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Racism and the Voting Rights Act of 1965: A natural experiment in Wake & Guilford counties in North Carolina

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**Racism and the Voting Rights Act of 1965: A natural experiment in Wake & Guilford
counties of North Carolina**

by

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A thesis submitted to the graduate faculty
in partial fulfillment of the requirements for the degree of
MASTER OF ARTS

Major: Political Science

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ABSTRACT

This study will look at racism and the history and progress of the Voting Rights Act of 1965, specifically in Wake and Guilford counties in North Carolina to assess whether it is still needed in its current format as we enter the 21st century. In June of 2013, the Supreme Court struck down the strongest and most widely used provisions in Section 4 and by default Section 5 of the VRA due to the perceived changed landscape of American politics. This study will examine the change in the expression of racism over the last fifty years. It will also analyze the effect of Section 5 of the VRA in two North Carolina counties to show why this decision should be overturned and the VRA restored to its previous strength.

It will measure the rates of voter registration and percentage of registered voters in their voting age population in these two counties specifically focusing on the years between Congress' last reauthorization in 2006 and the present time of 2014 since the Supreme Court decision. North Carolina counties were used due to the unique fact that originally the state was only partially covered by the VRA. This study samples both a Section 5 covered county and a bailed-out county to give a picture that shows there has been great progress, but there is still work to be done. This study will show that the VRA is still necessary in the 21st century due to the fact the race and racism are still and will continue to be a large factor in American politics.

CHAPTER 1

INTRODUCTION

“In our system, the first right and most vital of all of our rights is the right to vote. Jefferson described the elective franchise as the “ark of our safety.” It is from the exercise of this right that the guarantee of all our other rights flows.”

“Unless the right to vote be secured and undenied, all other rights are insecure and subject to denial for all our citizens. The challenge of this right is a challenge to America itself. We must meet this challenge as decisively as we would meet a challenge mounted against our land from enemies abroad.”

-President Lyndon B. Johnson
Special Message to Congress on the Right to Vote
March 15, 1965

Introduction

In June of 2013 Chief Justice Roberts read a decision in the case of *Shelby County, Alabama v. Holder* that struck down the main enforcement clauses of the Voting Rights Act of 1965. While reading the decision of the Court, Chief Justice Roberts claimed that “our country has changed” while at the same time stating that “any racial discrimination in voting is too much.” (*Shelby County v. Holder*, 570 U.S.—, 133 S. Ct. 2612 (2013)) This decision declared Section 4 of the Voting Rights Act to be unconstitutional and by default also struck down the Section 5 “preclearance” clause, which spearheaded the most powerful part of this piece of legislation. These two functions made any state or county that had a history of electoral discrimination and low levels of African American voter registration and turnout rates to be covered under Section 5. This meant that covered areas must first consult with the Attorney General and the district court of the District of Columbia before they are allowed to make any electoral changes. This piece of legislation in many parts applies to the nation as a whole, such as Section 2 which closely follows the language of the Fifteen Amendment.

The special provisions that were set out in the Voting Rights Act of 1965 set out to create a remedy to the unlawful conduct of 7 original states (6 fully covered and 1 partially covered) that had been keeping African American voters away from the election polls for over one hundred years. Only a radical piece of legislation, the likes of which had never been previously seen, could bring a remedy to this ongoing problem. This act's special provisions of a triggering mechanism that enacted preclearance was originally meant to have a sunset provision after five years, yet Congress has seen fit to renew it four times since then in 1970, 1975, 1982, and most recently in 2006 due to the ongoing need for its existence.

It has been almost 50 years since the passage of the Voting Rights Act of 1965. This powerful piece of legislation was passed by Congress to try and finally after almost 100 years of disenfranchisement, give African American citizens the right to vote and the ability to do so without any undue burden. Despite valiant efforts on Congress' part to try and enforce the 15th Amendment, African Americans in the South were slowly pushed away from the polls. Various methods ranging from terrorism and intimidation on the part of the Ku Klux Klan to the birth of literacy tests, poll taxes, and grandfather clauses kept the rates of African American voter registration and participation to a minimum.

The battle to ensure African Americans the right to vote has been fought in the trenches of war, on lunch counters, bridges, and rural roads throughout the Southern states. If we are to ensure that these battles were not fought in vain we must make sure that the Voting Rights Act is upheld and restored to its previous level of strength. Although America has changed in many ways, in many ways it still has the same attitudes and beliefs that it has had for over 200 years. This study is important because it focuses on some of the fundamental rights that this country was founded upon. These rights include the idea that all men are

created equal and should be treated as such under the law and that each individual should be able to elect others to govern that will take into account and strive to meet the needs of the governed.

This study will show how race relations and racism have transitioned over time since the Voting Rights Act first went into effect and show that although we have seen some improvement through the passage of time, there is still plenty of work to be done. It will specifically look at two counties in North Carolina with similar demographics, one that has been covered under Section 5 since its inception, and another that was originally covered and then soon after bailed-out. This will provide a natural experiment to show how each county has progressed over the last fifty years in the areas of African American voter registration and levels of registration as a function of total voting age population for each racial group. After it has been shown that the decision to declare Sections 4 and 5 of the VRA unconstitutional should be reversed, this study will provide ideas on the future directions of the Voting Rights Act and minority voting rights in America. It will specifically look at how we express ourselves when it comes to issues of race and politics to show that racism still has an effect in the areas under jurisdiction of the VRA. The main reason is to focus less on statistics which can sometimes be misleading and instead focus on certain psychological theories on why issues of race still affect our opinions and actions in elections, which may give insight into why we still need the VRA to be in full force. It is expected that the covered county will still show large gaps in levels of black registered voters in comparison to white registered voters. It is also expected that the bailed-out county will show a much smaller gap in registration rates.

This is very important to the future of the country as we move towards an era where the original majority will soon become a minority and a country where different types of minority groups enter every day. If we are to be able to accommodate all minority interests we need to make sure we continue to have a system of government where every citizen has the right to vote and has the same quality access to the polls, so that they may elect officials to represent their needs.

The United States Commission on Civil Rights has stated that “although there has been significant general progress, officials in some counties continue to flout the law.” (190) America has a unique situation unlike any other country around the world in that can show that democracy and equality across all groups of people is not just an idea thought up by philosophers and lawyers. Light says that “the law is good, but only comes to life when it is fully embraced by the society it serves” (163). This country can be a shining example of functional democracy that includes all groups of minorities and gives them an equal voice in how they are governed and by whom.

CHAPTER 2

TRANSITION OF RACISM IN AMERICA

“Racism is still with us. But it is up to us to prepare our children for what they have to meet, and hopefully, we shall overcome.”

-Rosa Parks

Introduction

Issues of race and politics are something that this country has had to deal with from the moment we set up our own independent government in 1776 till the present day. As Sears and Savalei (2006) put it “contention over racial issues is one of the continuing hallmarks of American political history.” The American people have had a racial divide in all of our economic, political, and social structures since the inception of the country. Although outward “old-fashioned” or Jim Crow racism has seemingly been all but erased from our society, racism itself is still an issue that pervades the American mind and has not gone away or changed forms. The only thing that has changed over the last sixty years is the way we interpret racism and we have now found that the cause may be deeper than we could have ever imagined.

There are individuals that will tell you that there has been no change in racism, others that will tell you it has evolved into something newer and more modern. I however argue that racism and prejudice against another race can co-exist in multiple forms at the same time. I argue that racism has changed and evolved with our societal changes since the time of the Civil Rights Acts of the 1950’s and 60’s and the Voting Rights Act in the mid 1960’s. It has not gone away and it will never go away because it is something that I believe is inherent in all of us deep within our subconscious. There are certain things in society that will activate an internal racism mechanism even when we do not think we care about race. We may be

able to overcome racist thoughts and actions with the right levels of motivation, but it will still exist in our genetic code whether we want it there or not. Racism has changed and evolved as the American society has pressured its citizens into thinking that it is no longer right to express these opinions in public, therefore these thoughts, attitudes, and beliefs have just went undercover. Also I agree with McConahay (1981) in his article asking whether racism in America has declined. He found that how this question is answered depends on how racism is measured and who does the measuring. Sears (1996) also sees this problem in the operationalization of what racism really is, which is why I believe that there is so much controversy on how to measure the levels of racism. We cannot reliably and validly measure something on which all parties do not agree on. If there is no agreed upon definition of racism, the problem will be bogged down in problems for a long time.

In today's society American politicians can no longer make policies that are explicitly reminiscent of the Jim Crow era. They have found ways to get around this roadblock by striking down laws that help minorities without allowing the majority of the citizenry to see what their real policy motivation is. This type of new and modern racism has been called symbolic racism. In Katz and Taylor's book about racism David Sears describes this new school of thought was developed to explain "the political role of whites' racial attitudes." (53) This type of modern racism is when an individual outwardly acts in a non-racist non-prejudiced way and yet inside they still maintain their racist attitudes. Many researchers out there believe that this is just old fashioned racism in a new form and that there really is not a new type of racism just the old one presenting itself in a new light.

The original school of thought on racism, what it is, where it stems from, and how it manifests itself is a matter of competing social psychological theories. They can range

anywhere from social dominance theory to social learning theory to realistic conflict theory. These theories include concepts like competing for resources, in group biases, and familial socialization patterns. In order to understand why racism happens in the first place, we need to understand its possible origins. Once we are able to grasp these ideas they we will be able to understand where racism is going, if anywhere, and find ways to reduce its harmful effects.

Social Psychological Theories of Racism

One of social psychology's earliest ideas on where racism comes from is called realistic conflict theory. This theory essentially states that intergroup hostility arises over the battle for "scarce resources, such as jobs, housing, and good schools." (Bobo, 1983) Due to this conflict based upon goals, competition, and hostility over resources, different groups will become prejudiced and begin to discriminate against other types of out-groups. This hostility leading to these racist attitudes can be a product of real or imagined battles over resources. "Once these resources are in short supply, demand for them increases" Cottam et al (2004). This is one of the reasons why this theory may be in play while politicians make policy decisions in the present time frame. We are now living in a time period in which the American people seem to finally be moving towards the concepts that our founders set forth that all men are created equal. We have less de jure discrimination than any other time in our nation's history.

The realistic conflict theory may be coming into play in policy making today, because now that good jobs, wealth, and educational opportunities are available to everyone groups may feel as though they have less access to them than before. This could be especially true in

the case of white Americans. In the first two hundred years of our country's history, nothing was denied to the white race. They have had the opportunities to vote, govern, and obtain vast amounts of wealth and power among other things. Now that legally all groups are entitled to equal protection and opportunity, the white race may feel worried that their piece of the proverbial pie is shrinking. This may cause them to have hostile racist beliefs towards different out-groups, African Americans in particular. As this perceived intergroup competition heats up and becomes much more hostile, I would expect to see more issues of racism arising. This type of theory could be in play for some of the rationale behind the Jim Crow era laws as well. White Americans may have felt backed into a corner and perceived that what resources they had may be taken away from them; therefore they implemented this system of de jure segregation and discrimination to feel as though they still had control over their set of resources and to keep a feeling of superiority. This type of process helps to lower competition of the scarce resources to the superior group and in turn limits the access and ability of the discriminated group to these opportunities and resources.

Another type of social psychological theory that racism may have its origins in is called Social Dominance Theory. Sidanius (1992) discusses this theory as being one in which people "prefer groups to be in a hierarchical structure wherein people want their in-group to dominate all other out-groups." In social dominance theory, the "American dilemma is simply a case of more general forces that tend to maintain the relative hegemony of some social groups over others" (Sears, Sidanius, Bobo, 26). This type of action creates a situation that legitimizes these discriminatory myths about out-groups which will tend to keep that group away from opportunity to become a group of equal standing. This theory also leads to an idea that there is a personality dimension to this process in which people actually desire an

unequal system that gives an unequal distribution of resources. This may be the bridge that connects this theory to more recent theories that look at implicit racism and how it may be an automatic process in the brain that acts before we even realize what is going on. This process is essentially functioning to give the individual a feeling of ego enhancement wherein they further believe themselves to be in the superior group. Bobo (1999) also points out that this theory shows that there is a “commitment to a relative status positioning” and keeping a “racialized social order.”

This theory could also lead to the patterns that we see today where white voters and representatives vote down any laws and policies that may indirectly help minorities, such as welfare reform. In a study done by Feldman and Huddy (2005) they found that a race conscious policy in the form of a scholarship program was more likely to be opposed by both liberals and conservatives, when it was targeted at black rather than white students. Bobo (2003) found that whites’ opposition to affirmative action or to voting for a black candidate is due largely to their negative affect for black individuals and their feelings of their groups place in the societal hierarchy. By opposing such programs, it allows the individual in the superior group to control access to these resources and further inhibits the minority group’s ability to change the status quo therefore legitimizing these myths of superiority. Individuals that are socialized in this type of environment tend to carry on these personality traits into adulthood.

Alternatively, some studies have shown that despite this socialization, with higher levels of education these types of attitudes are diminished. This pathway may show promise for helping to minimize the effects of racism and discrimination in outward expressions and in policy decisions. Racist attitudes and beliefs have changed and been diminished since the

Jim Crow era, but these same attitudes may still exist and make an impact on what policy decisions get made and the general feel of equality in American society.

The next question among researchers of race and politics is, has racism diminished to the brink of disappearing or has it evolved with the times? Issues of race and politics have evolved since the time of the Jim Crow laws. It is no longer only about school desegregation, voting rights, and the use of public facilities. Public policy today has the demanding task of dealing with affirmative action in higher education, social welfare reform set out to improve the economic situation of many minorities, and with a government that seems to finally be taking to heart the legal stance of equal protection and equal opportunity.

Modern Racism/Symbolic Racism

Modern or symbolic racism is thought to be a new expression of racism unlike old fashioned racism that was seen in the Jim Crow era. Sears and Henry (2003) place the origin of symbolic racism in a combination of anti-Black affect and conservative values, primarily in the area of individualism. This new type of symbolic racism has taken the place of old fashioned racism, which was a belief in create large amounts of social distances between white and black citizens, the ideology that Blacks were somehow biologically inferior to whites, and the ideal that segregation now and forever was an idea worth clinging to. Tarman and Sears (2005) found that symbolic racism has a large effect on whites' opposition to racially targeted policies, and this opposition takes precedent even over party identification, ideology, and other governmental beliefs. Symbolic racism is usually thought of as a single coherent belief system that tries to portray the idea that racial discrimination is no longer a large obstacle for good life opportunities. It is also thought that the disadvantages still faced

by the African American community are due to their own unwillingness to take responsibility of their lives, therefore they are not worthy of any of the various types of policies aimed at giving them special attention to bring them up to an equal level with the rest of the white population. (Henry and Sears, 2002)

This new type of racism includes multiple ideas that create a negative feeling towards the minority out-group. The first two ideas are that white individuals need to protect their so called traditional values, while at the same time blowing cultural differences out of proportion. All the while this type of racism makes the in-group believe that the out-group violates these traditional values and should as such be looked down upon because of this idea. Virtanen and Huddy (1998) point out that due to these factors, “racist beliefs are more likely to resurface as resentment over government special treatment of African Americans who many believe does not deserve it.”

One of the biggest problems when trying to measure this type of symbolic racism is the idea that it is a blending or a fusion between anti-Black affect and this feeling of individualism. Kinder and Sears (1981) found that this new racism is a form of resistance to change to the so called status quo of racial equality levels. Researchers have struggled to find a way to measure this type of racism as one concept, when it is made up of two or more parts. Also when trying to operationalize symbolic racism for measurement how much of each of the two factors is actually in play in the racist attitudes. One of the biggest problems with the fact that most researchers cannot agree on a consensus pick for how and what to measure, many critics provide that this new symbolic racism scale and measurement is neither reliable nor valid. These same critics also try to point out that there are no real qualitative differences between the old fashioned racism and in this new and modern

symbolic racism. One way that has been put forth by Henry and Sears (2002) to measure symbolic racism was the Symbolic Racism 2000 scale. This new scale measures racist attitudes by asking both Likert and non-Likert scale questions to learn a participants antipathy towards African Americans.

Symbolic racism has been found to have its true origins in psychological attributes such as personal beliefs, attitudes, and personality predispositions. It seems that this is not necessarily a new type of racism, but rather the same racist feelings just expressed differently. Throughout many studies one idea keeps popping up and that is the idea that these racist attitudes and beliefs may be rooted in psychological and personality related processes.

Henry and Sears (2002) asked participants to rate a proposition on a five point Likert scale. They involved four different themes, such as work ethic and responsibility for life outcomes, demands, denial of continuing discrimination, and undeserved advantage. These scores on these different thematic questions were all self-reported which made for a cheaper and easier way of measurement. This type of measurement process does have its naysayers and critics. One of the biggest criticisms of this methodology is that because the fact that all of the measures are self-reported, participants may find it in their best interest to lie so as not to appear as though they are really racist or to tone down their true feelings. This effect may actually be even larger if the experimenter were to use an African American to administer the questionnaire. It could even lead to what Dutton (1973) termed as “reverse discrimination”, which says that whites will exhibit more openly favorable behavior towards minorities to decrease the fear of repercussions from showing racist cues in their behavior. Most individuals probably would feel as though it is now socially undesirable to admit to these

types of feelings and beliefs therefore they could lie on the questionnaire so as not to appear racist.

Policy Implications of Symbolic Racism

In the realm of political policy making symbolic racism has been shown to play a large role. This combination of anti-Black antipathy and reliance on traditional values has had a very large influence on all types of white policy preferences. This has been shown in policies ranging anywhere from bussing students to affirmative action and it also plays a large role in voting behavior. Since we no longer see any real outward expression of support for an openly racist public policy, symbolic racism has allowed white individuals to still vote for policy that keeps minorities from accessing the tools and resources necessary to put themselves on a level playing field. Sears et al (1996) have also shown that symbolic racism attitudes will affect even college educated whites' racial policy preferences.

One major critique of this line of thought was shown in Rabinowitz et al's (2009) experiment that found that some measures of symbolic racism may actually hurt certain ideological perspectives even if they harbor no ill will towards minority groups. Those with actual conservative opinions may just feel as though African Americans should work their way up the societal ladder just like everyone else. Son Hing et al (2008) also found that in the case of conservatives would score high on a modern racism scale because they support ideals and values that are "confounded with the content of the MRS." (Son Hing et al, 2008) They may have no hurtful intentions or feelings towards this group, yet the symbolic racism scale will show that they harbor a very heavy racist attitude. This study suggests that there may be unintended framing effects going on when asking questions on the symbolic racism Likert

scales, so researchers do need to make sure they are measuring the right beliefs and asking the correctly worded question.

One realm in which symbolic racism can have a large effect is in the area of elections and specifically presidential elections. Much research has been done in the last few years due to the fact that America now has a black president for the first time in its history. Also in this point in time Moskowitz and Stroh (1994) have shown that we now have over 7000 elected black officials in the United States and the figure is still rising. Also we now have one the largest bloc of people in our history that are willing to vote for a qualified African American individual for elected office. We still have an issue of the fact that unless the minority candidate has an overwhelming lead in the work up until the election he or she only stands a minimal chance of being elected if it is a close race. This could be due to symbolic racism because we may tell people that we are willing to vote for an African American candidate, but when we get behind the curtain of a voting booth; we do not feel as much pressure to be politically correct and will therefore vote for the white candidate at the last moment. It is also due to this reasoning that Moskowitz and Stroh (1994) believe that black candidates must utilize different campaign strategies than their white counterparts. We might be liable to believe that if a black candidate downplays racial issues such as welfare reform or affirmative action he would be able to downplay some of the symbolic racism when it comes time to vote. Moskowitz and Stroh (1994) also found that even if a candidate does this and focuses more on the mainstream issues it does not necessarily cause white voters to lower their levels of symbolic racism toward the candidate. In the end racists will only see the black candidate through a racial lens and will distort any and all of the candidates campaign messages to fit their perception of that race. Research has also shown that racial resentment

over a government policy that is attentive to the needs of the black community will influence voting decisions in the next election and if there is a black candidate he or she will face extreme opposition because of the government policy even if they do not support it. (Citrin et al, 1990)

During the 2008 presidential election, the country was faced with the task of deciding for the first time ever whether or not a black candidate was a viable choice for president. As for race and politics, old fashioned racism, and modern racism, this opportunity presented a one of a kind chance to do research on an actual campaign outside of the laboratory. There were many different studies done to determine if certain objects, attitudes, or beliefs would have any effect on voter preference on deciding whether or not to vote for Barack Obama. One such study done asked whether or not prior exposure to the Confederate flag would have an impact on whether a person would vote for Barack Obama. (Ehrlinger et al, 2011) They found that exposure to the flag lead to an increase of racial biases and a lowered rate for willingness to vote for Barack Obama. This experiment was done primarily with Southern participants, but it would be interesting to see if adding a northern flavor to the sample would change their results at all.

Another area of study focused on whether mass media exposure of Barack Obama in images and other media instruments contradicting negative racial stereotypes would reduce levels of racism and prejudice (Goldman, 2012). In this experiment they actually found that contradicting exposure in the media lessened the amount of explicit racism and prejudice especially in those with a high school diploma or less education. One main concern though would have to be whether or not this measure implicit racism as well or would those measure produce different results? This is an interesting line of work because it shows one possibly

pathway in which we can help remove some racist tendencies among individuals for example by increasing television appearances that contradict negative stereotypes.

It has gotten to the point where whites' political preferences are "saturated with racial meaning." (Carmines and Stimson, 1989, Federico and Luks, 2005) Research has shown that through "race coded issues" (Mendelberg, 2001) white resentment towards blacks now predicts very strongly that white individuals will support policies that punish the social welfare and criminal justice realms, so as to harm the minority groups. Researchers have shown that policies that have explicit racial meaning are usually quickly rejected in the present age, but racially coded policies with implicit appeals toward racial issues may have a larger effect on whether white individuals support them or not. (Mendelberg, 2001 and Huber and Lapinski, 2006) It has been shown that politicians no longer make overtly racialized appeals, but rather hide them in covert racial language. These types of policies help to prime white individuals' behaviors because they do not recognize them as conscious racial cues that they should attend to. It has also been found that certain words can also invoke racist attitudes when analyzing candidates and their policy leanings in elections. (Slocum, 2001)

Finally in terms of white partisan preferences, Tesler (2013) set out to test whether or not old fashioned racism saw a return in the early era of President Obama. He explained that our concept of old fashioned racism of the Jim Crow era has all but disappeared since the Civil Rights Movement yet he set out to show that this type of racism may be seeing a slight resurgence in the early Obama era. He showed that due to President Obama's connection with the Democratic Party, old fashioned racism became a factor again in terms of partisan preference. This rise of a black president brought to the surface multiple forms of racism in the form of resentment of black influence on politics and by having a president from a

minority that some still believe to be biologically inferior to the white race. The last place we will look in our path to understanding the transition of racism through the last hundred years or so of American history is the idea that we can have implicit racist beliefs that we may not necessarily be able to control or know when these beliefs and attitudes are in play. Implicit racial attitudes have been found to play a role in voting behavior, outside of just political ideology. (Greenwald et al, 2009)

Implicit vs. Explicit Attitudes and Racism

We have looked throughout this literature review at some of the different transitions of racism through time, but there is one form left that may be the most important of all to understand and that is the idea of implicit or unconscious racism. According to Blanton and Jaccard (2008) and implicit measure of racism is an indirect measure that does not require an individual's direct knowledge of their standing on the construct being assessed. There are a few main methods for trying to measure these unconscious racist attitudes through either the AMP test or the IAT test. Both tests measure these implicit racist attitudes, but do so in a different way. There are some validity questions of these tests because they are not well developed yet even though there have already been some very strong claims in the research that they can predict unconscious racist attitudes. The interesting thing about these tests is they have been able to tell us many things about implicit racism such as the idea that it could be affected by different social factors and that people are generally unaware of these beliefs.

Dovidio et al (2002) found that people "do not even have to be aware of the operation of their attitudes" for them to be influential in the individual's behaviors. They have also written about the idea that when an individual has the time and motivation to assess the

consequences of their actions, then explicit attitudes play a role in individual behavior. When a person does not have the time or motivation these implicit racial biases and attitudes become activated. They also found that in some conditions in their experiment that implicit activation of white stereotypes and racism may lead to self-fulfilling prophecies during a white person's interaction with a member of the opposite race, wherein they may find evidence to confirm their previous stereotypes and beliefs. Fazio et al (1995) did an experiment in which they tested what effect a modern racism scale had on an evaluation of black vs. white faces. In this experiment participants were primed on a word list and then later asked to evaluate the faces in pictures, which in the case of many black faces negative reactions were recorded. I believe that this shows that we have unconscious and unknown beliefs in our minds that we can't access, but since we know this we should be mindful of our actions. If we can find enough motivation and take our time in situations that this could be a problem we should be able to overcome our implicit racism.

One of the main tests out there to measure these implicit attributes is the Implicit Association Test which is designed to measure the strength of associations linking different categories such as black and white to other anchors such as good and bad. (Blanton and Jaccard, 2008) in research done by Ottaway et al (2001) and Greenwald and Rudman (1999) these use this test to measure implicit levels of prejudice and racism. Greenwald and Rudman (1999) tested the validity of the IAT by using it on different age groups and different ethnic backgrounds to see if the test gave consistent results across the different categories. They showed in this research that there may be one way to overcome this racial bias and that is to try and classify out-group members as in-group members and continue to be cognizant of these biases. Arkes and Tetlock (2004) also showed how quickly that these implicit attitudes

were available based on reaction times to hearing good or bad words followed by a white or black face.

One of the newer types of tests is the Affect Misattribution Test (AMP). The AMP uses the concept of “showing a Chinese pictograph for 250 milliseconds preceded by a brief flash followed by a picture of a white or black man’s face” (Ditonto et al, 2013) to test for misattributing the faces with the presented words. Ditonto et al (2013) tried to show that “implicit attitudes add to our ability to explain public opinion related to race in 2008.” In their data they found that symbolic racism continues to be an extremely important variable in politics for the citizens of the United States and that in American politics in general race still matters.

As it has been shown racism and race related issues will be front and center in American politics for the foreseeable future. Regardless of whether or not people are conscious of their race related beliefs, we still need to be cognizant to the idea that race still matters in American politics. We as a people and as a country have come a long way. We have moved away from a time where African Americans had absolutely no access to voting and minimal access to being elected to any position, to a time where we have record levels of African American Representatives, Senators, and Mayors. In the 21st century the American people elected their first African American President, which showed levels of progress that were previously unimaginable. Although we have made this great step, it has been shown that racism and problems of race are still present in politics even during the last presidential election.

We must be careful to not let ourselves believe that the era of racial tension has passed and destroy previous pieces of powerful legislation such as the Voting Rights Act of

1965. It may be a victim of its own success due to the large change in public perception toward racism, but as these studies show racism is still present in our daily lives and will not just disappear because it is no longer as salient of an issue as it was. The days of Bull Connor and the Birmingham police force turning fire hoses and attack dogs loose on African American protestors may be gone, but racism and problems of race have not disappeared from the American psyche. Due to these facts we must remain vigilant to make sure that no citizen is denied the right to vote or hold office due to the color of their skin.

CHAPTER 3

CURRENT AND HISTORICAL PERSPECTIVES OF THE VOTING RIGHTS ACT OF
1965.

“But even if we pass this bill the battle will not be over. What happened in Selma is part of a far larger movement which reaches into every section and state of America. It is the effort of American Negroes to secure for themselves the full blessings of American life. Their cause must be our cause too. Because it's not just Negroes, but really it's all of us, who must overcome the crippling legacy of bigotry and injustice. And we shall overcome.”

-President Lyndon B. Johnson
Speech to Congress
March 15, 1965

The History Behind the Voting Rights Act of 1965

The right to vote is one of the fundamental rights given to all citizens of this nation in order to allow for full political participation. This right allows each and every one of us the ability to select those persons who we want to represent our needs and interests in the daily decisions of government. This has not always been the case that all citizens have had this right equally and if we are to understand where we are going as a nation and if we want “to control the future, we must understand the past. (Kousser, 2008)

After the Civil War during Reconstruction we saw the passage of the 14th and 15th Amendments to the United States Constitution. The 14th Amendment in its Equal Protection Clause reads that “no state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States.” (U.S. Const. Amend XIV §1.) The 15th Amendment prohibits the denial of voting rights “by the United States or any State on the basis of race, color, or previous condition of servitude.” (U.S. Const. Amend XV §1.) These two amendments laid out the basis for full inclusion of African Americans as citizens and gave them the full right to vote in elections. The effort to pass and “debate over the Fifteenth

Amendment was contentious; Southern states argued that it interfered with states' rights." (McCool, 3) Once the amendments had passed during Reconstruction we saw extremely high levels of participation and election of African Americans. It was found that "black voter registration grew rapidly as did the success of black candidates." (Hudson, 1998) They achieved political success on a number of levels including holding "a majority of the seats in the lower house in South Carolina." (Hudson, 1998)

The push by the federal government to allow African Americans full participation in government and voting was met by large amounts of pushback, especially in the Southern states. The South saw the rise of the Ku Klux Klan and other terror inducing tactics to keep African Americans away from the polls. The Klan began around 1866, just after the Civil War ended and soon after began their campaigns of terror against the newly freed African Americans. This "intensified after the freedmen began to exercise the right to vote." (Valelly, 13) Many of the Southern states passed anti-Klan legislation in response to this threat, but either never fully followed through with enforcement or did not have the necessary resources to compete with them at the time. Many of the Southern states began pushing back and flouting the federal government's regulations by introducing new devices and laws in an effort to keep African Americans from being full participants and voting. Some of these new devices included literacy tests, poll taxes, and grandfather clauses that would put voter registration out of reach for many of the newly freed African Americans. There was also a push to create more stringent laws pertaining to residency requirements that would help disenfranchise the newly freed blacks who were constantly moving around to find work.

As we entered the 20th century one of the most popular ways of keeping African Americans from voting was in the operations of the voting registrars. One of the more

notorious operational issues was in Selma, Alabama. In Selma the Board of Registrars was “only open twice a month, and its staff usually arrived late, took long lunches, left early, and almost always ignored black visitors.” (May, 54) Sadly this was a trend that was seen throughout the Southern states in an effort to discourage blacks from registering to vote. Even when open and given the opportunity to register to vote the literacy tests that were put in place required them to read and interpret passages from Alabama law or the U.S. Constitution. These interpretations were completely subjective on the part of the registrars and more often than not the African Americans who attempted to register failed and most were not given any reason for why they had failed. This process ensured that they could not just come right back the next day of operation and answer the same question differently by memorizing the answer.

Another duplicitous way that the registrars were able to keep blacks from registering to vote was through the option of having a character witness. This character witness was a registered voter who could vouch for the person trying to register as being a good citizen. As to be expected very few whites would vouch for any black individual who tried to register and any black individual who was registered was usually banned from helping their friends. In many cases the registrars would be the witness for white registrants, whether they truly knew them or not and those that knew black applicants would tell them that it was against the law for them to act as a witness for an applicant. These processes and patterns throughout the May (7) also described the situation in Dallas County, Alabama wherein Selma resides as a place where the population was 57 percent African American but less than 1 percent of them were registered to vote.

In the 1950s and 1960s Congress passed multiple forms of legislation in an effort to see that African Americans were afforded every right as a citizen without any undue burdens. These followed one of the Supreme Court's most game changing decisions in the case of *Brown v. Board of Education of Topeka* in 1954. This decision in theory ended segregation in schools throughout the country. There was backlash to the decision in which many Southern states simply ignored the ruling or moved forward creating newly desegregated schools at a slow pace with minimal effort or by opening new private schools where the entire population was white.

In the next ten years Congress would further enact three separate pieces of legislation in "1957, 1960, and 1964 to address the exclusion of blacks from the voting booth." (Davidson and Grofman, 1994) Each one of these acts tried to enable black voter participation and registration including sending federal examiners to each state in order to see to it that African Americans were registered. All three had fatal flaws which effectively placed the burden of proof in discrimination on the black individual that was a victim of discrimination. These acts essentially allowed for them to seek damages and retribution in district courts. In order to do this the individual must file their claim on a case by case basis. This process was extremely difficult due to the procedural red tape and extremely conservative Southern district court judges. It has been shown by Perez and Agraharkar (2013) that the "case by case litigation did little to curb widespread discrimination." There were some bright spots due to judges such as Frank Johnson in Alabama who was more progressive than most judges of the Southern states and became known as someone who "displayed empathy to the African Americans." (Landsberg, 33) Despite all of the procedural holdups, black voter registration was steadily climbing in the Southern states due to these

civil rights acts, yet the white backlash held strong especially in the more rural states such as Mississippi and Alabama. In the end none of the three Civil Rights Acts would “remove the serious obstacles to effective protection of voting rights.” (Christopher, 1965)

Due in part to the inadequacies of these three Civil Rights Acts we began to see an uptick in the grassroots mobilization of the Civil Rights Movement. The Southern Christian Leadership Conference one of many of the civil rights groups operating in the South began a campaign to get black voters registered in Selma, Alabama, which up to that point had extremely low numbers of black voter registration and participation. There was almost an unspoken and unwritten rule that the blacks in the county and city did not participate in politics and just went about their daily lives. There were campaigns in the past to increase registration in Selma organized by SNCC, but they eventually moved on to other areas due to a failure to realize their goals in the area.

One of the leaders of the SCLC, Dr. Martin Luther King Jr. decided that Selma would be the next place where they would take their stand to bring to light the atrocities and culture of African Americans being relegated to second class citizenship. Grofman and Davidson (1992) also show that another reason for the selection of Selma was due to the county sheriff James G. Clark Jr. who like Bull Connor in Birmingham could be “counted on to overreact to peaceful civil rights demonstrations.” His overreactions led to enormous amounts of arrests and beatings for black individuals who stood in massive lines in order to get registered to vote. This led to a huge surge in national news media coming to the area to document the atrocities committed by the police. This is exactly what King envisioned for the movement to gain ground and push President Johnson into creating a voting rights act that he continually promised King. President Johnson kept pushing for King to bide his time

till he was able to push for more of his Great Society legislation, but the march from Selma to Montgomery and the events that unfolded at the Edmund Pettis Bridge ultimately proved to be the tipping point.

The Voting Rights Act of 1965

The events of March 7, 1965 were eventually referred to as Bloody Sunday due to violence against the peaceful protestors trying to cross the bridge on their way to Montgomery. Less than a week later President Johnson gave a forceful speech to Congress urging the passage of a new voting rights act. Before that he had urged his attorney Nicholas Katzenbach to craft the “goddamn, toughest voting rights bill you can devise. (Valelly, 2006) In order to fix the fatal flaws of the previous Civil Rights Acts, this new law created a “single unified program to create voting equality.” (Duke Law Review, 1965) Unlike the three previous pieces of legislation the new Voting Rights Act of 1965 would now place the burden of proof on the states and would enact special provisions to cover certain states and counties in federal jurisdiction.

Any state or political subdivision found to have used any test or device that led to discrimination in voting registration prior to November 1, 1964 would now be blanketed under Section 5 of the new VRA of 1965. Also, in order to enact the triggering mechanism of Section 4 which led to the coverage under Section 5, any state or political subdivision that had less than fifty percent of the voting age population of African Americans registered and less than fifty percent voting turnout in the presidential election in 1964. These would now be covered by Section 5 which created a system where all voting requirements or any election rule was changed it would now need to be subject to “preclearance” by the district court in

the District of Columbia or by the Attorney General. The new VRA also allowed for a provision wherein the Attorney General can send in federal examiners to investigate any suspected electoral changes leading to discriminatory practices “if he receives twenty meritorious complaints.” (Voting Rights Act of 1965 §6 (b) “Further, the scope of this authority is extended by the act to apply to voting discrimination in state as well as federal elections.” (VRA of 1965, §15) This provision of preclearance put more muscle behind this act than previous Civil Rights Acts because now the state or political subdivision must bear the burden of proof to show that there are no discriminatory intents in any electoral changes before they can happen. This helps to create a much more efficient process than the previous set up, where every claim of discrimination was taken on a case by case basis and then bottled up with procedural inefficiencies.

Any initial constitutional arguments that an individual or group held against the enactment of the new VRA could be set aside due to the fact that the Fifteenth Amendment provides that “Congress shall have power to enforce this article by appropriate legislation.” (U.S. Const. Amend XV §2) This battle was fought the very next year in 1966 in a case to the Supreme Court wherein Chief Justice Earl Warren in his opinion stated that “it was a valid exercise on Congress’ power under the enforcement clause of the Fifteenth Amendment” and was justified on the basis of “insidious and pervasive evil which had been perpetuated in certain parts of our country through unremitting and ingenious defiance of the Constitution.” (*S. Carolina v Katzenbach*, 383U.S.301 1966)

The battle over preclearance in Section 5 would be a battle that would be fought over and over again in the next fifty years by those who believed it to be either unconstitutional or an invasion of states’ rights. The real key in this argument was the idea that Congress could

enact anything that they deemed to be “appropriate” to enforce the Fifteenth Amendment. Seeing as the problem of black disenfranchisement was one that had been going on for over one hundred years, this new voting rights act seemed more than appropriate to remedy the problems. It has also been amended in the 1980s to include language minorities as well so that they too may not bear any undue burden in registering to vote.

As a provision of the Voting Rights Act of 1965 any state or political subdivision would be able to “bail out” of Section 5 coverage when they could prove that there had been no discriminatory tests or devices for the previous five years before the claim. This was later changed to no tests or devices in the previous ten years in some of the later amendments to the VRA. This has been a path that has been relatively straightforward and easily accessible to any state or political subdivision that chose to undergo the process. It has been used on many different occasions and as will be discussed in a later chapter as Wake County in North Carolina was one of the first political subdivisions to successfully go through the bailout procedure. This could be seen as another reason why the new piece of legislation could be deemed appropriate and does not set out any undue burden on a state or political subdivision. If they can prove that any tests or devices were never intended to discriminate or show that they have acted in good faith in the previous five years then they can alleviate the situation of being covered under Section 5. These extraordinary measures have seen “their fair share of legal and political challenges” (Bullock and Rozell, 2012) and although it has survived and been strengthened through this process it still has a long road ahead of it in order to remain at full strength.

Contrasting Perspectives on the Current Need for the Voting Rights Act of 1965

It has been shown that in the years leading up to the enactment of the Voting Right Act the level of registered African American voters in the South went from approximately five percent to just over a third of all eligible voters in the year prior to the VRA's enactment. Clearly there was a need for extreme measures to be taken to remedy such an injustice in such a cohesive region that shares many cultural and historical trends. As we have moved to the end of the 20th and into the 21st century we have seen tremendous gains in African American voter participation and registration in the Southern states. In many states, it has reached the level of parity between eligible black and white voters and in some states such as Alabama we see even higher levels of turnout for African Americans.

This would speak volumes to the powerful effectiveness of the Voting Rights Act in achieving the goals it set out to reach in the mid-sixties. One of the main problems with this level of success is that people no longer see it as a necessary provision in order to maintain the parity that has been achieved in many areas. Grofman and Handley (1991) have even shown a slight long term upward trend of black legislators in Southern state legislations. The election of the nation's first African American president has also gone a long way in making the case for the critics that say that the powerful special provisions of the Voting Right Act are no longer necessary. It seems as though now this opinion has even penetrated the highest court in the land as Chief Justice Roberts spoke of a changed landscape in America.

In reality the Voting Rights Act may actually be a victim of its own success. The act has done its job so well that people no longer find it necessary. Chapter 2 explained that the problem of racism and race in politics is not one that has gone away fully and it may never fully leave. Individuals argue that since voting levels are at parity in many case and there are

minimal Jim Crow type tactics to get around voter equality laws, and many elected minority candidates that the goal has been achieved and the job is done.

One main argument made in McCool (2012) was that African Americans in politics have come of age and American's today can look at the president and not think "black." Those in favor of the idea that this is a changed landscape always seem to refer to the same idea that that era of Bull Connor is dead and that America is so vastly changed in its way of thinking that legislation such as the Voting Rights Act should now merely be a relic of the past. This could not be further from the truth as has been shown in the previous chapter, because whether we realize it or not race does have an effect on our political emotions and actions. McCool (2012) even makes the analogy of helping an individual to jumpstart a car. Once it has been successfully started, there is no reason to follow the car around permanently as the main goal has been accomplished. This has the makings of a very valid argument, but it seems to fail when correctly compared to African American voting rights. Once the Voting Rights Act was enacted and shown to have its intended effect, it was meant to be left alone to expire, but as will be shown, the continuous presence of racial problems and racism have led to the need to "follow the car as it goes down the road" because if we take our eyes off it problems will arise. (McCool, 2012)

Although we have moved away from an era of explicit Jim Crow type laws set to effectively disenfranchise black voters, we now have what Justice Ginsberg referred to in *Shelby County, Alabama v. Holder* as "second generation devices." (*Shelby County v. Holder*, 570 U.S.—, 133 S. Ct. 2612 (2013)) Second-generation barriers, on the other hand, allow formal access to the franchise but dilute minority voting strength by limiting the effect that minority votes. (Guiner, 1994) These types of devices include racially gerrymandering

districts to keep black voters in the minority and moving polling places on short notice to areas that are more inaccessible to the majority of black voters.

A new type of device that has seen a rise in popularity in recent years is the idea of having a voter ID law, wherein voters must provide proof of identification before they are allowed to vote. Bentele and O'brien (2014) show that more of these types of restrictive voter policies have popped up in the Southern states, especially due to the fact that a couple of states have enacted multiple restrictive voter policies. On its face this seems to be a good way of prevent in-person voter fraud, but this can very negatively affect many minorities and many poor individuals who may not have a form of identification as needed by these new laws. King-Meadows (2011) points out that these laws usually need a form of identification that includes a picture of the individual and must be government issued, which can place a large burden on those that cannot afford to go to the DMV and pay the fee to have one printed, which essentially creates a situation that makes this law similar to a poll tax. As Issacharoff (2004) puts it, "what remains unanswered is what happens when there is no Section 5" to meet these types of discriminatory practices.

We should soon see the progress and results of these types of legislation, since they have grown drastically since Chief Justice Roberts read the opinion in *Shelby County v. Holder*. In 2013 alone we have seen 8 states pass nine separate pieces of restrictive voter laws and over half of these states that passed laws are in the South. One glaring example of the controversy behind these laws can be seen by the fact that the state of Texas waited mere hours after the rendering of the verdict in *Shelby County* case to try and pass one of the most aggressive and restrictive voter id laws in the country. Even if these new voter id laws are not being passed in an outwardly discriminatory way, they still unfairly affect the poor and the

minorities, which are in many cases one in the same. If we still had the backing of Section 5 of the VRA it seems that these legislative efforts would be struck down swiftly by the Attorney General due to the fact that they place an undue discriminatory effect on minorities and the poor. We as a nation should pay close attention to the happenings of these efforts now that for the foreseeable future there will be no legislative and judicial strength behind the Voting Rights Act.

In the following chapter we will turn to a natural experiment comparing two counties in one of the original seven states to be covered under Section 5 of the Voting Rights Act to assess the change in voter participation and voter registration of African Americans. North Carolina has the unique situation that it was only partially covered in 40 counties, unlike the other six states that were put under blanket coverage. It continues to be an interesting state to watch because although it is different in many ways from some of the other Southern states with historically discriminatory practices it has many similar characteristics which will be looked at for reasons of why the Voting Rights Act and its special enforcement provisions should be restored to its previous levels of strength. North Carolina is also one of the states that are in the process of enacting new voter ID laws. Government issued identification is preferred for the rest of 2014 and 2015, but the requirement of having an ID as a prerequisite to voting will be in full force just in time for the 2016 presidential election.

CHAPTER 4
THE VOTING RIGHTS ACT AND NORTH CAROLINA: WAKE AND GUILFORD
COUNTIES

“The South may not be the nation’s number one political problem, as some northerners assert, but politics is the South’s number one problem.”

-V.O. Key Jr (1949)
Southern Politics in State and Nation

Introduction

This chapter will begin by explaining a brief history of the political scene in North Carolina and will be followed up by a natural experiment to test the success of the Voting Rights Act of 1965 in two selected counties. The measure for success of the VRA will be shown by levels of political participation and percentage of the voting age population (VAP) among African American individuals in the state. This will be done by analyzing data taken from the U.S. Census Bureau and the North Carolina Board of Elections and the Board of Elections in each of the two counties used. It will be used to look at pre-VRA levels of African American registration and participation and specifically focus on the years between 2006 and 2014 which include the years since the last reauthorization of the VRA and its dismantling in the landmark decision of *Shelby County v. Holder*. This will show that even now in the 21st century when many critics say that the VRA is no longer necessary; it is still having a large effect on participation and registration of eligible African American voters. The chapter will then conclude with the major findings of the experiment and explain the necessity of restoring the VRA to its previous levels of legislative strength and enforcement.

Prior to the natural experiment this chapter will discuss some of the demographics of the state as a whole and as a comparison to the country at large, to highlight the uniqueness of the state. This will then be followed by the introduction of the two counties used in the experiment: Guilford and Wake. These counties were purposefully selected based on several different criteria. The first of which is that they have both been singled out by the Voting Rights Act's Section 5 preclearance mechanism. Guilford County was covered up until the time of the decision of the Supreme Court to strike down the Section 4 and 5 provisions of the VRA in 2013. Wake County was covered in the initial enactment of the VRA, but successfully sued under the bailout provision in the new law to remove the need for preclearance and has been free of it ever since. This was the first successful example of the bailout process used in the country. The second main criteria in the selection of these two counties for inclusion in this natural experiment is due to the fact that they reside in the same region of the state (The Piedmont Region) and as such have similar demographic characteristics and similar political processes. This is important in the state of North Carolina due to the fact that its politics tend to follow regional patterns.

The state as a whole is unique in the fact that it was the only one of the original Section 5 covered jurisdictions to only be partially covered instead of having statewide blanket coverage, which may be due to its political tendencies and history as will be shown in a later section. The fact that these conditions exist give this experiment the unparalleled ability to give an accurate picture of the how the Voting Rights Act has progressed over the last 50 years.

The question of what would the current political climate and racial situation in the South as a region and in North Carolina be if the Voting Rights Act had never happened can

be answered by the findings of this natural experiment. Experiments and studies similar to this can help to give additional reasons on why the Voting Rights Act has been so successful and why we still need it now even 50 years later. This is important as the VRA has entertained many legal battles throughout its history trying to declare it no longer useful or unconstitutional.

Political History of North Carolina

The politics of North Carolina over the course of the last 150 have been similar in many aspects while at the same time very unique in comparison to the other Southern states. In his famous and definitive tome on Southern politics of the early 20th century, V.O. Key Jr. called the politics of North Carolina a “progressive plutocracy” and he labeled it as a “scrupulously orderly” government with a “reputation for fair dealings with its negro citizens” (205-206). It was a state that had been a part of the Confederacy during the Civil War, yet remained slightly different than its neighboring states with less large slave owning plantations and smaller aristocratic ruling class. These concepts may have been part of the reason for Key’s analysis in 1949. The state may have had somewhat different perceptions about its African American residents and may have been less inclined to be so biased against them when it came to the electoral processes. It is hard to say for sure without further analysis, but this could have been one of Key’s thoughts behind the state differences in comparison to its Confederate brethren. Throughout the last fifty years North Carolina has been able to show some of this progressiveness by having more of a two party system than the other former Confederate states. Bullock and Rozell (2014) show that there has been a “Republican resurgence since 2010,” but in the past it has split parties in many elections such

as a Democratic majority in many of the statewide elections and is in line to become a “presidential swing state” in future elections. It seems to remain competitive in all of its elections which are unlike the characteristic dominance of the Republican Party in much of the South.

Others may paint a slightly different picture of the politics of the state in this era and have pushed back on calling the North Carolina of the early 20th century progressive. According to Bullock and Gaddie (2009) race actually became a significant factor in state politics shortly after Key wrote his book. They actually show that in the year after Key’s *Southern Politics in State and Nation*, one of the tightest electoral contests was the 1950 senatorial election between Willis Smith and Frank Graham. Despite support from President Truman due to Graham’s anti-racist campaign and his “strong civil rights plank” (Schaffer, 68), Smith pulled ahead and won the election due to his pressing of racial issues prompted by future Senator Jesse Helms. This election was the first of many dealing with racial problems in politics which was in step with many of the other Southern states, especially since African Americans make up approximately twenty-five percent of the statewide population.

In essence this state seems as though it really is what Woodard (2006) referred to as a “paradox, due to its traditional minded citizens who are interested in newer ideas.” This can be attributed to the idea that North Carolina has no Atlanta-like city with its urban sprawl and mega population center in the state, but rather a few large cities with large suburbs. This has allowed its politics to be more centered on regional issues, which include the large coastal region, the Piedmont region, and the mountain region on the western edge of the state. Also the two counties in this chapter are both from the Piedmont region to help the comparison by showing more similarities between the two counties. The counties of this region also have

some of the most populous cities in the state including what is known as the Research Triangle with its large cities and prestigious universities, which may show why the idea of a progressive North Carolina continues to exist. Both Guilford and Wake County include major institutions of higher education, which shows that their populations will continue to expand in the future and progressive opinions will still find their way into state and local politics of the region. Cooper and Knotts (2008) make mention of the same concept, when they speak of a “modernizer philosophy of the major cities in the North Carolina Piedmont” that has led to a more progressive feel to the region’s politics.

In terms of racial progressiveness Davidson and Grofman (1994) point to the fact that in “1954 Greensboro, North Carolina became the first city in the South” to show support and a willingness towards compliance with the new *Brown v. Board of Education of Topeka, Kansas* decision. Greensboro also played an integral role in the Civil Rights Movement as it was one of the first places to have the sit-in demonstrations in an attempt to desegregate the lunch counters at Woolworth’s Department Store by the Greensboro Four, which led to the “creation of a new student-based arm of the Civil Rights Movement” (Hillstrom, 35). North Carolina also had the highest rates of black registered voters prior to the Voting Rights Act of 1965 at 46.8 percent, which may have led to the reason why it was the only one of the original seven states subject to preclearance that was only partially covered.

Alternatively, the racial progressiveness North Carolina was one of the first states to adopt both a poll tax and literacy tests in order to register to vote in 1900. Although this may have been the case, Bullock and Gaddie show that a short twenty years later, North Carolina was the first Southern state to remove the poll tax as a prerequisite for voting. (190) Thompson explains that although the state has moved forward in its racial politics it is

affected by the past, by the fact that “it was only in the 1990s that blacks were elected to Congress from North Carolina.” (6) It wasn’t until 1995 that 2 African Americans were elected to the United States House of Representatives. (Menifield, 18) Also in the first few years after the enactment of the Voting Rights Act, the KKK was in the middle of resurgence and had a large population in North Carolina and there was also a large amount of white sympathizers in the state as well. It has been shown by Eamon (111) that the KKK “North Carolina was less openly violent” but it was still able to sway some sympathy their way which created more racial problems at the onset of the VRA. Thompson (10) points out that the usage of the poll tax and literacy tests in the early 1900’s “significantly depressed black voter registration rates.” In the twenty years leading up to the Voting Rights Act the level of black registration hovered between 5% in 1949 to approximately 35% in 1960. Prior to the enactment of the Voting Rights Act 40 of the state’s 100 counties had applied a test or device that was discriminatory in nature, thus leading to their inclusion in the Section 5 preclearance standards after 1965.

Demographics

According the most recent census results in 2010, North Carolina has a population of approximately 9.5 million of which just about 22% identify as African American. This places them at almost twice the average of the nation as a whole, which shows that issues of race will most definitely be a factor when discussing politics in the Tar Heel State. A substantial portion of this population is located in the Piedmont region of the state which includes many of the largest urban areas of the state. The Piedmont region of the state also includes 25% of the entire black population of the state, which will important when assessing data later in the

experiment. This will help to illustrate the idea that racial issues in politics will be very important in the region.

Natural Experiment

In this natural experiment the author will examine two counties in North Carolina's Piedmont region, in which one has been subject to Section 5 preclearance since the inception of the Voting Rights Act and the other was bailed out almost immediately after the act took effect. The author will be using data from the North Carolina Board of Elections in each county and from the United States Census Bureau to assess voting trends since the most recent reauthorization of the Voting Rights Act of 1965. This experiment will assess the level of registered voters in three groups: black, white, and total population of voters. It will also assess the percentage of voters in each of these three groups from the voting age population (VAP).

It is expected that the level of registered African American voters and percentage of the total VAP will be higher in Guilford County which has been Section 5 jurisdiction. The author also expects the black voter registration to be higher in Guilford County due to its higher concentration of black population in comparison to Wake County. It should also be mentioned that in taking account the racial makeup of each county over the last three years using data from the Census Bureau and North Carolina Board of Elections, the numbers in each category are based off of those individuals identifying as black or white only and of one race. Individuals making up the population identifying as two or more races were left out of the analysis.

Guilford County

In Guilford County, North Carolina the most recent U.S. Census puts the total population at 488,406, of which 158,899 are identified as being African American. This makes up approximately one third of the entire county's population. The largest urban area in Guilford County is Greensboro which holds almost 75% of the entire county population and in this large urban area the racial makeup is 48.4% white and 40.6% black with 11% belonging to other racial and ethnic groups. Just based off of these figures alone it can be concluded that race will play a large role in the politics of Guilford County seeing as the black-white makeup of its largest population center is almost at parity.

It also displays a higher proportion of African American population than the state in general which also shows that race will be very politically relevant in the county. Guilford County is also one of the fastest growing counties in North Carolina both in percentage of African American citizens and population as a whole. Guilford County has been covered under the preclearance jurisdiction of Section 5 of the VRA since its inception and has been flagged on three separate occasions since that time for violations in electoral changes. The first of which was in 1982 when it tried to enact a very strict residency requirement for a place on the Board of Commissioners. Due to its rapid growth in African American population over the previous 30 years this would have effectively helped to keep them from winning a seat. The second violation was also found in 1982 when the city of Greensboro was trying to annex area outside its previous city limits which would effectively dilute the strength of the minority vote strength both in the city of Greensboro and in the county as a whole. The most recent violation was in 1983 when the city of Greensboro was once again

flagged under Section 5 for issues with its city council elections, although in this case the objection was withdrawn by the Attorney General's office.

In Figure 3 the author assessed voting trends in Guilford County by calculating the levels of registered voters for three groups of voters: black, white, and total population of the county. The levels show that there is a consistently positive trend in voter registration levels in all three categories, with peaks in each of the two presidential election years as would be expected.

While these figures are important Figure 4 gives a much clearer picture of voting trends in Guilford County over the previous eight years. Figure 4 shows that the levels of black voter registrations as a percent of VAP has stayed much lower than its white counterpart, although in the most recent year it has slightly surpassed that of white voters. While it appears as though the Section 5 coverage is helping the levels of African American voters in the county, we cannot know whether the most recent level will continue. It seems as though despite the results of the last two years there is still a large gap in a county that is more than one third African American. Just a few years prior we have seen a racial gap between five and ten percent of the voting age population. In a county that is under Section 5 jurisdiction, you would not expect to see these kinds of figures. If the landscape has truly changed in American politics it would seem odd that we would see trends like these even in the last 5 years. Although the progress in the county is good this seems to show that the Voting Rights Act and its special provisions have worked well in this county and it will be interesting to see what the next ten years holds now that these special provisions have been rendered a moot point.

Figure 1: Registration Rates- Guilford County, NC 2006-2014

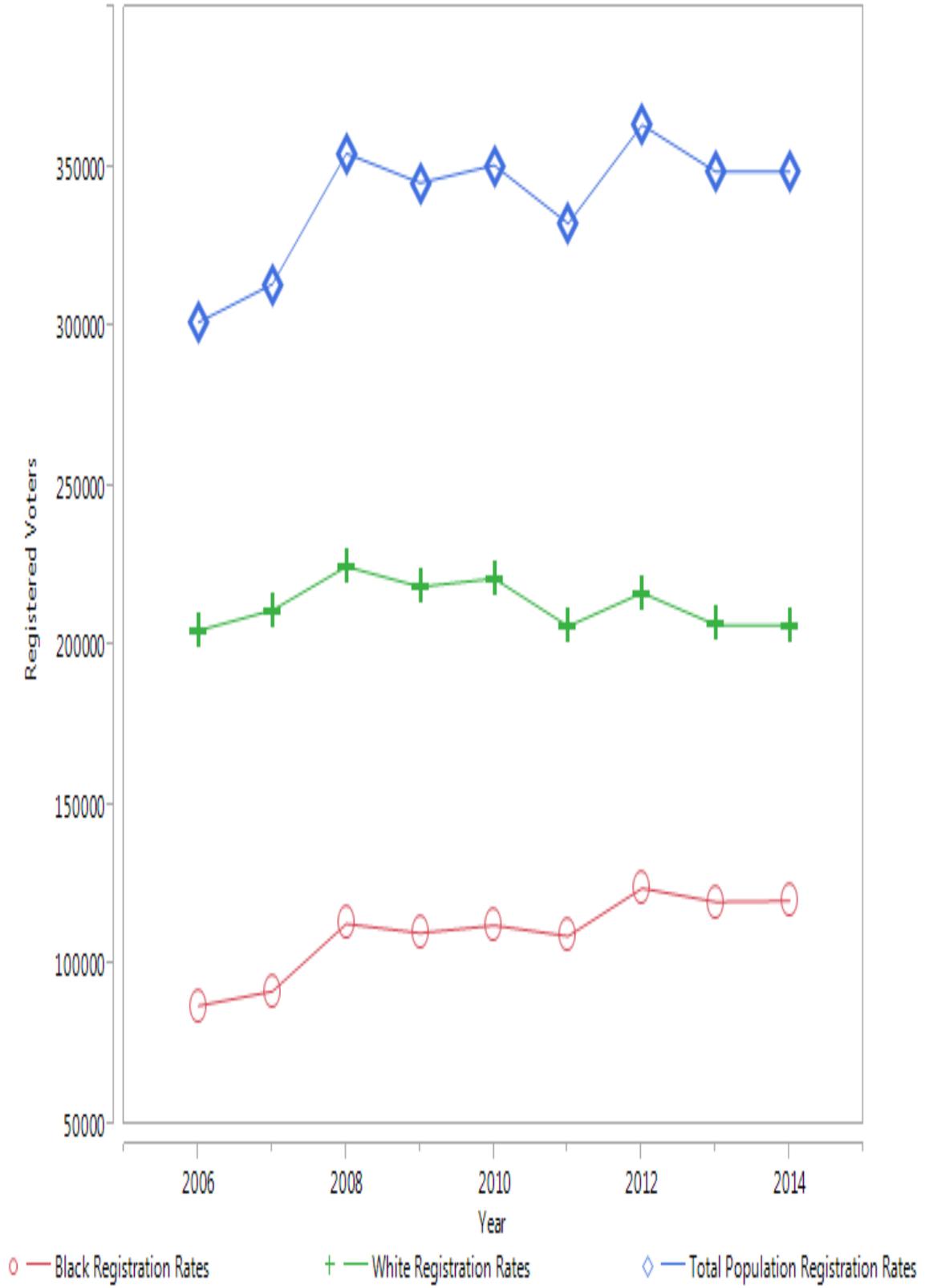


Figure 2: Percent Registered/Voting Age Population-Guilford County, NC

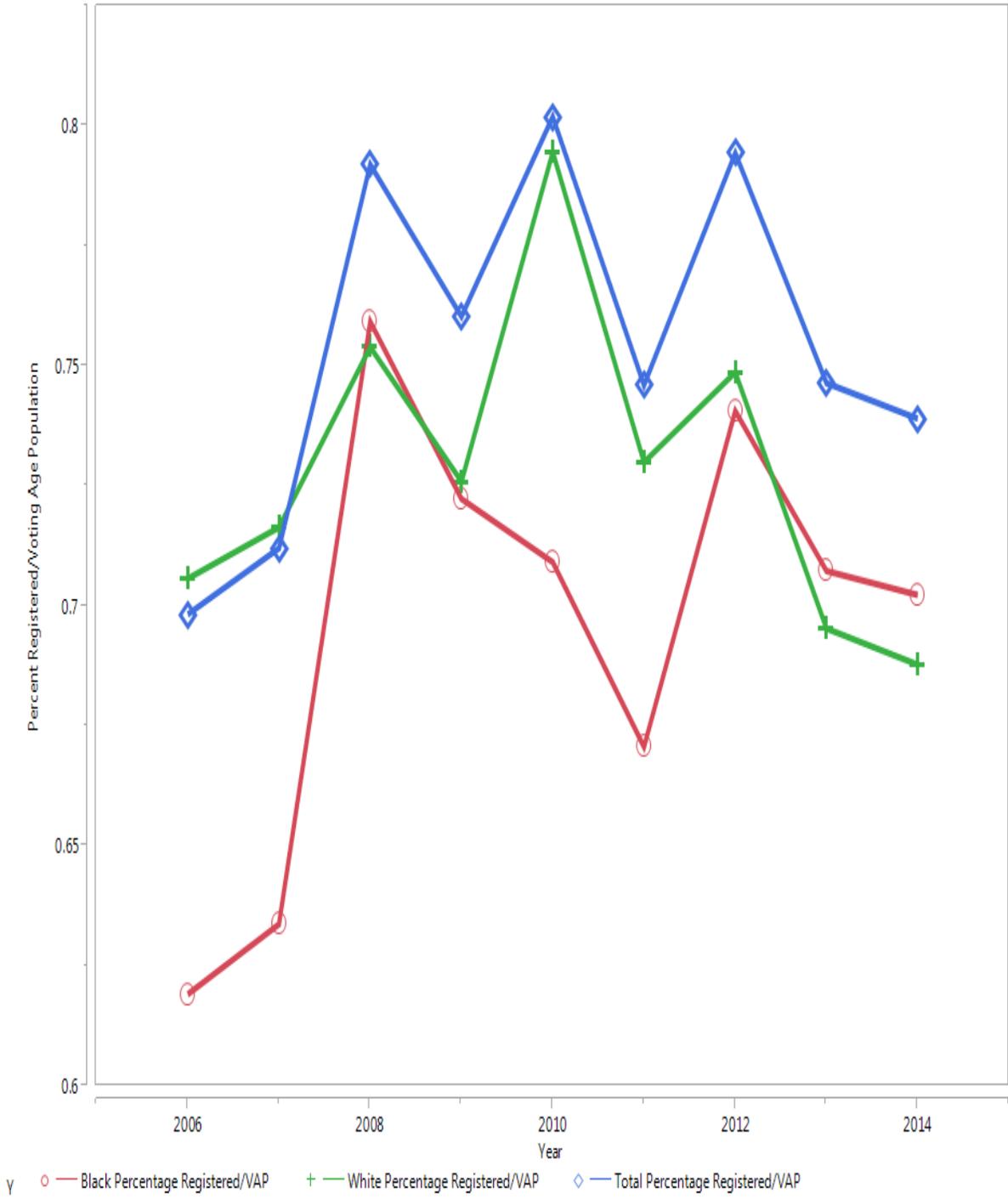


Table 1: Guilford County North Carolina 2006-2014

Year	2006	2007	2008	2009	2010	2011	2012	2013	2014
Black Registration Rates	87522	92035	113156	110348	112689	109341	124317	120044	120373
White Registration Rates	205101	211426	225078	218775	221322	206424	216855	206834	206635
Total Population Registration Rates	301639	313557	354477	345283	350814	332582	363419	348735	348708
Black Voting Age Population	141358	145227	149030	152761	158899	163023	167841	169714	171389
White Voting Age Population	290612	295116	298518	301353	278525	282773	289625	297454	300419
Total Voting Age Population	431970	440343	447548	454114	437424	445796	457466	467168	471808
Black Percentage Registered/VAP	0.619151	0.633732	0.759283	0.722357	0.709186	0.670709	0.740683	0.707331	0.702337
White Percentage Registered/VAP	0.705755	0.716416	0.753984	0.725975	0.794621	0.729998	0.748744	0.695347	0.687822
Total Percentage Registered/VAP	0.698286	0.712074	0.792042	0.760344	0.801999	0.746040	0.794417	0.746487	0.739088

Wake County

In Wake County, North Carolina the 2010 U.S. Census places the total countywide population at 900,933 of which 186,510 are identified as African American making up approximately 21.5% of the entire population. This level is consistent with the statewide average population of African Americans at 22%. The largest urban area in Wake County is the state capital of Raleigh which holds a population of 403,892. The racial makeup of the city includes 57.5% white and approximately 30% black individuals which makes it a very comparable city to Guilford's largest city of Greensboro. The fact that Wake County has a large African American population in the state capital which also holds some of the finest research universities in the country that are a part of the Research Triangle, shows that this population will probably be very progressive and have a large impact on the politics of the region.

These facts may have contributed to the rationale on why Wake County is not one of the Section 5 covered jurisdictions. As it was previously mentioned, Wake County was initially placed upon the list of covered jurisdictions under Section 5 preclearance but it was the first political subdivision to file a claim and remove itself from this coverage.

In Figure 5 we can see the voter registration rates for white, black, and total population. As we have seen since 2006 the levels of registration have stayed rather consistent in all three groups with a slightly positive trend due to the rapid population growth of the county, due in part from the large universities located within its boundaries. Figure 6 shows a much clearer picture has been going on in Wake County of the previous decade. This figure shows the registered population as a percentage of the total voting age population of each racial group. The total population as a percentage of VAP has shown a steadily

increasing level over the last eight years, with the large jump in 2008, which was probably due to both the fact that it was a presidential election year and the fact that we were voting to decide if we would have our first African American president or not. This would make most sense due to the fact that the very next year there is a large decrease in those actually voting. This author did however find quite an interesting point when during the midterm elections we see a large uptick in white registered voters.

This event could be due to many factors, such as a push away from the first two years of Democratic dominance in the federal government pushing through the Affordable Care Act. This also could indicate a possible backlash from white voters, possibly due to unconscious or old fashioned racism. As we have seen in Chapter 2 the idea of having a black president may have been a problem whether people knew it or not and chose to vote in individuals to Congress that would create a strong barrier to the President being able to push through any more controversial legislation. Another interesting finding from the data indicates that although the black voters had a post presidential election regression, they quickly rose back up and have continued to climb despite a declining African American population as a percentage of total population in recent years.

In terms of future directions in the state it seems as though the provisions in Section 5 have been doing their job. In the uncovered county we are seeing a six to nine percent racial gap in favor of black voters in a county where black voters make up a smaller proportion of the total population. In a covered county we are beginning to see signs of equality in registration rates, but there still seems room to improve. It is this type of progress that gives credence to the idea of North Carolina as a progressive state, because in this county alone we are able to see one of the highest levels of African American voters in the entire country.

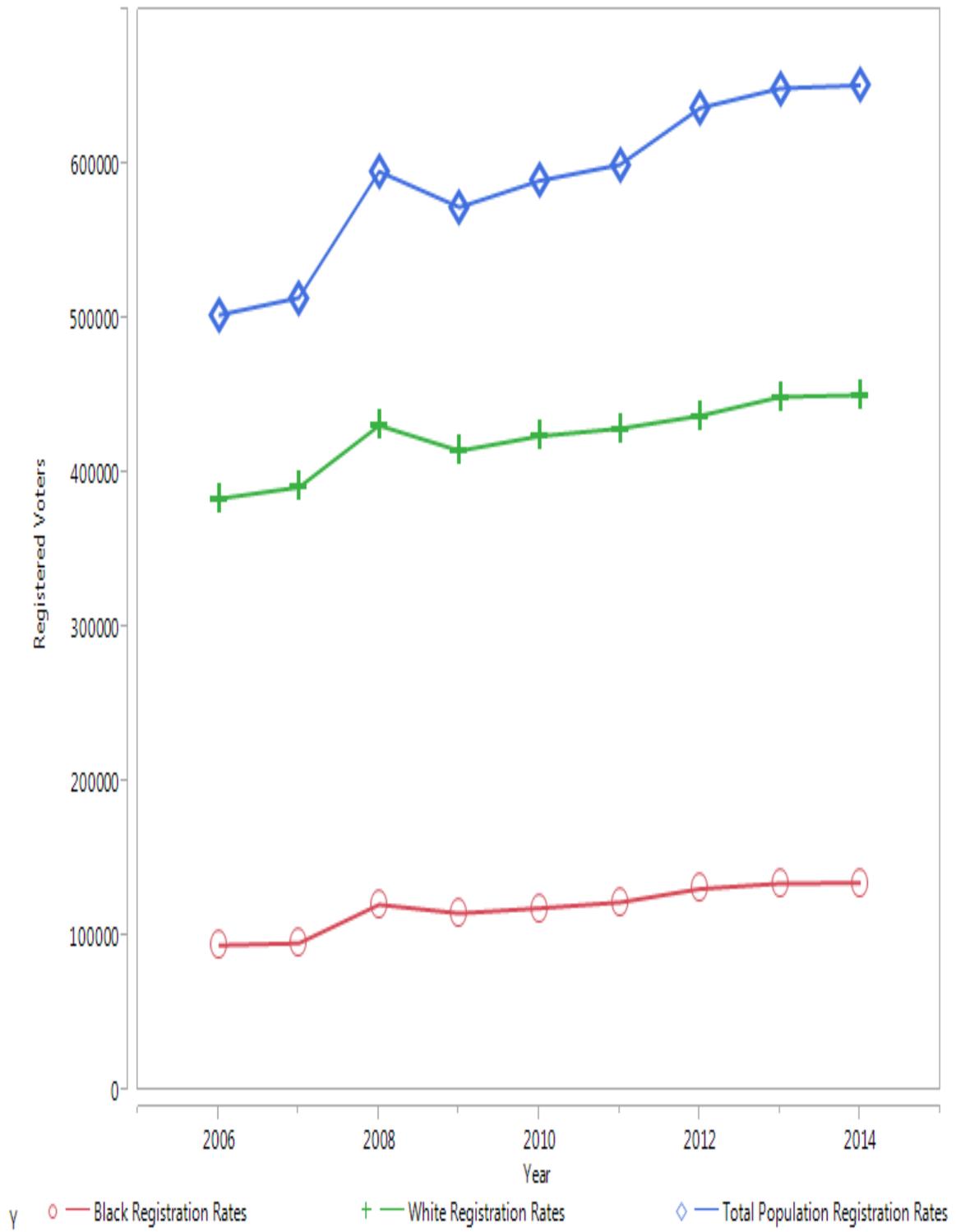
Figure 3: Registration Rates- Wake County, NC 2006-2014

Figure 4: Percent Registered/Voting Age Population- Wake County, NC

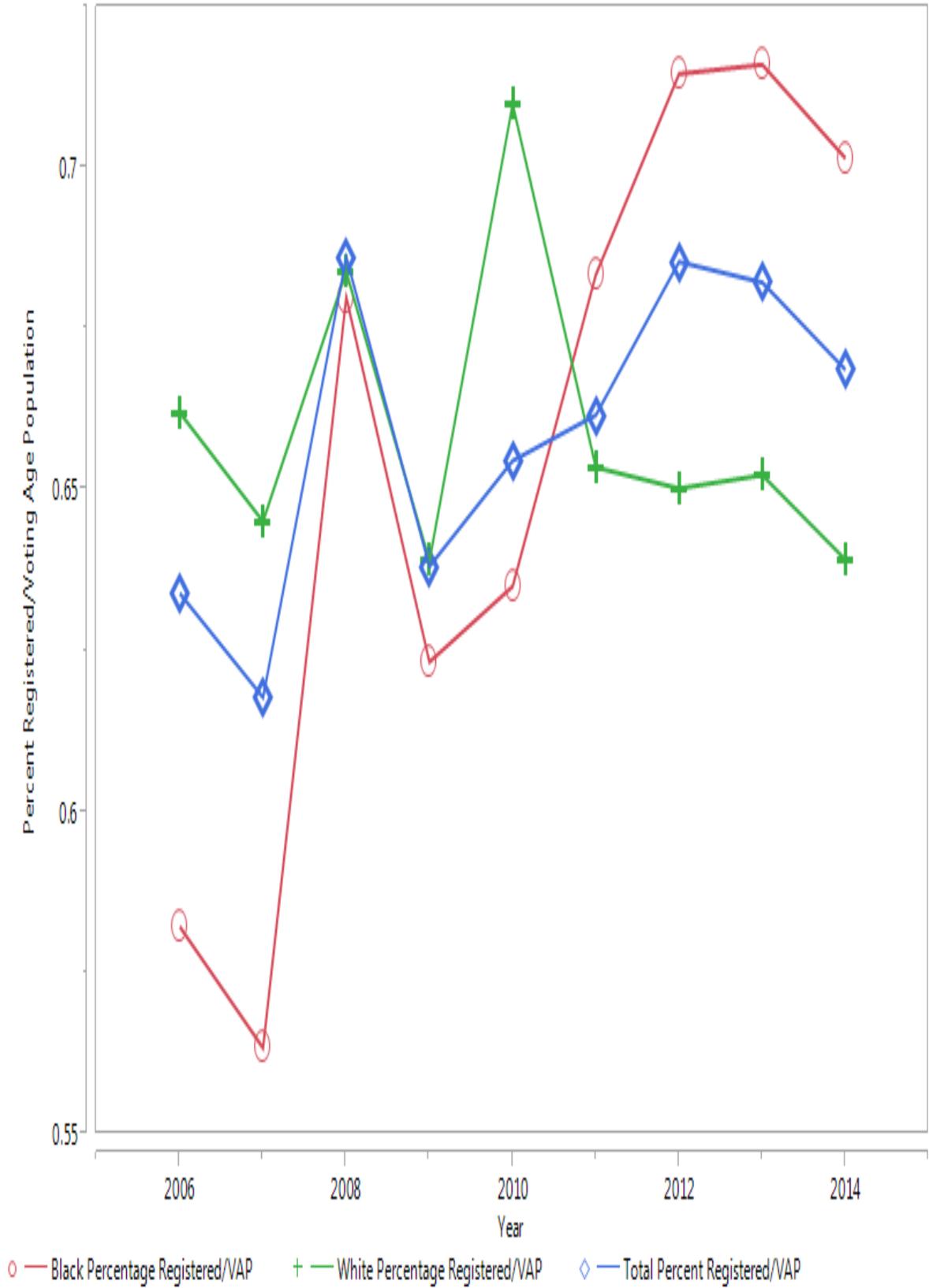


Table 2: Wake County North Carolina 2006-2014

Year	2006	2007	2008	2009	2010	2011	2012	2013	2014
Black Registration Rates	94355	95738	120774	115087	118450	122243	130937	134458	134792
White Registration Rates	383734	391130	431187	414751	424248	429153	437428	449711	450901
Total Population Registration Rates	502726	513892	595713	572594	589796	600113	636874	649640	651549
Black Voting Age Population	162055	169922	177610	184626	186510	178849	183212	187763	192129
White Voting Age Population	579595	606227	630417	649027	597546	656627	672646	689352	705358
Total Voting Age Population	792940	831746	868068	897214	900993	906944	929070	952143	974289
Black Percentage Registered/VAP	0.582240	0.563423	0.679995	0.623352	0.635086	0.683498	0.714674	0.71610	0.70157
White Percentage Registered/VAP	0.662072	0.645187	0.683971	0.639035	0.709983	0.653571	0.650309	0.65236	0.63925
Total Percent Registered/VAP	0.634002	0.617847	0.686251	0.638191	0.654606	0.661686	0.685496	0.68229	0.66874

CHAPTER 5

CONCLUSIONS: FUTURE DIRECTIONS OF THE VOTING RIGHTS ACT OF 1965

“If liberty and equality, as thought by some, are chiefly to be founded in democracy, they will be best attained when all persons alike share in the government to the utmost.”

-Aristotle

Conclusions

As this study has shown, the Voting Rights Act of 1965 has accomplished much of what it set out to do. African Americans that are eligible to vote are registering and participating in record numbers in the Southern states. They are doing so at similar levels of white voters and in some cases they are even surpassing the white vote. African Americans are also gaining better access and are becoming elected officials at a rate some never would have thought possible in the times before the Voting Rights Act. It is very likely that the strength behind the act has allowed for some change in the American landscape, especially in the Southern states as we have now seen the election and reelection of our first African American president.

We as a nation must stay vigilant and not form the opinion that the Voting Rights Act has become a relic of a past era and is no longer needed, because as was shown in Chapter 2 racism can affect us subconsciously and without direct knowledge of it manipulate our political motivations. It can still have an effect on our political opinions and choices even when we do not believe that it does. Old fashioned racism has been shown to still exist and influence our political beliefs and actions as recently as the past two presidential elections that saw the election of our nation's first African American president. The problem of race and racism is still present in American politics and will be for the foreseeable future. We

have already begun to see problems with racism against Hispanic citizens and individuals residing in the United States and the backlash that the influx of a new minority has created. The rise of the new voter ID law may just be the beginning now that the Robert's Court has declared unconstitutional the special provisions of the Voting Rights Act and only time will tell if we will regress into our old habits of trying to disenfranchise minorities. As Valleley puts it, "the Voting Rights Act was not the end of the voting rights story." (92) We should not treat it like it was the end of the story as there is still progress to be made due to America's ever changing racial makeup.

We need strong pieces of legislation to ensure that the rights of the minority voters are not infringed upon. As we see the traditional majority of white voters slowly morph into the minority over the next fifty to one hundred years we must ensure that equity in voting is available to all. Hudson (5) says that to have this we must have equal access to the ballot, equal voting environments, and the knowledge that each vote will count the same as everyone else.

The Voting Rights Act has been a very dynamic and malleable piece of legislation that we have been able to adapt to new challenges that arise each year. It has protected minorities throughout the years from literacy tests, poll taxes, redistricting efforts to keep minority voter's impact to a minimum, and problems that arise with language barriers. There is no reason to believe that we no longer need such an act in place because the American political landscape has changed vastly in fifty years. This legislation has seen very strong support from Senators, Congressmen, and Presidents from both the Republican and Democratic parties throughout the years. This act is truly a landmark decision and beacon of hope that both sides can agree on issues from time to time in order to do a lot of good for the

country and make sure that the original dreams of our founders can be realized now and in the future. Davidson and Grofman (386) point out that although we have seen great success throughout the last fifty years much of it has been in the larger cities and larger states and the full effect of the VRA has yet to reach many small rural areas where African American citizens and other minorities still don't have their voice fully heard and do not have the equal opportunity to obtain elected offices. Charles et al (2011) points out that it is Section 5 that allows the minorities some sort of "leverage" in the electoral process to ensure that their concerns and needs are heard. With Section 5 no longer protecting this process it will be a long and difficult path for minorities who feel they aren't having their concerns heard or met.

Now that the Voting Rights Act has been effectively dismantled by the Supreme Court, we must work within the remaining enforcement mechanisms in the VRA. There are still powerful provisions that have been rarely used due to the strength of Sections 4 and 5, but we may need to pull them off the shelf and dust them off if Congress is not able to reconfigure the triggering mechanism of Section 4 to meet what Chief Justice Roberts called a changed landscape. Section 2 of the Voting Rights Act is still in force that prohibits any sort of racial discrimination in voting along the same lines as the Fifteenth Amendment. It can be used to bring suit to and state or political subdivision that is seen to be in defiance of national laws that prohibit racial discrimination in the electoral process.

Also the rarely used, but very powerful Section 3 and 203 of the Voting Rights Act can be used in the future to gain some ground in the battle against minority disenfranchisement and racial discrimination in the form of language barriers. Section 3 is essentially a bail-in provision that allows a judge to have federal examiners come in and investigate suspected racially discriminatory electoral changes and approve them before they

go into full effect. It has only been sparingly used in the past due to the strength and efficiency of Section 5 but it does show some future promise in aiding the fight against minority disenfranchisement. The only problem with Section 3 is that it once again shifts the burden back onto the courts to find the evidence of intentional discrimination. This has been a very rarely performed action and only areas in Arkansas and New Mexico have been bailed-in from Section 3 judicial findings. In essence this does not have the sharp teeth that Section 5 had but for the time being we will have to work within the existing framework of this feature. It does allow for a cautious optimism that the VRA still has fight left in it.

In conclusion, Congress needs to look into reforming the triggering mechanism of Section 4 to meet the new standard given by the Roberts' Court, so they we may continue to protect minority rights to voting for years to come. This nation is moving quickly into a future with new and larger minority groups than ever before and at the pace in which technology advances we must make sure to have every legislative weapon in our arsenal ready to take on new challenges that will inevitably arise in the years to come. As technology advances newer and easier ways to disenfranchise minorities may become possible. Also due to the backlash of a somewhat controversial presidency with our first African American president we may see continuing evidence of old fashioned racism coming back into favor in Southern states that have had issues with it in the past.

As we have seen in the levels of voter registration and percentage of VAP in North Carolina, some of the biggest gaps in racial voting have come after the election of the nation's first African American president. When midterm elections rolled around in President Obama's first term, in both counties we saw a large resurgence of white voters, which tells us that race still holds a very important place in American politics.

The Voting Rights Act of 1965 is one of the most powerful and far reaching pieces of legislation that we have seen in the last one hundred years. It has accomplished a large percentage of its original goal of providing adequate and equal access to the ballot and representation for minorities, but it is still needed even today. We must ensure its survival to protect future generations of African Americans and other minorities from the atrocities of disenfranchisement that we have had in the past and to keep our nation from ever developing third and fourth generation barriers to voting in the future.

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APPENDIX

TEXT OF THE VOTING RIGHTS ACT OF 1965

AN ACT To enforce the Fifteenth Amendment to the Constitution of the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act shall be known as the "Voting Rights Act of 1965."

SEC. 2. No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color.

SEC. 3. (a) Whenever the Attorney General institutes a proceeding under any statute to enforce the guarantees of the fifteenth amendment in any State or political subdivision the court shall authorize the appointment of Federal examiners by the United States Civil Service Commission in accordance with section 6 to serve for such period of time and for such political subdivisions as the court shall determine is appropriate to enforce the guarantees of the fifteenth amendment (1) as part of any interlocutory order if the court determines that the appointment of such examiners is necessary to enforce such guarantees or (2) as part of any final judgment if the court finds that violations of the fifteenth amendment justifying equitable relief have occurred in such State or subdivision: Provided, That the court need not authorize the appointment of examiners if any incidents of denial or abridgement of the right to vote on account of race or color (1) have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future.

(b) If in a proceeding instituted by the Attorney General under any statute to enforce the guarantees of the fifteenth amendment in any State or political subdivision the court finds that a test or device has been used for the purpose or with the effect of denying or abridging the right of any citizen of the United States to vote on account of race or color, it shall suspend the use of tests and devices in such State or political subdivisions as the court shall determine is appropriate and for such period as it deems necessary.

(c) If in any proceeding instituted by the Attorney General under any statute to enforce the guarantees of the fifteenth amendment in any State or political subdivision the court finds that violations of the fifteenth amendment justifying equitable relief have occurred within the territory of such State or political subdivision, the court, in addition to such relief as it may grant, shall retain jurisdiction for such period as it may deem appropriate and during such period no voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect at the time the proceeding was commenced shall be enforced unless and until the court finds that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color: Provided, That such qualification, prerequisite, standard, practice, or procedure may be enforced if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, except that neither the court's finding nor the Attorney General's failure to object shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure.

SEC. 4. (a) To assure that the right of citizens of the United States to vote is not denied or abridged on account of race or color, no citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under subsection (b) or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no such test or device has been used during the five years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color: Provided, That no such declaratory judgment shall issue with respect to any plaintiff for a period of five years after the entry of a final judgment of any court of the United States, other than the denial of a declaratory judgment under this section, whether entered prior to or after the enactment of this Act, determining that denials or abridgments of the right to vote on account of race or color through the use of such tests or devices have occurred anywhere in the territory of such plaintiff. An action pursuant to this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court. The court shall retain jurisdiction of any action pursuant to this subsection for five years after judgment and shall reopen the action upon motion of the Attorney General alleging that a test or device has been used for the purpose or with the effect of denying or abridging the right to vote on account of race or color.

If the Attorney General determines that he has no reason to believe that any such test or device has been used during the five years preceding the filing of the action for the

purpose or with the effect of denying or abridging the right to vote on account of race or color, he shall consent to the entry of such judgment

(b) The provisions of subsection (a) shall apply in any State or in any political subdivision of a state which (1) the Attorney General determines maintained on November 1, 1964, any test or device, and with respect to which (2) the Director of the Census determines that less than 50 percentum of the persons of voting age residing therein were registered on November 1, 1964, or that less than 50 percentum of such persons voted in the presidential election of November 1964.

A determination or certification of the Attorney General or of the Director of the Census under this section or under section 6 or section 13 shall not be reviewable in any court and shall be effective upon publication in the Federal Register.

(c) The phrase "test or device" shall mean any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class.

(d) For purposes of this section no State or political subdivision shall be determined to have engaged in the use of tests or devices for the purpose or with the effect of denying or abridging the right to vote on account of race or color if (1) incidents of such use have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future.

(e) (1) Congress hereby declares that to secure the rights under the fourteenth amendment of persons educated in American-flag schools in which the predominant classroom language was other than English, it is necessary to prohibit the States from conditioning the right to vote of such persons on ability to read, write, understand, or interpret any matter in the English language.

(2) No person who demonstrates that he has successfully completed the sixth primary grade in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English, shall be denied the right to vote in any Federal, State, or local election because of his inability to read, write, understand, or interpret any matter in the English language, except that, in States in which State law provides that a different level of education is presumptive of literacy, he shall demonstrate that he has successfully completed an equivalent level of education in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English.

SEC. 5. Whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, and unless and until the court enters such judgment no

person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: Provided, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, except that neither the Attorney General's failure to object nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court.

SEC. 6. Whenever (a) a court has authorized the appointment of examiners pursuant to the provisions of section 3(a), or (b) unless a declaratory judgment has been rendered under section 4(a), the Attorney General certifies with respect to any political subdivision named in, or included within the scope of, determinations made under section 4(b) that (1) he has received complaints in writing from twenty or more residents of such political subdivision alleging that they have been denied the right to vote under color of law on account of race or color, and that he believes such complaints to be meritorious, or (2) that, in his judgment (considering, among other factors, whether the ratio of nonwhite persons to white persons registered to vote within such subdivision appears to him to be reasonably attributable to violations of the fifteenth amendment or whether substantial evidence exists that bona fide efforts are being made within such subdivision to comply with the fifteenth

amendment), the appointment of examiners is otherwise necessary to enforce the guarantees of the fifteenth amendment, the Civil Service Commission shall appoint as many examiners for such subdivision as it may deem appropriate to prepare and maintain lists of persons eligible to vote in Federal, State, and local elections. Such examiners, hearing officers provided for in section 9(a), and other persons deemed necessary by the Commission to carry out the provisions and purposes of this Act shall be appointed, compensated, and separated without regard to the provisions of any statute administered by the Civil Service Commission, and service under this Act shall not be considered employment for the purposes of any statute administered by the Civil Service Commission, except the provisions of section 9 of the Act of August 2, 1939, as amended (5 U.S.C. 118i), prohibiting partisan political activity: Provided, That the Commission is authorized, after consulting the head of the appropriate department or agency, to designate suitable persons in the official service of the United States, with their consent, to serve in these positions. Examiners and hearing officers shall have the power to administer oaths.

SEC. 7. (a) The examiners for each political subdivision shall, at such places as the Civil Service Commission shall by regulation designate, examine applicants concerning their qualifications for voting. An application to an examiner shall be in such form as the Commission may require and shall contain allegations that the applicant is not otherwise registered to vote.

(b) Any person whom the examiner finds, in accordance with instructions received under section 9(b), to have the qualifications prescribed by State law not inconsistent with the Constitution and laws of the United States shall promptly be placed on a list of eligible voters. A challenge to such listing may be made in accordance with section 9(a) and shall not

be the basis for a prosecution under section 12 of this Act. The examiner shall certify and transmit such list, and any supplements as appropriate, at least once a month, to the offices of the appropriate election officials, with copies to the Attorney General and the attorney general of the State, and any such lists and supplements thereto transmitted during the month shall be available for public inspection on the last business day of the month and, in any event, not later than the forty-fifth day prior to any election. The appropriate State or local election official shall place such names on the official voting list. Any person whose name appears on the examiner's list shall be entitled and allowed to vote in the election district of his residence unless and until the appropriate election officials shall have been notified that such person has been removed from such list in accordance with subsection (d): Provided, That no person shall be entitled to vote in any election by virtue of this Act unless his name shall have been certified and transmitted on such a list to the offices of the appropriate election officials at least forty-five days prior to such election.

(c) The examiner shall issue to each person whose name appears on such a list a certificate evidencing his eligibility to vote.

(d) A person whose name appears on such a list shall be removed therefrom by an examiner if (1) such person has been successfully challenged in accordance with the procedure prescribed in section 9, or (2) he has been determined by an examiner to have lost his eligibility to vote under State law not inconsistent with the Constitution and the laws of the United States.

SEC. 8. Whenever an examiner is serving under this Act in any political subdivision, the Civil Service Commission may assign, at the request of the Attorney General, one or more persons, who may be officers of the United States, (1) to enter and attend at any place

for holding an election in such subdivision for the purpose of observing whether persons who are entitled to vote are being permitted to vote, and (2) to enter and attend at any place for tabulating the votes cast at any election held in such subdivision for the purpose of observing whether votes cast by persons entitled to vote are being properly tabulated. Such persons so assigned shall report to an examiner appointed for such political subdivision, to the Attorney General, and if the appointment of examiners has been authorized pursuant to section 3(a), to the court. SEC. 9.

(a) Any challenge to a listing on an eligibility list prepared by an examiner shall be heard and determined by a hearing officer appointed by and responsible to the Civil Service Commission and under such rules as the Commission shall by regulation prescribe. Such challenge shall be entertained only if filed at such office within the State as the Civil Service Commission shall by regulation designate, and within ten days after the listing of the challenged person is made available for public inspection, and if supported by (1) the affidavits of at least two persons having personal knowledge of the facts constituting grounds for the challenge, and (2) a certification that a copy of the challenge and affidavits have been served by mail or in person upon the person challenged at his place of residence set out in the application. Such challenge shall be determined within fifteen days after it has been filed. A petition for review of the decision of the hearing officer may be filed in the United States court of appeals for the circuit in which the person challenged resides within fifteen days after service of such decision by mail on the person petitioning for review but no decision of a hearing officer shall be reversed unless clearly erroneous. Any person listed shall be entitled and allowed to vote pending final determination by the hearing officer and by the court.

(b) The times, places, procedures, and form for application and listing pursuant to this Act and removals from the eligibility lists shall be prescribed by regulations promulgated by the Civil Service Commission and the Commission shall, after consultation with the Attorney General, instruct examiners concerning applicable State law not inconsistent with the Constitution and laws of the United States with respect to (1) the qualifications required for listing, and (2) loss of eligibility to vote.

(c) Upon the request of the applicant or the challenger or on its own motion the Civil Service Commission shall have the power to require by subpoena the attendance and testimony of witnesses and the production of documentary evidence relating to any matter pending before it under the authority of this section. In case of contumacy or refusal to obey a subpoena, any district court of the United States or the United States court of any territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or is domiciled or transacts business, or has appointed an agent for receipt of service of process, upon application by the Attorney General of the United States shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or a hearing officer, there to produce pertinent, relevant, and nonprivileged documentary evidence if so ordered, or there to give testimony touching the matter under investigation, and any failure to obey such order of the court may be punished by said court as a contempt thereof.

SEC. 10. (a) The Congress finds that the requirement of the payment of a poll tax as a precondition to voting (i) precludes persons of limited means from voting or imposes unreasonable financial hardship upon such persons as a precondition to their exercise of the

franchise, (ii) does not bear a reasonable relationship to any legitimate State interest in the conduct of elections, and (iii) in some areas has the purpose or effect of denying persons the right to vote because of race or color. Upon the basis of these findings, Congress declares that the constitutional right of citizens to vote is denied or abridged in some areas by the requirement of the payment of a poll tax as a precondition to voting.

(b) In the exercise of the powers of Congress under section 5 of the fourteenth amendment and section 2 of the fifteenth amendment, the Attorney General is authorized and directed to institute forthwith in the name of the United States such actions, including actions against States or political subdivisions, for declaratory judgment or injunctive relief against the enforcement of any requirement of the payment of a poll tax as a precondition to voting, or substitute therefor enacted after November 1, 1964, as will be necessary to implement the declaration of subsection (a) and the purposes of this section.

(c) The district courts of the United States shall have jurisdiction of such actions which shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court. It shall be the duty of the judges designated to hear the case to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited.

(d) During the pendency of such actions, and thereafter if the courts, notwithstanding this action by the Congress, should declare the requirement of the payment of a poll tax to be constitutional, no citizen of the United States who is a resident of a State or political subdivision with respect to which determinations have been made under subsection 4(b) and a declaratory judgment has not been entered under subsection 4(a), during the first year he

becomes otherwise entitled to vote by reason of registration by State or local officials or listing by an examiner, shall be denied the right to vote for failure to pay a poll tax if he tenders payment of such tax for the current year to an examiner or to the appropriate State or local official at least forty-five days prior to election, whether or not such tender would be timely or adequate under State law. An examiner shall have authority to accept such payment from any person authorized by this Act to make an application for listing, and shall issue a receipt for such payment. The examiner shall transmit promptly any such poll tax payment to the office of the State or local official authorized to receive such payment under State law, together with the name and address of the applicant.

SEC. 11. (a) No person acting under color of law shall fail or refuse to permit any person to vote who is entitled to vote under any provision of this Act or is otherwise qualified to vote, or willfully fail or refuse to tabulate, count, and report such person's vote.

(b) No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for urging or aiding any person to vote or attempt to vote, or intimidate, threaten, or coerce any person for exercising any powers or duties under section 3(a), 6, 8, 9, 10, or 12(e).

(c) Whoever knowingly or willfully gives false information as to his name, address, or period of residence in the voting district for the purpose of establishing his eligibility to register or vote, or conspires with another individual for the purpose of encouraging his false registration to vote or illegal voting, or pays or offers to pay or accepts payment either for registration to vote or for voting shall be fined not more than \$10,000 or imprisoned not more

than five years, or both: Provided, however, That this provision shall be applicable only to general, special, or primary elections held solely or in part for the purpose of selecting or electing any candidate for the office of President, Vice President, presidential elector, Member of the United States Senate, Member of the United States House of Representatives, or Delegates or Commissioners from the territories or possessions, or Resident Commissioner of the Commonwealth of Puerto Rico.

(d) Whoever, in any matter within the jurisdiction of an examiner or hearing officer knowingly and willfully falsifies or conceals a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

SEC. 12. (a) Whoever shall deprive or attempt to deprive any person of any right secured by section 2, 3, 4, 5, 7, or 10 or shall violate section 11(a) or (b), shall be fined not more than \$5,000, or imprisoned not more than five years, or both.

(b) Whoever, within a year following an election in a political subdivision in which an examiner has been appointed (1) destroys, defaces, mutilates, or otherwise alters the marking of a paper ballot which has been cast in such election, or (2) alters any official record of voting in such election tabulated from a voting machine or otherwise, shall be fined not more than \$5,000, or imprisoned not more than five years, or both

(c) Whoever conspires to violate the provisions of subsection (a) or (b) of this section, or interferes with any right secured by section 2, 3, 4, 5, 7, 10, or 11(a) or (b) shall be fined not more than \$5,000, or imprisoned not more than five years, or both.

(d) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by section 2, 3, 4, 5, 7, 10, 11, or subsection (b) of this section, the Attorney General may institute for the United States, or in the name of the United States, an action for preventive relief, including an application for a temporary or permanent injunction, restraining order, or other order, and including an order directed to the State and State or local election officials to require them (1) to permit persons listed under this Act to vote and (2) to count such votes.

(e) Whenever in any political subdivision in which there are examiners appointed pursuant to this Act any persons allege to such an examiner within forty-eight hours after the closing of the polls that notwithstanding (1) their listing under this Act or registration by an appropriate election official and (2) their eligibility to vote, they have not been permitted to vote in such election, the examiner shall forthwith notify the Attorney General if such allegations in his opinion appear to be well founded. Upon receipt of such notification, the Attorney General may forthwith file with the district court an application for an order providing for the marking, casting, and counting of the ballots of such persons and requiring the inclusion of their votes in the total vote before the results of such election shall be deemed final and any force or effect given thereto. The district court shall hear and determine such matters immediately after the filing of such application. The remedy provided in this subsection shall not preclude any remedy available under State or Federal law.

(f) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether a person asserting rights under the provisions of this Act shall have exhausted any administrative or other remedies that may be provided by law

SEC. 13. Listing procedures shall be terminated in any political subdivision of any State (a) with respect to examiners appointed pursuant to clause (b) of section 6 whenever the Attorney General notifies the Civil Service Commission, or whenever the District Court for the District of Columbia determines in an action for declaratory judgment brought by any political subdivision with respect to which the Director of the Census has determined that more than 50 percentum of the nonwhite persons of voting age residing therein are registered to vote, (1) that all persons listed by an examiner for such subdivision have been placed on the appropriate voting registration roll, and (2) that there is no longer reasonable cause to believe that persons will be deprived of or denied the right to vote on account of race or color in such subdivision, and (b), with respect to examiners appointed pursuant to section 3(a), upon order of the authorizing court. A political subdivision may petition the Attorney General for the termination of listing procedures under clause (a) of this section, and may petition the Attorney General to request the Director of the Census to take such survey or census as may be appropriate for the making of the determination provided for in this section. The District Court for the District of Columbia shall have jurisdiction to require such survey or census to be made by the Director of the Census and it shall require him to do so if it deems the Attorney General's refusal to request such survey or census to be arbitrary or unreasonable. SEC. 14.

(a) All cases of criminal contempt arising under the provisions of this Act shall be governed by section 151 of the Civil Rights Act of 1957 (42 U.S.C.1995).

(b) No court other than the District Court for the District of Columbia or a court of appeals in any proceeding under section 9 shall have jurisdiction to issue any declaratory judgment pursuant to section 4 or section 5 or any restraining order or temporary or

permanent injunction against the execution or enforcement of any provision of this Act or any action of any Federal officer or employee pursuant hereto.

(c) (1) The terms "vote" or "voting" shall include all action necessary to make a vote effective in any primary, special, or general election, including, but not limited to, registration, listing pursuant to this Act, or other action required by law prerequisite to voting, casting a ballot, and having such ballot counted properly and included in the appropriate totals of votes cast with respect to candidates for public or party office and propositions for which votes are received in an election.

(2) The term "political subdivision" shall mean any county or parish, except that, where registration for voting is not conducted under the supervision of a county or parish, the term shall include any other subdivision of a State which conducts registration for voting.

(d) In any action for a declaratory judgment brought pursuant to section 4 or section 5 of this Act, subpoenas for witnesses who are required to attend the District Court for the District of Columbia may be served in any judicial district of the United States: Provided, That no writ of subpoena shall issue for witnesses without the District of Columbia at a greater distance than one hundred miles from the place of holding court without the permission of the District Court for the District of Columbia being first had upon proper application and cause shown.

SEC. 15. Section 2004 of the Revised Statutes (42 U.S.C.1971), as amended by section 131 of the Civil Rights Act of 1957 (71 Stat. 637), and amended by section 601 of the Civil Rights Act of 1960 (74 Stat. 90), and as further amended by section 101 of the Civil Rights Act of 1964 (78 Stat. 241), is further amended as follows:

(a) Delete the word "Federal" wherever it appears in subsections (a) and (c);

(b) Repeal subsection (f) and designate the present subsections (g) and (h) as (f) and (g), respectively.

SEC. 16. The Attorney General and the Secretary of Defense, jointly, shall make a full and complete study to determine whether, under the laws or practices of any State or States, there are preconditions to voting, which might tend to result in discrimination against citizens serving in the Armed Forces of the United States seeking to vote. Such officials shall, jointly, make a report to the Congress not later than June 30, 1966, containing the results of such study, together with a list of any States in which such preconditions exist, and shall include in such report such recommendations for legislation as they deem advisable to prevent discrimination in voting against citizens serving in the Armed Forces of the United States.

SEC. 17. Nothing in this Act shall be construed to deny, impair, or otherwise adversely affect the right to vote of any person registered to vote under the law of any State or political subdivision.

SEC. 18. There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of this Act

SEC 19. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

Approved August 6, 1965.