

# VOTING RIGHTS PROGRESS IN GEORGIA

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## I.

### INTRODUCTION

Forty years of effort in implementing the Voting Rights Act of 1965<sup>1</sup> have resulted in significant and lasting changes in access to the ballot for African Americans as well as a translation of those ballots into government influence. In this article, we explore the evolution of voting rights progress in Georgia, a Deep South state that was at the forefront of the civil rights movement, and the implementation and evolution of the Voting Rights Act (VRA). In Part II, we examine changes in minority registration and voting following the enactment of the VRA, which was designed to ensure minority access to the political process by guaranteeing the franchise, and conclude that the original access and participation goals of the VRA have been substantially attained.

Part III considers the election of African Americans to public office. Georgia has had success in electing minority officeholders to all levels of government, including major legislative and statewide constitutional and judicial offices. African-American candidates are generally elected from majority-black constituencies but have also appealed to white voters. Such crossover appeal facilitates the election of African Americans statewide and served as an important consideration for the Supreme Court when it changed the retrogression standard of section 5 of the VRA in *Georgia v. Ashcroft*.<sup>2</sup>

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1. Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437 (codified as amended at 42 U.S.C. §§ 1973 to 1973bb-1 (2000)).

2. 539 U.S. 461, 479-82 (2003).

Part IV addresses the causes and consequences of redistricting in Georgia, a state that has been at the forefront of redistricting controversies for four decades. In the redistricting following the release of the 2000 census figures, which became the subject of *Georgia v. Ashcroft*, African-American leaders supported the redistribution of the African-American vote in an effort to help Democrats retain majorities in the general assembly. This strategy reduced African-American concentrations in some state senate districts to the point that several districts that had been solidly African-American emerged in the new plan with barely more than a 50% African-American voting age population. African-American leaders explained that they believed these reductions did not endanger the retention of these districts because of the willingness of a share of the white electorate to support African-American candidates. As a result of this and other considerations, in *Georgia v. Ashcroft*, the U.S. Supreme Court created a new standard for evaluating the racial effects of redistricting.<sup>3</sup>

Part V analyzes voting patterns based on race and political party, relying on empirical methods used in voting rights litigation to determine patterns of racial support for African-American and white candidates.<sup>4</sup> This analysis, which reveals that the pattern of support for African-American Democrats follows the pattern of support for white Democrats, places political access and success into the broader context of party politics and suggests that partisan and racial goals converge in the new, two-party South.

## II.

### HISTORY OF AFRICAN-AMERICAN VOTER REGISTRATION AND PARTICIPATION IN GEORGIA

#### A. *African-American Voter Registration and Participation Prior to 1965*

Georgia has a long legacy of taking actions that have impeded African-American political participation.<sup>5</sup> In 1871, Georgia became the first state to enact a poll tax,<sup>6</sup> and in 1877, it made the tax cumula-

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3. *Id.* at 490–91.

4. Such methods were accepted by the Supreme Court in *Thornburg v. Gingles*, 478 U.S. 30, 61 (1986).

5. V. O. KEY, JR., *SOUTHERN POLITICS IN STATE AND NATION* 548–49 (Vintage Books 1949).

6. J. MORGAN KOUSSER, *THE SHAPING OF SOUTHERN POLITICS: SUFFRAGE RESTRICTION AND THE ESTABLISHMENT OF THE ONE-PARTY SOUTH, 1880-1910* 239 (1974).

tive,<sup>7</sup> meaning that past unpaid poll taxes accumulate and that an individual must pay the back taxes in order to vote.<sup>8</sup> In the wake of an 1898 Supreme Court decision validating the Mississippi Constitution's restrictions on African-American political participation,<sup>9</sup> Georgia joined other southern states in adopting additional prerequisites for registration.<sup>10</sup> These requirements included a literacy test, which required voters to demonstrate their ability to read and write; a property test; an understanding clause; and a grandfather clause.<sup>11</sup> Like many southern states, Georgia also adopted provisions limiting participation in the Democratic primary to white voters;<sup>12</sup> since no Republicans won any major offices in the state for almost a hundred years, the Democratic primary determined who would hold public office in Georgia, in all but a few mountain counties, until the early 1960s.<sup>13</sup>

In the twentieth century, Georgia repealed some of its more restrictive provisions on African-American voting while striving to maintain others. In 1945, the state legislature abolished the poll tax.<sup>14</sup> It was reluctant, however, to give up the white primary, even though the Supreme Court had banned it in Texas in the 1944 case of *Smith v. Allwright*.<sup>15</sup> In his last gubernatorial bid in 1946, three-time governor Eugene Talmadge ran on a platform that promised to maintain the white primary.<sup>16</sup> Despite his efforts, a number of African Americans voted in that year's Democratic primary.<sup>17</sup> In 1947, the Georgia General Assembly sought to maintain an all-white primary by removing the state from the operation of the Democratic primary, but Acting Governor Melvin E. Thompson vetoed the legislation.<sup>18</sup>

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7. Laughlin McDonald, Michael B. Binford & Ken Johnson, *Georgia, in QUIET REVOLUTION IN THE SOUTH* 101 (Chandler Davidson & Bernard Grofman, eds., 1994) [hereinafter *QUIET REVOLUTION*]. Georgia was among the last of the southern states to adopt other restrictions on suffrage. See KOUSSER, *supra* note 6.

8. KEY, *supra* note 5, at 580, 582.

9. *Williams v. Mississippi*, 170 U.S. 213 (1898).

10. KEY, *supra* note 5, at 539; KOUSSER, *supra* note 6, at 239.

11. KEY, *supra* note 5, at 539, 556–58; KOUSSER, *supra* note 6, at 239.

12. See KEY, *supra* note 5, at 620.

13. See Alan Judd, *Old Problems Resurface in Legislature's New Century*, ATLANTA J.-CONST., Jan. 9, 2000, at A1. See also KEY, *supra* note 5, at 280–85 (describing the phenomenon of “Mountain Republicans”).

14. ALBERT B. SAYE, *GEORGIA: HISTORY AND GOVERNMENT* 196 (1957).

15. 321 US 649 (1944). In *Allright*, the Supreme Court rejected the Democratic Party's argument that it was a private organization permitted to exclude blacks, holding that because membership was also “the essential qualification for voting in a primary.” Texas made the party an agent of the state, whose conduct is regulated by the Fourteenth Amendment. *Id.* at 664–65.

16. WILLIAM ANDERSON, *THE WILD MAN FROM SUGAR CREEK* 222 (1975).

17. KEY, *supra* note 5, at 635–36.

18. *Id.* at 636.

Even with the elimination of the white primary and the poll tax in the 1940s, African-American registration rates in Georgia remained low into the early 1960s,<sup>19</sup> as the literacy test coupled with frequently antagonistic local registrars discouraged African-American registration.<sup>20</sup> In the period immediately preceding the enactment of the VRA in 1965, only 27.4% of Georgia's non-white voting age population was registered to vote,<sup>21</sup> compared with 62.6% of the white voting age population. In thirty Georgia counties with significant African-American populations, less than 10% of the age-eligible African Americans were registered in 1962.<sup>22</sup> In four of these counties, the voting lists contained the names of fewer than ten non-whites.<sup>23</sup>

## *B. African-American Registration and Turnout from the Passage of the Voting Rights Act of 1965 to the Present*

### *1. The Immediate Impact of the Voting Rights Act*

Georgia was one of the states singled out by the VRA in 1965 for continued federal oversight of electoral practices. While portions of that legislation applied nationwide, the most controversial component impacted only those jurisdictions identified by the "trigger mechanism" in section 4.<sup>24</sup> The trigger mechanism picked up jurisdictions which, like Georgia, (a) had a "test or device"<sup>25</sup> as a prerequisite for registering and (b) in which less than half the voting age population had registered or voted in the 1964 presidential election.<sup>26</sup> The VRA requires that jurisdictions identified by section 4 become subject to

19. U.S. COMM'N ON CIVIL RIGHTS, POLITICAL PARTICIPATION 222–23 (1968) [hereinafter POLITICAL PARTICIPATION].

20. See generally HARRELL R. RODGERS, JR. & CHARLES S. BULLOCK III, LAW AND SOCIAL CHANGE: CIVIL RIGHTS LAWS AND THEIR CONSEQUENCES 21–23 (McGraw-Hill 1972).

21. POLITICAL PARTICIPATION, *supra* note 19, at 238. Figures presented for non-whites and whites; almost all Georgia non-whites in 1960s would be African American. CAMPBELL GIBSON & KAY JUNG, HISTORICAL CENSUS STATISTICS ON POPULATION TOTALS BY RACE, 1790 TO 1990, AND BY HISPANIC ORIGIN, 1970 TO 1990, FOR LARGE CITIES AND OTHER URBAN PLACES IN THE UNITED STATES (2005), available at <http://www.census.gov/population/www/documentation/twps0075.html>.

22. See POLITICAL PARTICIPATION, *supra* note 19, at 232–39.

23. See *id.*

24. Voting Rights Act of 1965, Pub. L. No. 89-110, § 4(b), 79 Stat. 437, 438 (codified as amended at 42 U.S.C. § 1973b(b) (2000)).

25. "Test or device" is defined in § 4(c) as a requirement that a person "(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."

26. Voting Rights Act § 4(b). See also § 4(c), 79 Stat. at 438–39.

section 5, which requires them to secure approval from a federal authority—either the Department of Justice or the District Court for the District of Columbia—before implementing changes in their election laws.<sup>27</sup> Federal agents could also be sent into the covered jurisdiction to register eligible prospective voters who had been turned away by local authorities.<sup>28</sup> Although the section 4 trigger mechanism was initially scheduled to expire in 1970, it was renewed for the fourth time in 2006 and will be in place until 2031.<sup>29</sup>

Even though only 167,663 non-whites had registered to vote in Georgia in 1962, the number of white registrants was high enough that 53.6% of the state's total voting age population was registered,<sup>30</sup> satisfying that portion of section 4. Despite its registration numbers, Georgia's low voter turnout rate made it subject to section 5. In the 1964 presidential election, the vote cast equaled just 43.2% of the state's voting age population, thus failing to exceed the 50% needed to avoid section 5 coverage.<sup>31</sup>

As in other southern states covered by section 5 of the VRA, immediate and dramatic change came quickly in Georgia following the VRA's passage. By 1967, 52.6% of Georgia's non-white voting age population had registered to vote.<sup>32</sup> This increased registration rate also extended to the white population, of which just over 80% of the age-eligible population had registered to vote.<sup>33</sup>

Particularly dramatic increases in African-American registration occurred in the thirty Georgia counties that had most consistently rebuffed African-American political overtures. Table 1 reports the white and non-white registration rates, as of December 1962, for the thirty counties in which fewer than 10% of the age-eligible non-whites were registered. In these counties, substantially larger shares of the

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27. Voting Rights Act § 5, 79 Stat. at 439 (known as the section 5 preclearance requirement of the VRA).

28. Voting Rights Act §§ 3, 6, 79 Stat. at 437, 439–40.

29. Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006, Pub. L. No. 109-246, § 4, 120 Stat. 577, 580.

30. POLITICAL PARTICIPATION, *supra* note 19, at 238. This figure is approximated since the voting age population is as of 1960, whereas the registration numbers are as of 1962.

31. U.S. CENSUS BUREAU, Series P 23-014, 1960 POPULATION OF VOTING AGE AND VOTES CAST FOR PRESIDENT, BY STATES: 1964 AND 1960, FOR STATES AND COUNTIES, tbl.1 (Apr. 21, 1965), available at <http://www.census.gov/population/socdemo/voting/p23-014/tab01.pdf>.

32. POLITICAL PARTICIPATION, *supra* note 19, at 222–23.

33. *Id.*

white population were registered.<sup>34</sup> Surprisingly, in a number of the counties, the registration rolls included more names of whites than existed in the age-eligible white population counted in 1960. Such counties are denoted in the table as having white registration of “100+”. The evidence is clear that while non-whites found it difficult to register, comparable barriers did not dissuade whites who wished to sign up to vote.

Within two years after passage of the VRA, registration rates for non-whites increased in almost every one of these thirty counties.<sup>35</sup> In all but four of the counties, more than 10% of the non-white adults had registered. In eight counties, a majority of non-white adults had signed up to vote. Baker County, with 71.7% of its non-white adults on the voting lists, led the way towards enfranchisement. The median level of non-white registration in 1967 was 28.25%, as compared to 5.6% in 1962, indicating that while some progress had been made, much remained to be done to extend the suffrage to Georgia’s African-American population. Notably, in 1967, the median figure for white registration exceeded one hundred percent of the voting age population. One of the counties showing relatively little progress, Chattahoochee, has a large concentration of military personnel, such that only 7.2% of the adult non-whites and 6.3% of the whites had registered.

## 2. *Contemporary Voter Registration and Turnout*

As shown in Table 1, in each of the thirty counties with low rates of African-American registration in 1962, African-American registration had become widespread by 2004. In every county except Chattahoochee, the bulk of the voting age population was registered. The mean for the thirty counties was 67.6%, and in eight counties, the registration rate exceeded 75%. Excluding Fayette County—where the 2004 registration figures exceed the 2000 voting age population as a result of African-American in-migration—the average African-American registration figure is 65.9% of the adult population compared with a white average of 73.8%.

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34. The exception is Chattahoochee County, which contains much of Fort Benning, many of whose soldiers are not Georgia residents. Section 5 can be overinclusive when a county contains a large number of military personnel who do not vote locally. See Michelle E. O’Connor-Ratcliff, Note, *Colorblind Redistricting: Racial Proxies as a Solution to the Court’s Voting Rights Act Quandary*, 29 HASTINGS CONST. L.Q. 61, 72 (2001).

35. See *supra* Table 1; POLITICAL PARTICIPATION, *supra* note 19, at 233–39. Echols County saw no change in its pre- and post-VRA rates. *Id.* at 234–35.

TABLE 1  
 WHITE AND NONWHITE REGISTRATION, 1962, 1967, AND 2004,  
 AND 2004 TURNOUT IN COUNTIES WITH VERY LIMITED  
 AFRICAN-AMERICAN REGISTRATION IN 1962

County	Number of nonwhite registrants in 1962	1962 registration percentage		1967 registration percentage		2004 registration percentage		2004 general election turnout by percentage of registered voters			
		Nonwhite	White	Nonwhite	White	Black*	White	Black Fem	Black Male	White Fem	White Male
Baker	24	1.9	100 +	71.7	100+	76.5	77.5	77	69	81	79
Bleckley	45	3.3	73.9	20.8	100+	55.4	73.0	75	55	80	79
Burke	427	6.5	84.1	41.8	99.7	73.5	77.4	72	63	79	78
Calhoun	145	6.0	100+	24.6	100+	55.8	60.0	68	59	76	76
Chattahoochee	17	0.9	4.2	7.2	6.3	35.1	26.4	60	49	65	55
Early	261	8.0	92.9	20.0	100+	68.3	74.5	55	46	78	78
Echols	19	7.7	92.9	7.7	100+	63.7	69.8	51	41	66	62
Fayette	26	2.2	77.0	5.7	84.9	118.2†	87.9	88	82	88	85
Glascock	1	0.3	100+	6.0	100+	59.4	81.6	74	62	82	85
Harris	263	8.5	100+	36.1	100+	69.3	90.5	72	55	80	78
Houston	413	9.8	44.0	54.8	80.1	69.4	71.6	79	73	80	80
Jeff Davis	56	6.2	100+	65.0	100+	76.9	78.0	64	55	70	70
Jefferson	283	5.9	82.0	54.9	91.6	71.9	75.8	72	55	81	79
Lee	29	1.6	84.8	55.0	100+	65.0	78.1	76	64	82	79
Lincoln	3	0.2	100+	47.6	100+	67.7	81.5	71	62	80	81



County	Number of nonwhite registrants in 1962		1962 registration percentage		1967 registration percentage		2004 registration percentage		2004 general election turnout by percentage of registered voters			
	Nonwhite	White	Nonwhite	White	Black*	White	Black Fem	Black Male	White Fem	White Male		
McDuffie	251	87.5	41.4	98.6	61.6	71.9	69	61	80	78		
Madison	55	77.0	26.4	80.1	57.8	67.6	78	66	80	80		
Marion	55	100+	17.4	100+	83.4	82.5	74	60	76	72		
Miller	6	100+	19.9	52.9	72.0	81.4	53	40	73	71		
Mitchell	375	100+	29.7	95.1	52.9	61.0	69	57	80	79		
Quitman	38	100+	25.6	100+	84.6	71.4	64	55	68	66		
Seminole	11	100+	33.9	100+	66.9	76.0	57	48	72	71		
Stewart	136	100+	26.4	100+	78.9	78.4	68	49	77	73		
Sumter	548	73.5	46.7	100+	65.8	66.3	68	55	80	80		
Talbot	219	100+	25.9	100+	79.7	85.7	74	66	79	77		
Terrell	98	96.6	53.9	100+	65.0	72.3	69	56	83	82		
Treutlen	45	100	62.1	85.4	74.3	78.0	71	60	76	73		
Warren	188	85.8	63.7	100+	73.7	74.0	70	58	85	81		
Webster	9	98.8	26.8	100+	76.5	79.2	71	60	83	82		
Worth	296	100+	25.8	85.8	59.0	63.9	62	56	80	78		

\* The numbers collected in 2004 were calculated in terms of "black" and "white," as opposed to the previous use of "nonwhite" and "white."

† Fayette County has experienced an influx of African Americans since 2000, which is reflected in the registration data

Sources: POLITICAL PARTICIPATION, *supra* note 19; Georgia Secretary of State, Georgia Secretary of State, Credit for Voting Report (Nov. 2, 2004), [http://www.sos.state.ga.us/ELECTIONS/voter\\_registration/CFV2004-11-02.pdf](http://www.sos.state.ga.us/ELECTIONS/voter_registration/CFV2004-11-02.pdf) (last visited Nov. 6, 2006).

In addition to this progress in African-American voter registration, African-American turnout has also increased in the forty years since the passage of the VRA. In every one of the thirty counties, at least a majority of registered African-American women voted in 2004. In the Atlanta suburbs of Fayette County, 88% of registered African-American women and 82% of registered African-American men participated. A higher proportion of African-American female registrants than white male registrants voted in Chattahoochee, Fayette, and Marion counties, and in a number of suburban counties the participation rates of African-American females almost equaled that of whites. Despite this evidence of success, the more common pattern was for African-American turnout rates to lag behind those for whites, especially in rural counties. Participation rates among African-American men also invariably lagged behind those of African-American women, often with a disparity of more than ten percentage points.

*a) Data from the United States Census*

In addition to the data in Table 1, another source of data on contemporary voter registration and turnout comes from the United States Census. After each election, the U.S. Bureau of the Census conducts a massive survey to determine registration and turnout rates among the voting age population of the jurisdiction.<sup>36</sup> These figures are self-re-

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36. See, e.g., U.S. DEP'T OF COMMERCE, BUREAU OF THE CENSUS, VOTING AND REGISTRATION IN THE ELECTION OF NOVEMBER 1980 (GPO 1982); U.S. DEP'T OF COMMERCE, BUREAU OF THE CENSUS, VOTING AND REGISTRATION IN THE ELECTION OF NOVEMBER 1982 (GPO 1984); U.S. DEP'T OF COMMERCE, BUREAU OF THE CENSUS, VOTING AND REGISTRATION IN THE ELECTION OF NOVEMBER 1984 (GPO 1986); U.S. DEP'T OF COMMERCE, BUREAU OF THE CENSUS, VOTING AND REGISTRATION IN THE ELECTION OF NOVEMBER 1986 (GPO 1988); U.S. DEP'T OF COMMERCE, BUREAU OF THE CENSUS, VOTING AND REGISTRATION IN THE ELECTION OF NOVEMBER 1988 (GPO 1990); U.S. DEP'T OF COMMERCE, BUREAU OF THE CENSUS, VOTING AND REGISTRATION IN THE ELECTION OF NOVEMBER 1990 (GPO 1992); U.S. DEP'T OF COMMERCE, BUREAU OF THE CENSUS, VOTING AND REGISTRATION IN THE ELECTION OF NOVEMBER 1992 (GPO 1994); U.S. DEP'T OF COMMERCE, BUREAU OF THE CENSUS, VOTING AND REGISTRATION IN THE ELECTION OF NOVEMBER 1994 (GPO 1996); U.S. DEP'T OF COMMERCE, BUREAU OF THE CENSUS, VOTING AND REGISTRATION IN THE ELECTION OF NOVEMBER 1996 (GPO 1998), available at <http://www.census.gov/prod/3/98pubs/p20-504.pdf>, <http://www.census.gov/prod/3/98pubs/p20-504u.pdf>; U.S. DEP'T OF COMMERCE, BUREAU OF THE CENSUS, VOTING AND REGISTRATION IN THE ELECTION OF NOVEMBER 1998 (GPO 2000); U.S. DEP'T OF COMMERCE, BUREAU OF THE CENSUS, VOTING AND REGISTRATION IN THE ELECTION OF NOVEMBER 2000 (GPO 2002), available at <http://www.census.gov/prod/2002pubs/p20-542.pdf>; U.S. DEP'T OF COMMERCE, BUREAU OF THE CENSUS, VOTING AND REGISTRATION IN THE ELECTION OF NOVEMBER 2002 (GPO 2004), available at <http://www.census.gov/prod/2004pubs/p20-552.pdf>; U.S. DEP'T OF COMMERCE, BUREAU OF THE CENSUS, VOTING AND REGISTRATION IN THE ELECTION OF NOVEMBER 2004 (2005) <http://www.census.gov/population/www/socdemo/voting/cps2004.html>.

ports, which tend to overestimate actual participation rates<sup>37</sup> but can be used for comparative purposes across time and across states on the assumption that the inflation is of similar magnitude. These surveys are also important in that they provide the basis for the estimates that the Census Bureau uses to determine whether registration or turnout rates for jurisdictions are so low as to subject the jurisdiction to the trigger mechanisms of the Voting Rights Acts of 1965, 1970, or 1975.<sup>38</sup>

(i) *Voter Registration*

As shown in Table 2 below, by 1980, 59.8% of voting-age African Americans in Georgia reported having registered. The comparable figure for the share of the white voting age population claiming to be registered was 67%. During the 1980s, approximately 7% more whites than African Americans were registered. The greatest disparity in white and African-American registration, 7.8 points, occurred in 1982.

By 1990, African-American and white Georgians had nearly identical registration rates: 57% of African Americans of voting age reported being registered, compared with 58.1% of whites. In 1994, a larger proportion of African Americans (57.6%) than whites (55%) had registered. African Americans have reported registering at higher rates than whites in four of the six most recent national elections, including the two most recent presidential elections. In the 2002 midterm election, when more voting age whites than African Americans reported registering, the disparity was only 1.1 percentage points, with 61.6% of voting age African Americans and 62.7% of voting age whites registered.

The figures for whites are comparable across the 24-year period. In recent years, however, Georgia has experienced a large Latino influx, and beginning in 1994, the census data reported estimates for

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37. See, e.g., Paul R. Abramson & William Claggett, *Race-Related Differences in Self-Reported and Validated Turnout in 1984*. 46 J. OF POL. 719, 721 (1984).

38. Voting Rights Act of 1965, Pub. L. No. 89-110, § 4(b), 79 Stat. 437, 438 (codified as amended at 42 U.S.C. § 1973b(b) (2000)) (delegating determination of registration and turnout numbers to the Director of the Census). Each Voting Rights Act renewal until 1975 updated the trigger to include the most recent election, and the 1975 renewal also treated English-only ballots as a form of literacy test, thus broadly expanding the scope of the Act to capture Texas, Arizona, and Alaska, for example. Voting Rights Act Amendments of 1970, Pub. L. No. 91-285, § 4. 84 Stat. 314, 315 (1970); Voting Rights Act Amendments of 1975, Pub. L. No. 94-73, §§ 202-03, 89 Stat. 400, 401 (1975). The 1982 and 2006 renewals of the VRA did not include new or additional triggers. See 42 U.S.C. § 1973b(b) (2000).

TABLE 2  
 REPORTED REGISTRATION PERCENTAGES\* BY RACE IN GEORGIA  
 AND OUTSIDE THE SOUTH, 1980-2004

	1980	1982	1984	1986	1988	1990	1992	1994	1996	1998	2000	2002	2004
<b>GEORGIA</b>													
Black	59.8	51.9	58.0	55.3	56.8	57.0	53.9	57.6	64.6	64.1	66.3	61.6	64.2
White	67.0	59.7	65.7	60.4	63.9	58.1	67.3	55.0	67.8	62.0	59.3	62.7	63.5
Non-Hispanic Whites										63.1	61.0	65.3	68.0
<b>NON SOUTH</b>													
Black	60.6	61.7	67.2	63.1	65.9	58.4	63.0	58.3	62.0	58.5	61.7	57.0	NA
White	69.3	66.7	70.5	66.2	68.5	64.4	70.9	65.6	68.1	63.9	65.9	63.0	NA

\* Percentages are calculated using the voting age population as the denominator.

Sources: See sources cited *supra* note 36.

whites that excluded Latinos.<sup>39</sup> Although the 2000 Census reported almost a half million Latinos in Georgia, as of 2004 barely 30,000—approximately 27% of Latinos eligible to vote—had registered to vote, suggesting that limiting voting data to non-Hispanic whites will result in a higher percentage of the white voting age population being registered.<sup>40</sup> Indeed, in the two most recent elections, once Latinos are excluded, the registration rate for whites exceeded that for African Americans. In 2004, for example, 64.2% of African Americans and 68.0% of non-Hispanic whites reporting registering, as compared to only 63.5% of all whites. Even after removing Latinos from the estimates, however, higher proportions of African Americans than whites reported registering in 1998 and 2000.

Another method of evaluating registration rates in Georgia is to compare the reported registration rates of Georgians and non-southerners, as shown in Table 2.<sup>41</sup> From 1980 through 1994, African Americans living outside the South invariably reported higher rates of registration than did African Americans in Georgia. In 1982, 1984, 1988, and 1992, the difference was approximately ten percentage points. Beginning with 1996, however, self-reported registration rates among African Americans in Georgia have exceeded those for African Americans outside the region. In the three most recent elections for which comparisons are available, registration for African Americans in Georgia is approximately five percentage points higher than for non-southern African Americans.

These data show that even before the implementation of the “Motor Voter Act” in 1993<sup>42</sup> and the Help America Vote Act of 2002,<sup>43</sup>

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39. See, e.g., VOTING AND REGISTRATION IN THE ELECTION OF NOVEMBER 1998, *supra* note 36, at tbl.B (providing registration rates for whites, blacks, and people of Hispanic origin). The word “Latino” first appeared on census forms in 2000. U.S. DEP’T OF COMMERCE, BUREAU OF THE CENSUS, CENSUS 2000 BRIEF: THE HISPANIC POPULATION 1 (2001), available at <http://www.census.gov/prod/2001pubs/c2kbr01-3.pdf>.

40. VOTING AND REGISTRATION IN THE ELECTION OF NOVEMBER 2004, *supra* note 36, at tbl.4a. Figures on non-Hispanic white participation have been available from the Census Bureau only since 1994. See, e.g., VOTING AND REGISTRATION IN THE ELECTION OF NOVEMBER 1994, *supra* note 36, at tbl.A.

41. A non-southerner is anyone who lives outside the South, defined as the eleven secession states. See H.D. PRICE, THE NEGRO IN SOUTHERN POLITICS 7 (1957).

42. National Voter Registration Act of 1993, Pub. L. No. 103-31, 107 Stat. 77 (codified as amended at 42 U.S.C. §§ 1973gg *et seq.* (2000)). The Act is more commonly known as the “Motor Voter Act.” See, e.g., Mitchell F. Crusto, *The Supreme Court’s “New” Federalism: an Anti-Rights Agenda?* 16 GA. ST. U. L. REV. 517, 530–31 (2000).

43. Help America Vote Act of 2002, Pub. L. No. 107-252, 116 Stat. 1666 (codified as amended at 42 U.S.C. § 15301 (2000)).

both of which were designed to facilitate participation in elections,<sup>44</sup> the disparity in African American and white registration rates had largely been eliminated. In 2004, African Americans constituted 27.4% of all registered voters in Georgia and 27.2% of the state's citizen voting age population, according to the U.S. Census.<sup>45</sup>

(ii) *Voter Turnout*

The racial disparity in voter turnout has also diminished. As shown in Table 3, in 1980 the Census Bureau estimated that 43.7% of age-eligible African Americans voted in the general election, compared with 56% of whites. In the midterm election of 1982, the racial disparity dropped to 8.2 percentage points. Voting trends indicate greater racial disparity in presidential than in midterm elections. Until 1996, at least 10% more whites than African Americans voted in presidential elections, and even in 1996, white turnout exceeded the African-American figure by almost seven percentage points. In contrast, in midterm elections, the greatest racial differences—which occurred in 1982 and 1994—have been approximately eight percentage points. In 1990, almost identical percentages of African-American and white Georgians went to the polls.

African-American voter turnout has continued to rise in the twenty-first century, particularly in presidential elections. Reported African-American turnout rates remained around 40–45% until 2000, when 51.6% of age-eligible African Americans reported voting. In the same election, only 48.3% of age-eligible whites reported voting. In the most recent presidential election, African-American participation rates again slightly exceeded those for whites. In midterm elections, which traditionally have lower turnout among both African Americans and whites, African-American voter participation has not been so strong. The proportion of age-eligible African Americans who reported voting in midterm elections peaked in 1990 at 42.3%; after 1990, the number seesawed, dropping to 30.9% in 1994, rising to just over 40% in 1998, and then ebbing to 38.5% in 2002. African-American turnout in a midterm election has exceeded white turnout only once, in 1998.

Excluding data for Hispanic whites results in a higher turnout rate for non-Hispanic whites, although from 1998 to 2002, the increase was less than two percentage points. Even excluding data for

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44. See 42 U.S.C. § 1973gg(b); Pub. L. No. 107-252, 116 Stat. 1666 (2002).

45. See VOTING AND REGISTRATION IN THE ELECTION OF NOVEMBER 2004, *supra* note 36 at tbl.4a.

TABLE 3  
 REPORTED TURNOUT PERCENTAGES\* BY RACE IN GEORGIA  
 AND OUTSIDE THE SOUTH, 1980-2004

	1980	1982	1984	1986	1988	1990	1992	1994	1996	1998	2000	2002	2004
<b>GEORGIA</b>													
Black	43.7	32.5	45.9	37.3	42.4	42.3	47.1	30.9	45.6	40.2	51.6	38.5	54.4
White	56.0	40.7	55.3	40.5	53.2	42.6	58.7	38.3	52.3	36.8	48.3	41.4	53.6
Non-Hispanic Whites										37.6	49.6	43.0	57.4
<b>NON-SOUTH</b>													
Black	52.8	48.5	58.9	44.2	55.6	38.4	53.8	40.2	51.4	40.4	53.1	39.3	NA
White	62.4	53.1	63.0	48.7	60.4	48.2	64.9	49.3	57.4	45.4	57.5	44.7	NA

\* Percentage are calculated using the voting age population as the denominator.

Sources: See sources cited *supra* note 36.

Hispanic whites, since 1998, turnout rates for African Americans and non-Hispanic whites in Georgia have differed by fewer than five percentage points. In 1998 and 2000, African-American turnout exceeded the non-Hispanic white figure by at least two percentage points. In 2002, the non-Hispanic white turnout rate was 4.5 percentage points above the African-American rate, and in 2004 it was three percentage points higher than the African-American rate.

As was the case with registration rates, progress in voter turnout can also be evaluated by comparing Georgia to states outside the South, as shown in the bottom half of Table 3. In the 1980s, non-southern African Americans voted at much higher rates than those in Georgia. In 1982, for example, the difference between non-southern African Americans and African Americans in Georgia reached sixteen percentage points, and it declined only slightly, to thirteen percentage points, in the next presidential election. In the three most recent elections for which non-southern figures are available, however, the reported participation rates for African Americans in Georgia and non-southern states have been essentially equal. In 1998, just over 40% of African Americans, both non-southern and in Georgia, reported voting, while in 2002, the figure for both was approximately 39%. In 2000, African-Americans outside the South reported participating at a rate 1.5 percentage points higher than those in Georgia. These data suggest that much of the disparity in voter turnout of twenty years ago has been eliminated. In particular, in two of the four most recent election years, the reported African-American participation rate in Georgia exceeded that for non-Hispanic whites. While African-American participation rates are slightly higher outside the South than in Georgia, since 1998 the differences have been minimal.

*b) Data from the Georgia Secretary of State*

A problem with self-reported political participation data, such as that compiled by the U.S. Census, is that respondents tend to give socially approved answers<sup>46</sup>—some individuals who were unregistered will tell a pollster that they had registered,<sup>47</sup> and because of the heavy emphasis placed upon the civic duty of voting, a number of non-voters will report that they went to the polls.<sup>48</sup> Georgia, however,

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46. William T. Harbaugh, *If People Vote Because They Like To, Then Why Do So Many of Them Lie?*, PUB. CHOICE, Oct. 1996, at 64.

47. *Id.* at 63 & n.2.

48. *Id.* at 63.



is one of five states that maintains voter registration data by race,<sup>49</sup> making it possible to have more accurate registration data concerning race.<sup>50</sup> Additionally, since 1996, Georgia's Secretary of State has conducted a post-election audit of voter turnout by going through voter sign-in sheets at poll sites and cross-checking that information against the registration data showing the voter's race.<sup>51</sup> Unlike the figures provided by the Census Bureau, these are not estimates but actual counts.<sup>52</sup> As shown in Table 4, the number of African-American registrants increased by more than 225,000 between 1996 and 2004. In 1996, African Americans constituted 24.4% of all registrants, but by 2004 they accounted for 27.2% of registrants. The 2004 figure almost exactly equals the Census Bureau's estimate of the African-American share of Georgia's registered voters for the same year.<sup>53</sup>

The Georgia Secretary of State data demonstrate that African-American turnout has also increased. As shown in Table 4, slightly fewer than 500,000 African Americans in Georgia voted in the 1996 presidential election. Eight years later, the number of African Americans voting for president increased by 337,000. During the same eight-year span, the share of all African-American registrants going to the polls in presidential elections grew from 53.5% to 72.2%. The

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49. GA. CODE ANN. § 21-2-217(a) (1994); Application for Voter Registration, available at [http://www.sos.state.ga.us/elections/voter\\_registration/vra\\_2003\\_update.pdf](http://www.sos.state.ga.us/elections/voter_registration/vra_2003_update.pdf). See also Ga. Sec. of State, Voter Registration Statistics, [http://www.sos.state.ga.us/elections/voter\\_registration/statistics.htm](http://www.sos.state.ga.us/elections/voter_registration/statistics.htm) (last visited Feb. 5, 2007). The others are Florida, Louisiana, North Carolina, and South Carolina. See FLA. STAT. ANN. § 97.052(2)(f) (2006); LA. REV. STAT. ANN. § 18:104(A)-(B) (2006); N.C. GEN. STAT. § 163-82.10(b) (2006); S.C. CODE ANN. § 7-5-170 (2006). All five states are covered in whole or in part by section 5 of the Voting Rights Act. Voting Rights Act of 1965 § 4, 42 U.S.C. § 247(a) (1965). Because only five states maintain this kind of data, Georgia's Secretary of State data cannot easily be compared to data from the other forty-five states.

50. This information is likely to be more accurate even though individuals may not accurately report their race or opt for the "other" category. See, for example, the registration rules for Florida, which observe that "the Florida Voter Registration Application Form does not require the applicant to include sex or race/ethnicity on the application." Florida Division of Elections, <http://election.dos.state.fl.us/voterreg/index.shtml> (last visited Sept. 12, 2006).

51. See Georgia Secretary of State, Credit for Voting Reports, [http://www.sos.state.ga.us/ELECTIONS/voter\\_registration/credit\\_for\\_voting\\_reports.htm](http://www.sos.state.ga.us/ELECTIONS/voter_registration/credit_for_voting_reports.htm) (last visited Nov. 6, 2006).

52. *Id.* The Secretary of State's website cautions that these numbers do not always match the number of ballots cast. See also CHARLES STEWART III, MEASURING THE IMPROVEMENT (OR LACK OF IMPROVEMENT) IN VOTING SINCE 2000 IN THE U.S. 22 & n.28 (2006), [http://web.mit.edu/cstewart/www/papers/measuring\\_2.pdf](http://web.mit.edu/cstewart/www/papers/measuring_2.pdf) (questioning the accuracy of the Credit for Voting Reports).

53. See VOTING AND REGISTRATION IN THE ELECTION OF NOVEMBER 2004, *supra* note 36, at tbl.4a.

TABLE 4  
OFFICIAL REGISTRATION AND TURNOUT  
IN GEORGIA, 1996–2004

Year	Registration		Registration Percentage (of all registrants)		Turnout		Turnout Percentage (of registrants by race)	
	Black	White	Black	White	Black	White	Black	White
1996	929,525	2,822,012	24.4	74.1	497,086	1,814,983	53.5	64.3
1998	972,047	2,867,910	24.9	73.4	415,839	1,382,647	42.8	48.2
2000	980,033	2,792,479	25.4	72.4	615,723	1,993,493	62.8	71.4
2002	962,720	2,695,306	25.6	71.7	458,640	1,536,635	47.6	57.0
2004	1,155,706	2,917,322	27.2	68.7	834,331	2,344,632	72.2	80.4

Sources: Georgia Secretary of State, Credit for Voting Report (Nov. 5, 1996), [http://www.sos.state.ga.us/elections/voter\\_registration/CFV1996-11-05.pdf](http://www.sos.state.ga.us/elections/voter_registration/CFV1996-11-05.pdf) (last visited Nov. 30, 2006); Georgia Secretary of State, Credit for Voting Report (Nov. 3, 1998), [http://www.sos.state.ga.us/elections/voter\\_registration/CFV1998-11-03.pdf](http://www.sos.state.ga.us/elections/voter_registration/CFV1998-11-03.pdf) (last visited Nov. 30, 2006); Georgia Secretary of State, Credit for Voting Report (Nov. 7, 2000), [http://www.sos.state.ga.us/elections/voter\\_registration/CFV2000-11-07.pdf](http://www.sos.state.ga.us/elections/voter_registration/CFV2000-11-07.pdf) (last visited Nov. 30, 2006); Georgia Secretary of State, Credit for Voting Report (Nov. 5, 2002), [http://www.sos.state.ga.us/elections/voter\\_registration/CFV2002-11-05.pdf](http://www.sos.state.ga.us/elections/voter_registration/CFV2002-11-05.pdf) (last visited Nov. 30, 2006); Georgia Secretary of State, Credit for Voting Report (Nov. 2, 2004), [http://www.sos.state.ga.us/elections/voter\\_registration/CFV2004-11-02.pdf](http://www.sos.state.ga.us/elections/voter_registration/CFV2004-11-02.pdf) (last visited Nov. 30, 2006).

number of additional African Americans voting exceeded the number of new African-American registrants by almost half, indicating that a substantial number of African Americans came to the polls who had previously registered but not voted. The share of African-American registrants participating in midterm elections also grew, although less dramatically, from 42.8% in 1998 to 47.6% four years later.

Yet while the percentage of African-American registrants who voted increased, African-American turnout remained lower than white turnout. As Table 4 shows, the African-American turnout rate in 1996 was almost eleven percentage points less than the white turnout rate. The disparity shrank to 8.6 points in 2000 and was down to 8.2% in 2004, when 72.2% of African-American registrants and 80.4% of white registrants voted. The Census Bureau statistics for voter turnout, while calculated differently, also affirm higher non-Hispanic white turnout.<sup>54</sup> Despite the disparity between whites and African Americans, the variation in the participation rates for both groups indi-

54. As reported in Table 3, the Census estimated that 57.4 percent of non-Hispanic whites and 54.4 percent of blacks voted in the 2004 election. It should be noted that the Census Bureau estimates use the voting age population as the denominator for the calculations while the turnout figures reported in Table 4 use registration as the denominator.

cates that African Americans are not subject to systematic discrimination at the polling place; in fact, the African-American turnout rate in 2004 exceeds the white turnout rate in previous years.

c) *Alternative Explanations for Low African-American Turnout*

The totality of the data thus suggest that African Americans in Georgia no longer face serious obstacles that prevent them from registering or voting, even though African-American turnout remains lower than white turnout. Political science research suggests another explanation: lingering disparities in participation rates among ethnic groups may be due more to differences in socioeconomic characteristics than obstacles to registration.<sup>55</sup> Indeed, the literature on American political participation consistently finds that socioeconomic status (SES) is the most important determinant of political involvement across ethnic and racial groups.<sup>56</sup> Additional research has found “excess participation” among African Americans after controlling for SES.<sup>57</sup> The research, however, is not wholly consistent. One study found that African-American voter participation lags behind white participation even when controls for socio-demographic influences, such as education, were introduced.<sup>58</sup> Other researchers have found that once they control for SES, there is little difference in the participation rates of different racial and ethnic groups.<sup>59</sup>

Socioeconomic status matters, but so does political effort. Katherine Tate argues that participation by African Americans is associated with education, political interest, and partisanship.<sup>60</sup> She also observes that unlike participation in churches or political organizations, intensity of racial identity does not drive participation.<sup>61</sup> Tate notes

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55. RAYMOND E. WOLFINGER & STEVEN J. ROSENSTONE, *WHO VOTES* 90 (1980).

56. See, e.g., SIDNEY VERBA, KAY LEHMAN SCHLOZMAN & HENRY E. BRADY, *VOICE AND EQUALITY: CIVIC VOLUNTEERISM IN AMERICAN POLITICS* 19, 522–23 (1995); WOLFINGER & ROSENSTONE, *supra* note 55, at 13–36; Jan E. Leighley & Jonathan Nagler, *Socioeconomic Class Bias in Turnout, 1964–88*, 86 AM. POL. SCI. REV. 725, 725 (1992); Jan E. Leighley & Jonathan Nagler, *Individual and Systemic Influences on Turnout: Who Votes? 1984*, 54 J. POL. 718, 720–21 (1992).

57. See, e.g., Thomas M. Guterbock & Bruce London, *Race, Political Organization, and Participation: An Empirical Test of Four Competing Theories*, 48 AM. SOC. REV. 439, 450 (1983).

58. Abramson & Claggett, *supra* note 37, at 416–19.

59. Jan E. Leighley & Arnold Vedlitz, *Race, Ethnicity, and Political Participation: Competing Models and Contrasting Explanations*, 61 J. POL. 1092, 1108 (1999).

60. Katherine Tate, *Black Political Participation in the 1984 and 1988 Presidential Elections*, 85 AM. POL. SCI. REV. 1159, 1168 (1991).

61. *Id.* at 1159.

that registration without mobilization is insufficient to promote turnout.<sup>62</sup> Similarly, Arnold Vedlitz finds that while intensive voter registration drives do increase turnout over the short term for presidential elections, without additional efforts, such as turnout campaigns, long-term voting among all newer registrants trails off.<sup>63</sup> In political parties' key mobilization efforts, African Americans are contacted less often than whites, which primarily arises from a lack of contact by the Republican Party.<sup>64</sup> Those who are contacted belong to civic culture organizations that possess strong social networks.<sup>65</sup> While education still matters, it is one of several factors—including party contact, partisanship, and church mobilization—that can increase the probability of voting.<sup>66</sup>

### III.

#### AFRICAN-AMERICANS ELECTED TO OFFICE

Since the passage of the VRA, African Americans have become much more successful at winning elected offices in Georgia. In 1969, thirty African Americans held office in Georgia, fourteen of whom served in the state legislature.<sup>67</sup> As Table 5 shows, another eight sat on city councils, and three served on school boards. By 1973, the number of African-American officials in Georgia had risen to over one hundred, and three years later it topped two hundred. By 1984, just over three hundred African Americans held public office in Georgia, with 170 serving on city councils and another 58 serving on school boards.

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62. *Id.* at 1173.

63. Arnold Vedlitz, *Voter Registration Drives and Black Voting in the South*, 47 J. POL. 643, 650 (1985).

64. *See, e.g.*, Peter W. Wielhouwer, *Releasing the Fetters: Parties and the Mobilization of the African-American Electorate*, 62 J. POL. 206, 210–12 (2000).

65. *See id.* at 213–14.

66. *See id.* at 217–18.

67. JOINT CTR. FOR POLITICAL AND ECONOMIC STUDIES, NATIONAL ROSTER OF BLACK ELECTED OFFICIALS (1969). By comparison, in 1965 only three African Americans held public office in Georgia. *See* Bob Kemper & Carlos Campos, *Voter Law a Divisive Issue for Georgians: But All Acknowledge Progress*, ATLANTA J.-CONST., July 21, 2006, at A4.

TABLE 5  
 NUMBER OF AFRICAN-AMERICAN ELECTED OFFICIALS  
 OVERALL AND IN SELECTED POSITIONS, 1969–2001

Year	Total	County	Municipal	School Board
1969	30	4	8	3
1970	40	3	15	7
1971	51	6	20	8
1972	65	7	32	10
1973	104	9	42	28
1974	137	9	72	31
1975	168	12	89	36
1976	204	13	115	43
1977	225	18	132	41
1980	249	23	149	43
1981	266	23	151	55
1984	301	29	170	58
1985	340	58	179	57
1987	445	94	229	73
1989	483	102	242	81
1991	511	103	257	84
1993	545	105	266	95
1995	<i>No Report from Joint Center for 1995</i>			
1997	579	99	290	104
1999	584	93	302	99
2001	611	102	293	118

Sources: Various volumes of JOINT CTR. FOR POLITICAL AND ECONOMIC STUDIES, NATIONAL ROSTER OF BLACK ELECTED OFFICIALS (1969–2001).

The number of African-American officeholders continued to grow through the 1980s, in part because of a 1982 amendment to the VRA's section 2, a permanent, nationally applied standard to eliminate discrimination in voting practices. Congress amended section 2 in response to the Supreme Court's 1980 decision in *Mobile v. Bolden*, in which the Court held that successful challenges to existing electoral arrangements—as opposed to proposed changes that preclearance jurisdictions had to submit for federal approval—required evidence of an intent to discriminate.<sup>68</sup> This high standard made it difficult to successfully challenge at-large electoral systems<sup>69</sup> with litigation designed to institute single-member district electoral systems, which often could facilitate the election of minority candidates.<sup>70</sup> Unsatis-

68. See S. REP. NO. 97-417 at 26–28 reprinted in 1982 U.S.C.C.A.N. 177, 203–06.

69. QUIET REVOLUTION, *supra* note 7. Single-member district systems divide a region into districts, with each district voting for one representative. By contrast, in at-large or multi-member district systems, all voters from the entire jurisdiction elect all representatives to fill available seats. See *id.*

70. See *id.*

fied with the *Bolden* holding, Congress rewrote section 2 to change the standard from discriminatory *intent* to discriminatory *effect*.<sup>71</sup> This lower evidentiary burden resulted in hundreds of challenges to at-large electoral systems and dramatically increased the use of single-member districts across the nation.

As a consequence of this change, single-member district systems replaced many at-large systems, and the number of African-American officeholders continued to grow.<sup>72</sup> By 1987, the total number of African Americans holding public office in Georgia was almost 150% higher than the 1984 figure. By 1991, more than five hundred African Americans were serving in Georgia. After 1991, however, the growth rate slowed; in 2001, 611 African Americans held office in Georgia. As in previous years, approximately half of African-American office holders in 2001 served at the municipal level, with another hundred serving in county offices and a slightly larger number sitting on school boards. Today the number of African-American officeholders may exceed eight hundred.<sup>73</sup> The next sections will review the growth in the number of African Americans in Congress, the state legislature, and statewide offices.

### A. African Americans in Congress

#### 1. African-American Success in the House of Representatives

Since 1972, when Georgia and Texas became the first southern states to elect an African American to Congress since the earliest years of the twentieth century,<sup>74</sup> African-American congresspersons in Georgia have occasionally won their seats by fashioning biracial coalitions in majority-white districts.<sup>75</sup> The first to do so was civil rights activist Andrew Young,<sup>76</sup> who won a seat in the House of Representatives two years after he won the Democratic nomination but lost in the

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71. Voting Rights Act Amendments of 1982, Pub. L. No. 97-205, § 3(b), 96 Stat. 131, 134 (1982).

72. See *supra* Table 5.

73. See Kemper & Campos, *supra* note 67. The Joint Center for Political and Economic Studies ceased performing annual surveys of the numbers of black elected officials in 2001, so the number of black elected officials after the 2006 election cannot be stated with certainty. See Joint Center Publications: Black Elected Officials, <http://www.jointcenter.org/publications1/BEO.php>.

74. MICHAEL BARONE, GRANT UJIFUSA & DOUGLAS MATTHEWS, *THE ALMANAC OF AMERICAN POLITICS* 1976, at 198 (1975) [hereinafter 1976 ALMANAC]; *Timeline*, ST. PETERSBURG TIMES, Feb. 1, 1991, at 2X.

75. See *infra* Table 6 (listing African American members of Congress from Georgia who represented majority white districts).

76. See 1976 ALMANAC, *supra* note 74.

general election to a Republican incumbent.<sup>77</sup> Young triumphed in the Fifth Congressional District, which was 44% African American, by building a biracial coalition that included substantial backing from the white community.<sup>78</sup> Young won reelection in 1974 and 1976, taking two-thirds of the vote in the latter general election.<sup>79</sup> After his third victory, Young resigned from Congress when President Jimmy Carter appointed him as U.S. Ambassador to the United Nations.<sup>80</sup>

In the special election to fill the vacancy created by Young's resignation, white liberal Wyche Fowler led a field of twelve candidates with 40% of the vote,<sup>81</sup> and in the subsequent runoff, Fowler easily defeated civil rights hero John Lewis with 62% of the vote.<sup>82</sup> Fowler held the Fifth Congressional District seat for a decade,<sup>83</sup> during which time he defeated a number of African-American challengers. Fowler continued to win reelections even after the district became 65% African American following the 1982 redrawing of congressional districts using population data from the 1980 Census.<sup>84</sup> As had been the case with his predecessor, Fowler succeeded by appealing to a biracial coalition, as shown in Table 6.<sup>85</sup>

When Fowler decided to seek a U.S. Senate seat in 1986, a large field of candidates—all but one of whom was African American—entered the Fifth District Democratic primary.<sup>86</sup> In the primary, state senator Julian Bond led with 47% of the vote while John Lewis, mak-

77. Paul Delaney, *Blacks Reassess Political Role After Atlanta Loss*, N.Y. TIMES, Nov. 9, 1970, at 31.

78. 1976 ALMANAC, *supra* note 74.

79. See B. Drummond Ayres Jr., *Southern Blacks Make Major Gains*, N.Y. TIMES, Nov. 11, 1974, at 30; CONGRESSIONAL QUARTERLY'S GUIDE TO U.S. ELECTIONS 1279 (3d ed. 1994).

80. MICHAEL BARONE, GRANT UJIFUSA & DOUGLAS MATTHEWS, THE ALMANAC OF AMERICAN POLITICS 1978, at 198 (1977).

81. MICHAEL BARONE, GRANT UJIFUSA & DOUGLAS MATTHEWS, THE ALMANAC OF AMERICAN POLITICS 1980, at 211–12 (1979).

82. *Id.* See *infra* note 178 and accompanying text.

83. RICHARD F. FENNO, JR., SENATORS ON THE CAMPAIGN TRAIL 160 (Univ. of Okla. Press 1996).

84. See 2 *Incumbents in Georgia Win Re-election to Seats in House*, N.Y. TIMES, Dec. 1, 1982, at A18.

85. See *id.* (reporting that although Fowler's district was only 35 percent white, he won over 79 percent of the vote); Editorial, *Securing Voting Rights*, BOSTON GLOBE, Aug. 31, 1982, editorial Page 1 (explaining Fowler's appeal to black voters).

86. *Julian Bond to Seek Congressional Seat*, N.Y. TIMES, Feb. 1, 1986, at 1.8; William E. Schmidt, *Fowler Takes Strong Lead in Senate Race in Georgia*, N.Y. TIMES, Aug. 13, 1986, at A.16.

ing another bid for the House, polled 35% of the vote.<sup>87</sup> In the crucial runoff, Lewis prevailed, in part by winning more than 80% of the white vote.<sup>88</sup> While Bond had attracted the bulk of the African-American vote,<sup>89</sup> Lewis's biracial coalition produced a 52% majority.<sup>90</sup>

After the 1992 elections, two other African Americans joined Lewis in Congress: Sanford Bishop, from the Second District in southwest Georgia, and Cynthia McKinney, who won the Eleventh District, which stretched from Atlanta's eastern suburbs to Augusta and Savannah.<sup>91</sup> With three African Americans in the eleven-person delegation, African Americans had achieved a level of representation in the House equal to their share of Georgia's 1990 population.<sup>92</sup>

In 2002, following redistricting after the 2000 Census,<sup>93</sup> David Scott became the fourth African American in Georgia's House delegation.<sup>94</sup> With four African Americans in Congress, Georgia equaled the largest number of African-American members ever to represent

87. See Art Harris, *Political Upset Spells New Era for Atlanta's Blacks*, SEATTLE TIMES, Sept. 7, 1986, at A.7; MICHAEL BARONE & GRANT UJIFUSA, *THE ALMANAC OF AMERICAN POLITICS 1988*, at 299 (1987) [hereinafter 1988 ALMANAC].

88. See Robert A. Jordan, 'Biracial Appeal' the Secret at Polls; Black Candidates Building Coalitions with White Minorities to Produce Election-Day Victories, BOSTON GLOBE, Sept. 14, 1986, at A14.

89. *Id.*

90. 1988 ALMANAC, *supra* note 87, at 300. John Lewis continues to represent the Fifth District and is the dean of Georgia's House delegation. See *Colleagues Stay Mum on McKinney's Defeat*, AUGUSTA CHRONICLE, Aug. 12, 2006, at B2. Lewis was elected to the House in 1986, making him the most senior congressional representative from Georgia. See MICHAEL BARONE & RICHARD E. COHEN, *THE ALMANAC OF AMERICAN POLITICS 2006*, at 483-513 (2005) [hereinafter 2006 ALMANAC].

91. MICHAEL BARONE & GRANT UJIFUSA, *THE ALMANAC OF AMERICAN POLITICS 1994*, at 334-57 (1993).

92. See JESSE MCKINNON, C2KBR/01-5, U.S. CENSUS BUREAU, *THE BLACK POPULATION: 2000, CENSUS 2000 BRIEF 4 tbl.2* (2001), available at <http://www.census.gov/prod/2001pubs/c2kbr01-5.pdf> (indicating African Americans constituted 27 percent of Georgia's population in 1990).

93. David Pendered, *Senate Passes Redrawn Districts*, ATLANTA J.-CONST., Aug. 11, 2001, at A6. The 2001 Georgia redistricting was a concerted partisan effort to maximize Democratic opportunities through the efficient use of black votes. See Jim Galloway, *Redistricting Expands White Base*, ATLANTA J.-CONST., Aug. 16, 2001, at A1; Jim Wooten, Editorial, *Secret Deals Silence Voices of Many Voters*, ATLANTA J.-CONST., Aug. 12, 2001, at C8. The redistricting created a fourth congressional district that elected a black candidate in suburban Atlanta (the 13th), and another, the 12th district that ran from Athens, east through Augusta and then south to Savannah, that had the potential to elect a black member. See *infra* notes 106-20 and accompanying text. These districts were challenged but survived scrutiny in *Larios v. Perdue*, 306 F. Supp. 2d 1190 (N.D. Ga. 2003).

94. In the 2002 general election, Scott garnered 59.6 percent of the vote, handily winning the newly created District 13 House seat. See 2006 ALMANAC, *supra* note 90, at 511-13; *Electing the New Congress: Races for the House*, N.Y. TIMES, Nov. 7, 2002, at B10.



any state in Congress at one time. Notably, the other states that have had four African Americans serving in the House have much larger delegations than Georgia.<sup>95</sup> When Scott joined the Georgia delegation, which then included thirteen members, African Americans' share of Georgia House seats (31%) exceeded the percentage of African Americans in Georgia's 2000 population (29.5%).<sup>96</sup>

## 2. *Redistricting and Concern About the Need for Majority African-American Districts*

As recent electoral history has shown, an African-American majority in the population—to say nothing of an African-American majority among registrants—is not necessary for African Americans to win Georgia congressional seats. Table 6 shows African-Americans from Georgia serving in Congress and indicates the percentage of African Americans in the population of the district at the time.

The data demonstrate that, of thirty-three congressional elections won by African Americans, fifteen occurred in districts in which less than half of the population was African American. Of the eighteen contests won by African Americans in majority-black districts, eleven occurred in the Fifth District. Sanford Bishop has won six of his eight elections when his district had a white majority.<sup>97</sup> David Scott has also won in a district where African Americans did not constitute a majority of either the population or the registrants. Three of Cynthia McKinney's six victories came in a district in which whites outnumbered African Americans,<sup>98</sup> and when she lost her 2002 reelection bid,<sup>99</sup> the winner was another African-American woman, state court judge Denise Majette.<sup>100</sup> McKinney regained the seat in 2004 but lost

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95. Currently the 29-member New York delegation and the 53-member California delegation each has four African-American representatives. See 2006 ALMANAC, *supra* note 90, at 167–311, 1158–236.

96. See McKINNON, *supra* note 92.

97. Bishop's district was altered by the district court in Georgia in *Johnson v. Miller*, 922 F. Supp. 1552 (S.D. Ga. 1995) (finding the Second District to be improperly redrawn after remand from the Supreme Court). The *Miller* litigation is discussed *infra* at notes 101–05 and accompanying text.

98. See Ellen Katz, *Resurrecting the White Primary*, 153 U. PA. L. REV. 325, 382–84 (2004); BIOGRAPHICAL DIRECTORY OF THE UNITED STATES CONGRESS: CYNTHIA ANN MCKINNEY, available at <http://bioguide.congress.gov/scripts/biodisplay.pl?index=M000523> (last visited Feb. 11, 2007).

99. See Katz, *supra* note 98 at 384–86.

100. *Id.* See also Ben Smith & David A. Milliron, *Vote Analysis: GOP Not Key in McKinney Loss*, ATLANTA J.-CONST., Oct. 15, 2002, at A1. Prior to the election, prominent blacks had distanced themselves from McKinney after she suggested that President Bush ignored advanced warnings of the Sept. 11th attacks in order to profit from the subsequent wars. These comments played a role in her subsequent defeat.

TABLE 6  
AFRICAN-AMERICANS SERVING IN CONGRESS  
FROM GEORGIA, 1973–2007

	Dist. 5	Dist. 2	Dist. 11/Dist. 4*	Dist. 13
1973	Andrew Young (44%) <sup>†</sup>			
1975	Andrew Young			
1977	Andrew Young <sup>‡</sup>			
1979				
1981				
1983				
1985				
1987	John Lewis (65%)			
1989	John Lewis			
1991	John Lewis			
1993	John Lewis (62%)	Sanford Bishop (57%)	Cynthia McKinney (64%)	
1995	John Lewis	Sanford Bishop	Cynthia McKinney	
1997	John Lewis (62%)	Sanford Bishop (39%)	Cynthia McKinney (37%)	
1999	John Lewis	Sanford Bishop	Cynthia McKinney	
2001	John Lewis	Sanford Bishop	Cynthia McKinney	
2003	John Lewis (56%)	Sanford Bishop (45%)	Denise Majette (53%)	David Scott (41%)
2005	John Lewis	Sanford Bishop	Cynthia McKinney	David Scott
2007	John Lewis (57%)	Sanford Bishop (48%)	Hank Johnson (54%)	David Scott

\* District renumbered from 11 to 4 with 1996 redistricting.

<sup>†</sup> Numbers in parentheses indicate the African-American percentage in the district according to the previous census.

<sup>‡</sup> Resigned to become US ambassador to the United Nations.

Sources: Table constructed by the authors from Census data and election returns.

again in the 2006 Democratic primary, this time to an African-American male. The ability of African Americans to win congressional seats in districts in which most voters are white provides evidence that at least a share of the white electorate is quite willing to have an African-American representative.

When the Department of Justice (DOJ) reviewed Georgia's congressional districting plans in the early 1990s, however, it seemed to assume that African Americans could be elected only from majority-black districts: in rejecting the state's first two districting plans, the DOJ pushed the state to create three majority-black districts.<sup>101</sup> This assumption was put to the test after the Supreme Court struck down Georgia's Eleventh District for violating the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.<sup>102</sup> The Court concluded that, in drawing this district, the Georgia General Assembly violated the U.S. Constitution by relying predominately on race in determining the district's boundaries; the district's irregular shape, with several appendages drawn as a "deliberate attempt to bring black populations into the district," subordinated traditional districting principles such as "compactness, contiguity, and respect for political subdivisions."<sup>103</sup> This case, *Miller v. Johnson*, touched off widespread concern, especially in the minority community, that redrawing the majority black districts to increase their white populations would end the careers of African-American legislators.<sup>104</sup> The 1996 election proved those fears to be unfounded, as both Bishop and McKinney easily won reelection in their new majority-white districts, defeating white challengers in both the Democratic primary and the general election.<sup>105</sup>

Some sought to discount these victories by attributing them to incumbency, asserting that had the seats been open, whites would have won.<sup>106</sup> The 2002 election provided a partial test of that proposi-

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See Lynette Clemetson, *For Black Politicians, 2 Races Suggest a Rise of New Tactics*, N.Y. TIMES, Aug. 22, 2002, at A1.

101. See *Miller v. Johnson*, 515 U.S. 900, 917–22 (1995); Letters from John R. Dunne, Assistant Attorney General, to Mark M. Cohen, Senior Assistant Attorney General (Jan. 21, 1992 & Mar. 20, 1992).

102. See *Miller v. Johnson*, 515 U.S. 900, 903, 924–28 (1995).

103. See *id.* at 916–17.

104. David G. Savage, *Despite Redistricting Dispute, Black Lawmakers Win Reelection*, L.A. TIMES, Nov. 9, 1996, at 10.

105. *Id.*; MICHAEL BARONE & GRANT UJIFUSA, *ALMANAC OF AMERICAN POLITICS* 1998, at 410–16 (1997).

106. Cynthia A. McKinney, Op-Ed., *A Product of The Voting Rights Act*, WASH. POST, Nov. 26, 1996, at A15.

tion on an open seat in the majority-white Thirteenth District.<sup>107</sup> There, African-American state senator David Scott faced three experienced challengers, including another African-American state senator, a white state senator, and a former white congressional candidate who had most recently served as executive director of Georgia's Democratic Party.<sup>108</sup> Not only did Scott defeat these qualified opponents, he managed to win a majority of the vote in the Democratic primary, thus avoiding a runoff.<sup>109</sup>

African-American candidates were not uniformly successful in 2002, however. While Scott won his majority-white district, an African-American nominee lost in the Twelfth District, which had approximately the same racial composition. In that race, African-American Champ Walker, a political novice, won the Democratic nomination in a runoff against another African-American contender.<sup>110</sup> Walker, however, proved to be a deeply flawed candidate. He had been arrested multiple times, although never convicted,<sup>111</sup> and he ran an inept campaign in which he performed poorly in some debates and avoided others.<sup>112</sup> Walker's greatest strength—his father, Charles Walker—may have also proven to be his greatest liability. The elder Walker served as the majority leader in the state senate when the Georgia General Assembly drew the district in which his son ran,<sup>113</sup> but suspicions of corruption had surrounded him, and he ultimately was convicted on more than 125 federal charges and suspended from his

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107. An African American, David Scott, won in a 40.7 percent black district. See MICHAEL BARONE WITH RICHARD E. COHEN, *ALMANAC OF AMERICAN POLITICS* 2004, at 491–92 (2003).

108. *Id.*

109. *Id.*

110. See Jim Tharpe & Bryan Long, *Election 2002: Congress: Gingrey, Walker Gain Nominations*, ATLANTA J.-CONST., Sept. 11, 2002, at B1. The runoff pitted Walker against African-American state representative Ben Allen. The year prior, Allen broke from the state Democratic leadership and, with Republican support, proposed a redistricting map designed to boost the chances of black candidates. This map was eventually rejected. See David Pendered, *Black Democrats Revolt Over Murphy's Districts*, ATLANTA J.-CONST., Sept. 6, 2001, at C8.

111. See James Salzer, *Walker Faces Challenge to Reign: Race "A Little Tighter Than It Should Be," He Admits*, ATLANTA J.-CONST., Nov. 1, 2002, at D1; *Candidate Has Had Brushes with Police*, FLA. TIMES UNION, Oct. 15, 2002, at B4.

112. Tom Barton, *Voters Lose When Walker Cuts and Runs From Debating Burns*, SAVANNAH MORNING NEWS, Oct. 6, 2002, at 12A.

113. *Id.*; David E. Rosenbaum, *In Georgia, a Shot at Congress for 5 Blacks*, N.Y. TIMES, Sept. 24, 2002, at A25. See also *infra* notes 166–71 and accompanying text.

office.<sup>114</sup> Champ Walker lost the general election, taking only 45% of the vote.<sup>115</sup>

The 2001 redistricting following the 2000 Census created another congressional district with a substantial African-American minority—the Georgia Third.<sup>116</sup> The population of this district, centered on Macon and including much of the middle portion of the state, was just under 40% African American.<sup>117</sup> The African American who ran in the district's Democratic primary finished third, winning only 11% of the vote.<sup>118</sup> His low vote count suggests that he failed to unify the support of the African-American population, which constituted 35% of the district's registered voters.<sup>119</sup> At least a partial explanation for his lack of success may be that the most powerful African-American politician in the district, Robert Brown—who had been the vice-chair of the Senate Reapportionment Committee—managed the campaign of the successful white Democrat Jim Marshall.<sup>120</sup>

### B. African Americans in the State Legislature

In 1962, Georgia elected an African-American state senator, making Leroy Johnson the first black southern legislator in modern times.<sup>121</sup> By the time of the passage of the VRA in 1965, Johnson had been joined by a second African American in the fifty-four member state senate.<sup>122</sup> African Americans thus constituted approximately 4% of the senate. As Table 7 shows, increases in the number of seats held by African Americans in the senate came slowly. The senate had only two African-American members until after the redistricting following the 1980 Census, when the number doubled to four. By 1985, African Americans held more than a tenth of the seats in the senate. Gradual

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114. James Salzer, *Federal Prison Awaits Walker: Ex-legislator Gets 10 Years for Fraud*, ATLANTA J.-CONST., Nov. 30, 2005, at A1.

115. See *Electing the New Congress: Races for the House*, *supra* note 94.

116. See 2006 ALMANAC, *supra* note 90.

117. See *id.*

118. See *id.*; United States Representative—3rd District, *Georgia Election Results: Official Results of the August 20, 2002 Primary Election*, [http://www.sos.state.ga.us/elections/election\\_results/2002\\_0820/0001410.htm](http://www.sos.state.ga.us/elections/election_results/2002_0820/0001410.htm) (last visited Sept. 27, 2006).

119. See Georgia Secretary of State, Credit for Voting Report (Aug. 20, 2002), [http://www.sos.state.ga.us/elections/voter\\_registration/CFV2002-08-20Precinct.pdf](http://www.sos.state.ga.us/elections/voter_registration/CFV2002-08-20Precinct.pdf) (last visited Nov. 30, 2006).

120. Duane D. Stanford, *Georgians Develop the Touch for Voting: Leery Electorate Gets Test Run on Machines*, ATLANTA J.-CONST., Sept. 22, 2002, at C1.

121. See *G.O.P. Hails Gain in Legislatures*, N.Y. TIMES, Dec. 27, 1962, at 8 (mentioning the historic election of Johnson, a Democratic attorney); Robert A. Holmes, *The Georgia Legislative Black Caucus: An Analysis of a Racial Legislative Subgroup*, J. OF BLACK STUDIES, July 2000, at 770.

122. Holmes, *supra* note 121.

increases continued, and by 1997, the African-American delegation constituted almost a fifth of the senate—a figure that, aside from a dip in 2003, persisted through 2006.

TABLE 7  
RACIAL COMPOSITION OF GEORGIA GENERAL ASSEMBLY,  
1963–2005

Year	House			Senate		
	White members	Black members	Percentage black	White members	Black members	Percentage black
1963	205	0	0	53	1	1.9
1965	198	7	3.4	52	2	3.7
1967	196	9	4.4	52	2	3.7
1969	183	12	6.2	54	2	3.6
1971	182	13	6.7	54	2	3.6
1973	166	14	7.8	54	2	3.6
1975	161	19	10.6	54	2	3.6
1977	159	21	11.7	54	2	3.6
1979	159	21	11.7	54	2	3.6
1981	159	21	11.7	54	2	3.6
1983	159	21	11.7	52	4	7.1
1985	159	21	11.7	50	6	10.7
1987	156	24	13.3	50	6	10.7
1989	155	25	13.9	49	7	12.5
1991	153	27	15.0	48	8	14.3
1993	149	31	17.2	47	9	16.1
1995	148	32	17.8	46	10	17.9
1997	147	33	18.3	45	11	19.6
1999	147	33	18.3	44	11	19.6
2001	144	36	20.0	45	11	19.6
2003*	139	39	21.7	45	10	17.9
2005*	139	39	21.7	44	11	19.6
2007†	133	42	23.3	44	12	21.4

\* The house has two Latino members and the senate has one.

† The house has two Latino members.

Sources: Charles S. Bullock III, *Georgia: The GOP Finally Takes Over*, in *THE NEW POLITICS OF THE OLD SOUTH* (3d ed., Charles S. Bullock III, & Mark J. Rozell, eds., Rowman and Littlefield 2007).

Georgia elected its first African American since Reconstruction to the state house of representatives—following implementation of the one-person, one-vote standard<sup>123</sup>—in a 1965 special election.<sup>124</sup> After that election, African Americans held 7 out of 205 house seats, or

123. Under the one-person, one-vote standard, the Constitution and ideals of democratic government demand that “as nearly as is practicable one man’s vote in a congressional election is to be worth as much as another’s” such that the votes of inhabitants in thinly populated districts may not be “weighted at two or three times the

roughly 3% of the seats in the lower chamber.<sup>125</sup> By 1975, African Americans held a tenth of the house seats. African-American representation in the house then stalled for a decade, until it began gradually increasing in 1977. By 2001, African Americans held a fifth of the house seats; following redistricting, their share increased to 21.7%. These numbers persisted in 2005 and included, for the first time in modern memory, a Republican African American.<sup>126</sup> A special election in 2006 brought a second African-American Republican to the house.<sup>127</sup>

Table 7 demonstrates that African-American representation in the Georgia General Assembly has increased dramatically since the initial passage of the VRA in 1965. This growth has occurred even as the number of Democrats—the traditional party of African-American legislators in Georgia—serving in the legislature has decreased.<sup>128</sup> The 2005 senate had more African-American Democrats (eleven) than white Democrats (ten),<sup>129</sup> and following the defection of a white legislator to the Republican Party in August 2005,<sup>130</sup> the house had three more white (forty-one) than African American (thirty-eight) Democrats. As the 2006 elections approached, four more white house Dem-

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value of the votes of people living in more populous parts of the state.” *Wesberry v. Sanders*, 376 U.S. 1, 8 (1964).

124. See Charles S. Bullock III, *Georgia: The GOP Finally Takes Over*, in *THE NEW POLITICS OF THE OLD SOUTH* 51 (3d ed., Charles S. Bullock III, & Mark J. Rozell, eds., Rowman and Littlefield 2007); Holmes, *supra* note 121, at 770–71; *Republicans Win 17 Georgia Races*, N.Y. TIMES, June 17, 1965, at 20.

125. See Holmes, *supra* note 121, at 771.

126. The Republican African American was Willie Lee Talton, from Houston County. See *Georgia’s 1st Black Republican Legislator*, JET MAGAZINE, Feb. 7, 2005, at 15 (describing Talton’s victory in House District 145).

127. See Ben Smith, *Everson Makes History with State House Win*, ATLANTA J.-CONST., Sept. 28, 2005, at B3 (reporting Melvin Everson’s victory in House District 106). Neither represents a majority-black constituency. See Georgia Secretary of State, District Statistics by Race and Gender, [http://www.sos.state.ga.us/elections/voter\\_registration/district\\_race\\_gender.pdf](http://www.sos.state.ga.us/elections/voter_registration/district_race_gender.pdf) (last visited Jan. 5, 2007).

128. Despite Democratic victories across the country in the November 2006 election, Republicans remain in control in Georgia and across the Deep South. See Jay Bookman, Editorial, *Republicans’ Appeal Outside South Wanes*, ATLANTA J.-CONST., NOV. 9, 2006, at A23.

129. The twenty-second Democrat in the senate is a Latino. There is also a Latino in the house Democratic delegation. See Jim Wooten, Editorial, *Democrats’ Options Few*, ATLANTA J.-CONST., NOV. 21, 2004, at D6.

130. Nancy Badertscher, *Top Vidalia Democrat Will Join GOP Today*, ATLANTA J.-CONST., Aug. 11, 2005, at D3.

ocrats defected to the Republican Party,<sup>131</sup> and several other white Democrats opted not to file for reelection.<sup>132</sup>

When the Georgia General Assembly convened in January 2007, the senate had twelve African-American members, the highest number ever.<sup>133</sup> The African-American membership in the house also increased to a total of forty-two.<sup>134</sup> African Americans now constitute 23.3% of house membership, and 54% of the Democratic Caucus in that chamber.

### C. *Statewide African-American Officials*

Georgia elected its first African American state legislator in 1962 and its first African-American member of Congress in 1972. An African American first won a statewide office in 1984, when Robert Benham was appointed to the state court of appeals, the state's second highest tribunal.<sup>135</sup> Since then, African Americans have had a substantial measure of electoral success in statewide offices, particularly the state judiciary.

In the summer of 1984, Benham defeated three white challengers in a non-partisan primary.<sup>136</sup> When Benham was appointed to the Georgia Supreme Court, he was succeeded on the court of appeals by Clarence Cooper, an African-American superior court judge.<sup>137</sup> Approximately six months after his appointment, Cooper defeated a white challenger to win a full term.<sup>138</sup> When Cooper was appointed to the federal district bench, John Ruffin, another African American, succeeded him.<sup>139</sup> Ruffin has subsequently twice returned to the bench

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131. See Jim Galloway, *2 Democrats Switch to GOP*, ATLANTA J.-CONST., Apr. 27, 2006, at C7.

132. See Jim Wooten, Editorial, *Seismic Shift in Political Landscape*, ATLANTA J.-CONST., Apr. 23, 2006, at B6.

133. See Georgia State Senate, [http://www.legis.ga.gov/legis/2007\\_08/senate/senate\\_list.php](http://www.legis.ga.gov/legis/2007_08/senate/senate_list.php) (last visited Feb. 12, 2007). Almost all of them were incumbents. Georgia Secretary of State: Elections Division, Qualifying Candidate Database, <http://www.sos.state.ga.us/cgi-bin/qualifyingindex.asp> (last visited Oct. 13, 2006).

134. See Georgia House of Representatives, [http://www.legis.ga.gov/legis/2007\\_08/house/07alpha.html](http://www.legis.ga.gov/legis/2007_08/house/07alpha.html) (last visited Jan. 2, 2007); Interview by Charles Bullock with James Salzer, Georgia Capitol Reporter, Atlanta Journal-Constitution (Jan. 5, 2007).

135. See *Black Judge Wins Georgia Election*, N.Y. TIMES, Aug. 16, 1984, at B28.

136. See QUIET REVOLUTION, *supra* note 7, at 85.

137. See *id.* at 262.

138. See DONALD L. GRANT, THE WAY IT WAS IN THE SOUTH: THE BLACK EXPERIENCE IN GEORGIA 458 (1993).

139. See Judges of the United States Courts, <http://www.fjc.gov/servlet/tGetInfo?jid=505> (last visited Feb. 12, 2007) (Cooper was appointed by President Clinton on March 9, 1994); Court of Appeals of The State of Georgia, Biography of Chief Judge John H. Ruffin, Jr., [http://www.gaappeals.us/biography/bio\\_judges.php?jname=John](http://www.gaappeals.us/biography/bio_judges.php?jname=John)



without opposition.<sup>140</sup> In 1999, Governor Roy Barnes appointed two African Americans, Yvette Miller and Herbert Phipps, to newly created seats on the court of appeals,<sup>141</sup> and both Miller and Phipps have subsequently won reelection to the court of appeals with no opposition.<sup>142</sup>

Benham again led the way for African Americans in the Georgia judiciary when, in 1989, he became the first African American to serve on the state's highest court after being appointed to fill an interim vacancy on the state supreme court.<sup>143</sup> He won reelection in 1990 by defeating a white challenger,<sup>144</sup> ran unopposed in 1996, and defeated a challenger again in 2002.<sup>145</sup> In 1992, Leah Ward Sears became the first African-American woman to serve on the Georgia Supreme Court when Governor Zell Miller appointed her to a vacancy.<sup>146</sup> A few months later, Sears won election to the remainder of

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%20H.%20Ruffin,%20Jr (last visited Nov. 6, 2006) (Ruffin joined the bench on August 24, 1994).

140. See Georgia Election Results, Official Results of the November 5, 1996 General Election, [http://www.sos.state.ga.us/elections/election\\_results/1996\\_1105/](http://www.sos.state.ga.us/elections/election_results/1996_1105/) (last visited Nov. 6, 2006); Georgia Election Results, Official Results of the August 20, 2002 General Primary Election, [http://www.sos.state.ga.us/elections/election\\_results/2002\\_0820/](http://www.sos.state.ga.us/elections/election_results/2002_0820/) (last visited Nov. 6, 2006).

141. See Peter Mantius, *Governor Names New Judges, Other Appointees*, ATLANTA J.-CONST., June 30, 1999, at B3; Court of Appeals of The State of Georgia, Biography of Judge M. Yvette Miller, [http://www.gaappeals.us/biography/bio\\_judges.php?jname=M.%20Yvette%20Miller](http://www.gaappeals.us/biography/bio_judges.php?jname=M.%20Yvette%20Miller) (last visited Nov. 6, 2006); Court of Appeals of The State of Georgia, Biography of Judge Herbert E. Phipps, [http://www.gaappeals.us/biography/bio\\_judges.php?jname=Herbert%20E.%20Phipps](http://www.gaappeals.us/biography/bio_judges.php?jname=Herbert%20E.%20Phipps) (last visited Nov. 6, 2006).

142. Georgia Election Results, Official Results of the November 7, 2000 General Election, Judicial, [http://www.sos.state.ga.us/elections/election&5Fresults/2000\\_1107/judicial.htm#ca](http://www.sos.state.ga.us/elections/election&5Fresults/2000_1107/judicial.htm#ca) (last visited Nov. 6, 2006).

143. Tuskegee University: Distinguished Alumni, <http://www.tuskegee.edu/Global/story.asp?S=1362985> (last visited Feb. 12, 2007). Judgeships in Georgia are elected positions. However, about two-thirds of the state's judges initially come to the bench via a gubernatorial appointment to a vacancy. See, e.g., AMERICAN JUDICATURE SOC'Y, JUDICIAL SELECTION IN GEORGIA: AN INTRODUCTION, <http://www.ajs.org/js/GA.htm> (last visited Feb. 13, 2007) ("Judges are chosen in nonpartisan elections, but mid-term vacancies are filled through gubernatorial appointment. . . . The vast majority of Georgia judges are initially appointed to the bench and compete in contested elections to retain their seats."). The new appointee must run in the "next general election which is more than six months after" the appointment. GA. CONST. art. VI, § 7, ¶¶ 1, 3-4.

144. See *The Results from State's Other Contests*, USA TODAY, Jul. 18, 1990, at A3; *Campaign Digest: Candidate for No. 2 Spot Vows He'll Raffle Car*, ATLANTA J.-CONST., June 26, 1990, at D3.

145. Project Vote Smart, Justice Robert Benham, [http://www.vote-smart.org/bio.php?can\\_id=MGA51471](http://www.vote-smart.org/bio.php?can_id=MGA51471) (last visited Feb. 12, 2007).

146. The Supreme Court of Georgia, Justices' Biographies, [http://www2.state.ga.us/Courts/Supreme/justices\\_bios.html#sears](http://www2.state.ga.us/Courts/Supreme/justices_bios.html#sears) (last visited Feb. 12, 2007).

the term, defeating a white challenger.<sup>147</sup> When Sears won a second six-year term in 1998, she did so by defeating two white challengers in the non-partisan primary.<sup>148</sup> In her third victory, in 2004, Sears defeated a white conservative who had strong support from Georgia's Republican governor, Sonny Perdue, and from other leading Republicans.<sup>149</sup> In June 2005, Governor Perdue tapped a third African American, Harold Melton, for the seven-person supreme court.<sup>150</sup> Melton, who had been the governor's executive counsel, won election to the remainder of the term without opposition in 2006.<sup>151</sup>

In 1998, an African American won election to a constitutional office for the first time.<sup>152</sup> Former state representative Thurbert Baker had previously been appointed to an interim vacancy as attorney general of Georgia,<sup>153</sup> and in 1998, he won a full term against a strong challenge from a Republican senator.<sup>154</sup> He won a second term in 2002 and a third in 2006.<sup>155</sup> The second African American to win a constitutional office was Michael Thurmond, a former state legislator, who was elected as the state labor commissioner.<sup>156</sup> Thurmond's victory came after he won the nomination in a Democratic runoff and then turned back a Republican opponent.<sup>157</sup> Like Baker, Thurmond

147. *See id.*; Mark Sherman & David Beasley, *Incumbents Stung by GOP Surge*, ATLANTA J.-CONST., July 22, 1992, at A1.

148. Georgia Election Results, Official Results of the July 21, 1998 Primary Election, Judicial, [http://www.sos.state.ga.us/elections/election%5Fresults/1998\\_0721/](http://www.sos.state.ga.us/elections/election%5Fresults/1998_0721/) (last visited Nov. 6, 2006).

149. *See* Editorial, *Sears Endures to Blaze New Trail*, ATLANTA J.-CONST., Mar. 4, 2002, at A12; Georgia Election Results, Official Results of the July 20, 2004 Primary Election, Judicial, [http://www.sos.state.ga.us/elections/election%5Fresults/2004\\_0720/judicial.htm#sc](http://www.sos.state.ga.us/elections/election%5Fresults/2004_0720/judicial.htm#sc) (last visited Nov. 6, 2006).

150. *See* Randy Evans, *Newest Justice Sure to Make a Difference*, ATLANTA J.-CONST., Jun. 13, 2005, at A9.

151. *See* Justice at Stake Campaign, 2006 State Supreme Court Election Results, <http://www.justiceatstake.org/files/2006ElectionResults.pdf>.

152. "Constitutional office" describes executive positions that are established by the state constitution. *See* GA. CONST. art. V § 3 (designating as constitutional offices the Secretary of State, Attorney General, State School Superintendent, Commissioner of Insurance, Commissioner of Agriculture, and Commissioner of Labor).

153. Incumbent Attorney General Michael Bowers resigned to run for governor, and Baker was appointed by Governor Zell Miller. Office of Attorney General of Georgia, <http://www.state.ga.us/ago/biography.html>.

154. Georgia Election Results, 1998 Election Results, [http://www.sos.state.ga.us/ELECTIONS/election\\_results/1998\\_1103/summary.htm](http://www.sos.state.ga.us/ELECTIONS/election_results/1998_1103/summary.htm) (last visited Feb. 12, 2007).

155. *Id.*; Georgia Election Results, 2006 Election Results [http://www.sos.state.ga.us/elections/election\\_results/2006\\_1107/swfed.htm](http://www.sos.state.ga.us/elections/election_results/2006_1107/swfed.htm) (last visited Feb. 12, 2007).

156. Michael L. Thurmond, *How We Did It*, BLUEPRINT MAGAZINE, July–Aug. 2001, available at [http://www.ndol.org/ndol\\_ci.cfm?kaid=127&subid=173&contentid=3545](http://www.ndol.org/ndol_ci.cfm?kaid=127&subid=173&contentid=3545).

157. *Id.*

won reelections in 2002 and 2006.<sup>158</sup> In 2000, another African American, David Burgess, became the first African American to hold one of the five seats on the state Public Service Commission.<sup>159</sup> Burgess won an election for the remainder of the term in 2002, but when he sought reelection in 2006, he fell in a general election runoff after polling a plurality in the November general election.<sup>160</sup> With Burgess's defeat, Republicans controlled all five Public Service Commission seats.

Georgia has a total of thirty-four officials who are elected statewide: two U.S. senators, eight constitutional officers, seven members of the supreme court, twelve members of the court of appeals, and five members of the Public Service Commission.<sup>161</sup> In 2007, eight of these thirty-four statewide officials (23.5%) were African American, at a time when blacks constituted 27.2% of Georgia's voting age population.<sup>162</sup> All of these officials have won election at least once, and several have multiple statewide victories under their belts.<sup>163</sup>

All of these African Americans who have won statewide elections have done so with substantial white support. As Table 4 shows, whites cast approximately three-fourths of the votes in a typical general election, making it impossible for an African American to win a majority by mobilizing only black support.

#### IV.

#### VOTING RIGHTS LAW AND REDISTRICTING IN GEORGIA: CAUSES AND CONSEQUENCES

As the previous section demonstrates, African Americans seeking office in Georgia have enjoyed substantial success in winning electoral office and in attracting the support of white voters. It was thus not

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158. Georgia Election Results, 2002 Election Results, [http://www.sos.state.ga.us/elections/election%5Fresults/2002\\_1105/federal.htm](http://www.sos.state.ga.us/elections/election%5Fresults/2002_1105/federal.htm) (last visited Feb. 12, 2007); Georgia Election Results, 2006 Election Results, [http://www.sos.state.ga.us/elections/election%5Fresults/2006\\_1107/swfed.htm](http://www.sos.state.ga.us/elections/election%5Fresults/2006_1107/swfed.htm) (last visited Feb. 12, 2007).

159. See Georgia Public Service Commission, <http://www.psc.state.ga.us/pscinfo/pscintro.asp#commissioners> (last visited Nov. 6, 2006). The Public Service Commission, which regulates electricity and natural gas rates, was constitutionalized by Article 1, section 4 of the Georgia state constitution.

160. See Georgia Election Results, Official Results of the December 5, 2006 General Election Runoff, [http://www.sos.state.ga.us/elections/election\\_results/2006\\_1105/](http://www.sos.state.ga.us/elections/election_results/2006_1105/) (last visited Dec. 27, 2006).

161. See COUNCIL OF STATE GOVERNMENTS, *THE BOOK OF THE STATES* 309–12, 350–51 (2005).

162. See VOTING AND REGISTRATION IN THE ELECTION OF NOVEMBER 2004, *supra* note 36, at tbl.4a.

163. See, e.g., Georgia Election Results, 1998 Election Results, *supra* note 130; Georgia Election Results, 2002 Election Results, *supra* note 130.

surprising that in 2001, many of the state's African-American senators and representatives agreed to reduce black concentrations in some legislative districts.<sup>164</sup>

A. *Plans to Reduce African-American Concentrations  
in Legislative Districts*

The redistricting plan adopted by the state senate reduced the black voting age population (BVAP) in majority-black districts by an average of 10.3 percentage points, as shown in Table 8.<sup>165</sup> Additionally, three districts that formerly had a substantial BVAP—over 60%—emerged from the new plan with a BVAP of less than 51%. This plan was supported by three African-American legislative leaders—Majority Leader Charles Walker, Rules Committee Chair David Scott, and Robert Brown, Vice-Chair of the Reapportionment Committee<sup>166</sup>—who could have stopped the plan had they been concerned that retrogression would reduce the likelihood that African Americans could win seats. The BVAP in Walker's own district went from 63.5% to 51.2%,<sup>167</sup> and Brown strongly supported the plan that reduced the BVAP in his district from 62.3% to 50.8%.<sup>168</sup>

In agreeing to these reductions in minority concentrations, the members of the Legislative Black Caucus seemed to accept the analysis prepared by David Epstein, the expert employed by Attorney General Thurbert Baker in anticipation of court challenges to the state's redistricting plans. Epstein concluded that African Americans had a reasonable chance of being elected even in districts where African Americans constituted less than half of the voting age population.<sup>169</sup> Specifically, he estimated that a legislative district without an incumbent needed an African-American concentration of 44% of the voting-age population for African Americans to have a 50% chance of electing their preferred candidate.<sup>170</sup> Charles Walker almost adopted Epstein's analysis word-for-word; when asked what level of BVAP was needed for African Americans to have an equal chance of winning in

164. See *Georgia v. Ashcroft*, 539 U.S. 461, 471 (2003).

165. See also *Georgia v. Ashcroft*, 195 F. Supp. 2d 25, 81–82 (D.D.C. 2002).

166. See David Pendered, *GOP Vows to Challenge Map Plan*, ATLANTA J.-CONST., Aug. 7, 2001, at B1; David Pendered, *Race Linked to Redistricting Battle, Black Vote Key to Democrats' Overall Strategy*, ATLANTA J.-CONST., Aug. 4, 2001, at 8H; Jim Galloway, *Redistricting Expands White Base, Racial Strategy Key to Democrats' Push to Retain Capitol*, ATLANTA J.-CONST., Aug. 16, 2001, at A1.

167. *Georgia v. Ashcroft*, 195 F. Supp. 2d 25, 63–64, 107 (D.D.C. 2002).

168. See *id.* at 61–62, 101, 106–07.

169. Plaintiff's Exhibit 25 at 16–17, *Georgia v. Ashcroft*, 195 F. Supp. 2d 25 (D.D.C. 2002) (No. 01-2111).

170. *Id.*

TABLE 8  
CHANGE IN AFRICAN-AMERICAN VOTING AGE  
POPULATION IN MAJORITY-BLACK DISTRICTS PRODUCED  
BY THE FIRST 2001 SENATE PLAN

Senate District	Population Deviation	Black Percentage of Voting Age Population			Black Percentage of Registration	
		Pre-2001 Plan	2001 Plan	%age Change	Pre-2001 Plan	2001 Plan
2	-3.12	60.30	50.31	-9.99	62.38	48.42
10	-4.96	70.30	64.14	-6.16	69.81	63.06
12	-4.15	55.30	50.66	-4.64	52.48	47.46
15	-4.67	61.60	50.87	-10.73	72.69	50.25
22	-4.85	63.10	51.51	-11.59	64.07	49.44
26	-4.39	62.30	50.80	-11.50	62.79	48.27
35	-1.76	75.60	60.69	-14.91	81.00	64.73
36	-4.73	60.00	56.94	-3.06	61.39	58.65
38	-4.76	76.30	60.29	-16.01	75.33	60.38
39	-4.98	54.40	56.54	2.14	59.46	59.79
43	-4.79	88.40	62.63	-25.77	89.14	63.11
55	-4.97	71.90	60.64	-11.26	73.07	60.99
Average		66.63	56.34	-10.29		

Source: Computed from data provided by the Georgia General Assembly Reapportionment Office, <http://www.georgia2000.org/> (last visited Nov. 30, 2006).

Georgia, Walker testified, “Forty percent and above. Generally around the state, I would feel comfortable at a 45 percent BVAP level.”<sup>171</sup> Epstein also found that as the BVAP increases above 44%, the probability of electing an African-American candidate increases.<sup>172</sup>

As shown in Table 8, the 2001 redistricting substantially reduced the percentage of African Americans in numerous districts’ registrant population. Both the senate plan adopted in 2001 and the one it replaced featured a dozen districts in which African Americans constituted the majority of the population, but in four of the reapportioned districts, the majority of registrants were white, while African-Americans had previously constituted a majority of registered voters in all twelve districts. In all but two of the senate districts prior to redistricting, at least 60% of the registrants were African American. After redistricting, however, the number of senate districts in which the

171. Plaintiff’s Exhibit 24 at 12, *Georgia v. Ashcroft*, 195 F. Supp. 2d 25 (D.D.C. 2002) (No. 01-2111).

172. Plaintiff’s Exhibit 25, *supra* note 169, at 16–17.

African-American registration rate exceeded 55% dropped from eleven to seven.

In the section 5 hearing conducted by the District Court for the District of Columbia on Georgia's 2001 redistricting plans,<sup>173</sup> the DOJ voiced no concerns about any federal congressional or state house districts and accepted the reductions in African-American concentration in all but three of the state senate districts.<sup>174</sup> The DOJ even accepted Senate District 15, in which the BVAP fell from 62.1% to 50.9%, and District 22, in which the BVAP fell from 63.5% to 51.5%.<sup>175</sup> In both of these districts, more than 64% of the registrants had been African American, while under the new plan, African Americans accounted for only 50% of registrants. Even the three senate districts (2, 12 and 26) to which the DOJ objected were subsequently approved following the U.S. Supreme Court's decision in *Georgia v. Ashcroft* that the district court did not consider the correct factors in determining that the 2001 Georgia districting plans violated section 5.<sup>176</sup>

#### *B. African-American Leaders' Support for the Redistricting Plan*

In *Georgia v. Ashcroft*, a number of Georgia's African-American leaders testified in support of the redistricting plan. At the forefront was Thurbert Baker, Georgia's African-American attorney general. Baker pursued the appeal to the Supreme Court, challenging the district court's finding that three senate districts violated the VRA by reducing African-American concentrations, and he persisted in his appeal even when Georgia's new governor, Republican Sonny Perdue, ordered him to abandon it.<sup>177</sup>

Another leading supporter of the effort to reduce minority concentrations in legislative districts was African-American congressman John Lewis, whose severe beating during his efforts to secure voting rights for African Americans in Selma, Alabama, helped mobilize sup-

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173. Section 5 of the Voting Rights Act requires that states subject to it, like Georgia, must secure federal approval before implementing any change in their election laws, including new districting plans. Voting Rights Act § 5, 42 U.S.C.A. § 1973(c) (2006). Jurisdictions usually seek preclearance from the Department of Justice, although they can seek a declaratory judgment from the Federal District Court for the District of Columbia. *Id.* See also *Georgia v. Ashcroft*, 195 F. Supp. 2d at 71. Georgia opted to pursue judicial preclearance for its 2001 plan. *Id.*

174. *Georgia v. Ashcroft*, 195 F. Supp. 2d at 72.

175. See *id.* at 56, 72.

176. See *Georgia v. Ashcroft*, 539 U.S. 461, 472, 490 (2003); Rhonda Cook, *Attorney General's Authority Upheld*, ATLANTA J.-CONST., Sept. 5, 2003, at A1.

177. Cook, *supra* note 176.

port critical for the passage of the Voting Rights Act of 1965.<sup>178</sup> Explaining why he did not object to the reduction in minority concentrations, even though the African-American percentage in his district dropped from 62% to 56%, Lewis said,

[Georgia] is not the same state it was. It's not the same state that it was in 1965 or in 1975, or even in 1980 or 1990. We have changed. We've come a great distance . . . . [I]t's not just in Georgia, but in the American South, I think people are preparing to lay down the burden of race.<sup>179</sup>

Elsewhere in his testimony, Lewis elaborated,

I think many voters, white and black voters, in metro Atlanta and elsewhere in Georgia, have been able to see black candidates get out and campaign and work hard for all voters. And they have seen people deal with issues, as I said before, that transcend race: Economic issues, environmental issues, issues of war and peace . . . . So there has been a transformation. It's a different state, it's a different political climate, it's a different political environment. It's altogether a different world that we live in, really.<sup>180</sup>

Robert Brown, an African-American state senator who served as vice-chair of the Senate Reapportionment Committee, also agreed that major changes have taken place in Georgia in recent years. He testified that “[t]here has been some change from that rigid, if there’s an African-American on the ticket, there’s an automatic no vote for whites.”<sup>181</sup> Senator Brown also testified that his fellow African-American senators strongly supported the redistricting plan.<sup>182</sup> As he pointed out, “[t]he Senate Plan would not have passed without [African-American] support.”<sup>183</sup> Brown opined that a district with a 50% BVAP could likely be won by an African American even if the candidate was competing for an open seat and lacked the advantages of incumbency.<sup>184</sup>

Because the rate of white registration tends to exceed that of African-American registration and white registrants vote at higher rates than African-American registrants,<sup>185</sup> it was likely that whites would

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178. JOHN LEWIS, *WALKING WITH THE WIND: A MEMOIR OF THE MOVEMENT* 330–32, 338–47 (1999).

179. Plaintiff’s Exhibit 21 at 18, *Georgia v. Ashcroft*, 195 F. Supp. 2d 25 (D.D.C. 2002) (No. 01-2111).

180. *Id.* at 15–16.

181. Plaintiff’s Exhibit 20 at 8, *Georgia v. Ashcroft*, 195 F. Supp. 2d 25 (D.D.C. 2002) (No. 01-2111).

182. *Id.* at 26–27.

183. *Id.* at 27.

184. *Id.* at 29–30.

185. *See supra* Tables 2–4.

constitute most of the voters in at least five of the previously majority-black districts in the 2001 plan.<sup>186</sup> Therefore, the implication of the Epstein analysis, which was accepted by the Georgia Legislative Black Caucus, is that African-American candidates can attract a sufficient share of the white vote to win in these districts.<sup>187</sup> Indeed, evidence from both statewide elections and some congressional elections indicates that African Americans now enjoy a degree of success in Georgia even when the majority of the electorate is white. The African Americans who have won statewide contests have succeeded at a time when African Americans cast a quarter or less of all votes, indicating a substantial white crossover vote for the African-American candidate.<sup>188</sup>

## V.

### RACIAL AND PARTY VOTING PATTERNS

#### A. *African-American and White Support for African-American and White Candidates*

The willingness of the Department of Justice and the Supreme Court to accept a Georgia redistricting plan that in the past might have been found to be flawed by retrogression underscores the changes in racial voting patterns in the state. While in the past, African Americans may have been more willing to support a white candidate than white voters were to cast ballots for an African-American candidate, that situation has changed dramatically. Today, African-American candidates can count on more support from the white electorate than white candidates receive from the African-American electorate, as will be shown in Tables 9 and 10.

Table 9 contains estimates of African-American and white support for African-American candidates who ran for Congress in the Fifth Congressional District from 1970 through 1982. Andrew Young, an African American, won the Democratic nomination in this predominantly white (44% African American) district in 1970, although he lost the general election. From 1972 to 1976, Young won the seat and garnered a substantial number of white votes. Nevertheless, except for the 1974 general election, white support for African-American candidates never reached 50%. In contrast, African Americans gave near-unanimous support to an African-American candidate

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186. The five previously majority-black districts that would be likely to have majority-white voters are Districts 2, 12, 15, 22, and 26.

187. Plaintiff's Exhibit 25 at 16-17, *Georgia v. Ashcroft*, 195 F. Supp. 2d 25 (D.D.C. 2002) (No. 01-2111).

188. *See supra* Part III.



during the period when Young was the Democratic nominee in the Fifth District. When Young left Congress, he was succeeded by Wyche Fowler, a white Democrat who won a 1977 special election in a highly polarized environment. Fowler won his first election without African-American support, but the sharp decrease in African-American support for African-American candidates in 1978 indicates that Fowler, like his predecessor, managed to fashion a biracial coalition.<sup>189</sup> During Fowler's tenure, white support for African-American opponents to Fowler dropped to 10% or less.

TABLE 9  
SUPPORT FOR AFRICAN-AMERICAN CANDIDATES AMONG  
BLACK AND WHITE VOTERS IN BLACK-WHITE CONTESTS  
FOR GEORGIA'S FIFTH CONGRESSIONAL DISTRICT

	White voters (%)	Black voters (%)
1970 Primary	23	99
1970 Runoff	32	100
1970 General	19	100
1972 Primary	39	100
1972 General	25	100
1974 General	55	100
1976 General	44	100
1977 Primary	5	98
1977 Runoff	4	96
1978 Primary	6	34
1982 General	10	31

Source: Computed by the authors from official election returns.

Moving to the 1990s, estimates of racial voting patterns in Georgia congressional races, as presented in Table 10, show African-American candidates often polling 30% or more of the white vote and at least 90% of the African-American vote.<sup>190</sup> The African American who ran poorest among those in Table 10 is Denise Freeman, who took on popular incumbent Charlie Norwood; while she received strong support from African-American voters, she polled little more than a fifth of the white vote.

189. See *supra* note 81.

190. Charles S. Bullock III & Richard E. Dunn, *The Demise of Racial Redistricting and the Future of Black Representation*, 48 EMORY L.J. 1209, 1226, 1232-34 (1999); see also *infra* Table 11.

TABLE 10  
 RACIAL VOTING PATTERNS IN GEORGIA CONGRESSIONAL  
 CONTESTS INVOLVING AFRICAN-AMERICAN  
 CANDIDATES, 1992-1998

	Race	Party	WHITES				BLACKS			
			OLS	EI	HP	(N)	OLS	EI	HP	(N)
<u>1992 Primaries</u>										
<i>District 2</i>										
4 Candidates	B	D	26.3	32.3	35.1	(27)	88.7	83.9	80.7	(16)
2 Candidates	W	D	73.7	67.7	64.9		11.3	16.1	19.3	
<i>District 11</i>										
4 Candidates	B	D	56.5	61.7	63.0	(19)	92.1	89.9	87.2	(35)
1 Candidate	W	D	43.5	38.3	37.0		9.2	10.1	12.8	
<u>1992 Runoffs</u>										
<i>District 2</i>										
Bishop	B	D	17.5	30.4	28.7	(27)	85.5	76.6	74.9	(16)
Hatcher	W	D(I)	82.5	69.6	71.3		14.5	23.4	25.1	
<i>District 11</i>										
McKinney	B	D	21.2	35.0	23.4	(19)	97.7	86.3	88.5	(35)
DeLoach	W	D	78.8	65.0	76.6		2.3	13.7	11.5	
<u>1992 General Election</u>										
<i>District 2</i>										
Bishop	B	D	30.0	33.2	34.0	(26)	100	98.2	96.6	(16)
Dudley	W	R	70.0	66.8	66.0		0.0	1.8	3.4	
<i>District 11</i>										
McKinney	B	D	31.6	37.9	38.4	(18)	97.9	96.4	95.7	(n/a)
Lovett	W	R	68.4	62.1	61.6		2.1	3.6	4.3	
<u>1994 General Election</u>										
<i>District 2</i>										
Bishop	B	D(I)	40.4	42.7	38.1	(35)	99.5	94.7	95.9	(19)
Clayton	W	R	59.6	57.3	61.9		0.5	5.3	4.1	
<i>District 11</i>										
McKinney	B	D(I)	23.8	32.5	31.6	(23)	99.8	94.4	95.0	(42)
Lovett	W	R	76.2	67.5	68.4		0.2	5.6	5.0	
<u>1996 Primary</u>										
<i>District 4</i>										
McKinney	B	D(I)	21.3	24.9	27.7	(59)	92.3	92.7	94.8	(13)
3 Candidates	W	D	78.7	75.1	72.3		7.7	7.3	5.2	
Participation			11.6	11.7	15.1		30.6	30.2	30.8	
<u>1996 General Election</u>										
<i>District 2</i>										
Bishop	B	D(I)	37.4	37.7	36.6	(65)	100.0	97.1	98.2	(10)
Ealum	W	R	62.6	62.3	63.4		0.0	2.9	1.8	
<i>District 4</i>										
McKinney	B	D(I)	30.7	32.1	30.7	(59)	100.0	99.2	95.1	(14)
Mitnick	W	R	69.3	67.9	69.3		0.0	0.8	4.9	

1998 General  
Election

*District 2*

Bishop	B	D(I)	37.8	39.5	41.3	(75)	99.9	95.4	98.4	(10)
McCormick	W	R	62.2	60.5	58.7		0.1	4.6	1.6	

*District 4*

McKinney	B	D(I)	34.9	36.2	36.8	(58)	97.2	95.0	93.1	(23)
Warren	B	R	65.1	63.8	63.2		2.8	5.0	6.9	

*District 5*

Lewis	B	D(I)	50.2	53.7	51.0	(36)	97.7	96.8	95.4	(100)
Lewis	B	R	49.8	46.3	49.0		2.3	3.2	4.6	

*District 10*

Freeman	B	D	17.5	23.7	22.9	(66)	90.5	80.8	93.7	(13)
Norwood	W	R(I)	82.5	76.3	77.1		9.5	19.2	6.3	

Source: Charles S. Bullock III, and Richard E. Dunn, *The Demise of Racial Districting and the Future of Black Representation*, 48 EMORY L.J. 1209, 1209–53 (1999).

OLS = ecological regression; EI = district-level estimates from Gary King, *A SOLUTION TO THE ECOLOGICAL INFERENCE PROBLEM: RECONSTRUCTING INDIVIDUAL BEHAVIOR FROM AGGREGATE DATA* (Princeton Univ. Press) (1997); HP = racially homogenous precincts. (I) = Incumbent; N = Number of racially homogeneous precincts; D = Democrat; R = Republican. The Supreme Court upheld the use of ecological regression and racially homogenous precincts to analyze voting patterns in *Thornburg v. Gingles*, 478 U.S. 30, 52, 62 (1986).

### B. Race and Voting by Party Affiliation

In recent years, African-American candidates, with the notable exception of John Lewis in 1998, have been unable to attract majority support among white voters. Table 11 shows, however, that this difficulty has also been encountered by white Democrats. In neither 1996 nor 1998 did any white Democratic candidate for Congress in Georgia attract a majority of the white vote in the general election. In 1994, only one Democratic nominee managed to get the bulk of the white vote, and in 1992, three white Democrats got the majority of the white vote. Table 11 demonstrates the increasing movement of white voters to the Republican Party.<sup>191</sup> In the early 1990s, white voters responded differently to African-American and white Democrats, but by the end of the decade, most white voters found Democratic candidates, regardless of their race, unacceptable. Consequently, success of Democratic candidates—both African-American and white—depends on obtaining support from African-American voters. The most recent evidence comes from the 2006 Democratic gubernatorial primary, in

191. Republicans remain in control in Georgia following the 2006 election. See Bookman, *supra* note 128.

which the winner took the bulk of the African-American vote but only 41% of the white vote.<sup>192</sup>

TABLE 11  
WHITE SUPPORT FOR WHITE DEMOCRATIC STATE  
HOUSE CANDIDATES IN GEORGIA, 1992–1998

Candidate name	Dist.	Candidate status	White Support				
			OLS	EI	HP	(N)	
<u>1992</u>							
Christmas	1	OS	36.9	35.4	34.2	(126)	
Ray	3	I	41.2	40.7	38.5	(102)	
Steinberg	4	OS	45.1	47.1	44.8	(108)	
Center	6	C	39.2	41.2	40.9	(143)	
Darden	7	I	55.6	56.0	54.3	(132)	
Rowland	8	I	57.7	53.7	48.2	(121)	
Johnson	10	OS	52.3	51.7	48.5	(143)	
<u>1994</u>							
Beckworth	1	C	18.3	18.2	17.8	(147)	
Overby	3	C	30.0	31.1	29.0	(114)	
Yates	4	C	41.9	41.8	38.0	(112)	
Jones	6	C	35.2	36.0	35.3	(171)	
Darden	7	I	45.5	44.5	45.4	(135)	
Mathis	8	OS	34.9	34.4	30.5	(110)	
Deal	9	I	57.3	57.1	57.2	(227)	
Johnson	10	I	29.7	30.1	30.0	(160)	
<u>1996</u>							
Kaszans	1	C	15.9	19.2	20.9	(102)	
Chafin	3	C	25.0	30.9	27.3	(89)	
Coles	6	C	36.9	41.1	40.0	(166)	
Watts	7	C	38.5	37.4	41.0	(125)	
Wiggins	8	C	34.7	38.1	34.8	(91)	
Poston	9	C	34.0	33.5	34.6	(230)	
Bell	10	C	32.0	31.9	29.2	(71)	
Stephenson	11	C	33.2	33.5	34.7	(172)	
<u>1998</u>							
Coles	6	C	22.7	25.2	26.9	(181)	
Williams	7	C	38.5	37.5	41.4	(111)	
Cain	8	C	21.6	22.9	26.8	(99)	
Littman	11	C	26.2	28.5	28.7	(166)	

Source: Charles S. Bullock III, and Richard E. Dunn, *The Demise of Racial Districting and the Future of Black Representation*, 48 EMORY L. J. 1209, 1209–53 (1999).

OLS = ecological regression; EI = district-level estimates from Gary King, *A SOLUTION TO THE ECOLOGICAL INFERENCE PROBLEM: RECONSTRUCTING INDIVIDUAL BEHAVIOR FROM AGGREGATE DATA* (Princeton Univ. Press) (1997); HP = racially homogenous precincts; N = number of homogeneous white precincts; I = incumbent; OS = open seat candidate; C = challenger.

192. Charles S. Bullock III, *A Deep Look at What the Primary and Runoff Results Tell Us*, BILL SHIPP'S GEORGIA, Oct. 9, 2006, <http://insideradvantagegeorgia.com/restricted/2006/September%2006/9-12-06/Charles%20Bullock.php>.

1. *The Importance of the African-American Vote in the Democratic Primary*

As shown in Table 12, the African-American vote has become crucial to the Democratic primary in recent years. In the early 1990s, African Americans cast less than a quarter of the votes in Democratic primaries. But in each of the last three primaries, African Americans have cast at least 45% of the Democratic ballots and, as Table 12 shows, African Americans cast 47.2% of the votes in the Democratic primary in 2004.<sup>193</sup>

TABLE 12  
AFRICAN-AMERICAN PERCENTAGE OF DEMOCRATIC  
PRIMARY TURNOUT, 1990–2006

Year	Total Primary Turnout*	Democratic Turnout	Black percentage of Democratic vote
1990	1,171,131	1,053,013	24.6
1992	1,151,971	875,149	22.1
1994	761,371	463,049	39.2
1996	1,182,168	717,302	22.5
1998	905,383	486,841	36.4
2000	960,414	613,884	31.3
2002	1,102,611	575,533	45.2
2004	1,418,838	731,111	47.2
2006	912,358	485,748	46.5

\* Democratic and Republican primaries, combined

Source: Georgia Secretary of State, Credit for Voting Reports, [http://www.sos.state.ga.us/elections/voter\\_registration/credit\\_for\\_voting\\_reports.htm](http://www.sos.state.ga.us/elections/voter_registration/credit_for_voting_reports.htm) (last visited Nov. 30, 2006).

To understand the significance of this high level of African-American participation in the Democratic primary, consider that African Americans now account for almost half of the Democratic primary votes, even though they constitute only 27% of the state's registered voters.<sup>194</sup> While outcomes certainly vary across the state, it is likely that in districts at least 30% black, African Americans may cast the majority of the votes in the Democratic primary, creating a strong probability that African-American votes can determine the Democratic primary choice.

193. These figures are taken from the post-primary audit done by the secretary of state and are derived from the voter sign-in sheets. See *supra* note 51 and accompanying text.

194. See *supra* Table 12; see also *supra* note 45 and accompanying text.

## 2. *The Impact of Party Affiliation on Racial Voting Patterns*

Table 13 presents another perspective on how Georgia voters treat Democratic candidates regardless of their race: combined data for the past five elections demonstrate greater overall success for African-American Democratic candidates than for white candidates. The white Democrats, shown in Table 13, won 36% of their contests, while African American Democrats won nearly two-thirds of theirs.<sup>195</sup>

In the 2006 election, Republicans made further gains in Georgia by winning the open posts of lieutenant governor and secretary of state, which had previously been held by Democrats. Incumbent African Americans won reelection as attorney general and labor commissioner and accounted for two of the three Democrats successful in statewide contests. An African American lost in her bid to unseat the state school superintendent. White Democratic challengers came up short against the sitting governor, insurance commissioner, and one of the Public Service Commission seats. In the end, Agriculture Commissioner Tommy Irvin was the only white Democrat to win a statewide victory.

The 2004 Georgia ballot contained three statewide races: the U.S. presidency, a U.S. Senate seat, and one seat on the Public Service Commission. Two of the races, for president and the Public Service Commission, had a white Democratic nominee; the Democratic Senate nominee was African-American U.S. Representative Denise Majette. The results in Table 13 show that the three Democrats, all of whom lost, polled remarkably similar vote shares, with John Kerry attracting 41.4% of the vote, Majette 40.0% of the vote, and the Democratic nominee for the Public Service Commission, Mac Barber, 39.5%.

In 2002, Democrats split the statewide results, winning five contests and losing six. A different pattern emerges, however, once we factor in the race of the Democratic nominee. The white Democratic nominees won only three of nine contests in which they competed, while both of the African-American Democratic nominees won. Both of the African Americans were incumbents, but incumbency cannot explain this result, as all but two of the white Democratic nominees were also incumbents. White Democratic incumbents won three contests and lost four, including the two at the top of the ticket for senator and governor.

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195. African-American Democrats would have had an ever-greater rate of success but for one unusual race. David Burgess, an African-American member of the Public Service Commission, faced a runoff for his seat on December 5, 2006. As Table 13 shows, despite having led the field in the general election, Burgess lost the runoff in a contest that stimulated very little participation.

TABLE 13  
SUCCESS OF DEMOCRATIC STATEWIDE CANDIDATES,  
1998–2006

Office	Race of Democrat	# of Democratic votes	Democratic percentage of total votes	Outcome
<u>1998</u>				
Senator	W	791,904	45.2	Lost
Governor	W	941,076	52.5	Won
Lieutenant Governor	W	990,496	56.4	Won
Secretary of State	W	983,905	56.6	Won
Attorney General	B	883,932	50.9	Won
Comm'r of Agriculture	W	1,085,694	62.8	Won
Comm'r of Insurance	B	651,891	37.7	Lost
School Supt.	W	794,324	46.0	Lost
Comm'r of Labor	B	894,656	52.7	Won
Pub. Serv. Comm'n (Hargis)	W	746,081	44.6	Lost
Pub. Serv. Comm'n (McDonald)	W	638,054	49.6	Won
<u>2000</u>				
President	W	1,116,230	43.2	Lost
Senator	W	1,413,224	58.2	Won
Pub. Serv. Comm'n (Burgess)	B	1,201,346	52.3	Won
Pub. Serv. Comm'n (Boyd)	W	928,005	41.0	Lost
<u>2002</u>				
Senator	W	931,857	45.9	Lost
Governor	W	937,062	46.3	Lost
Lieutenant Governor	W	1,041,227	51.9	Won
Secretary of State	W	1,225,232	61.1	Won
Attorney General	B	1,093,734	55.6	Won
Comm'r of Agriculture	W	1,138,705	57.4	Won
Comm'r of Insurance	W	657,754	33.2	Lost
School Supt.	W	859,653	43.0	Lost
Comm'r of Labor	B	1,007,468	51.2	Won
Pub. Serv. Comm'n (Sizemore)	W	913,119	47.5	Lost
Pub. Serv. Comm'n (McDonald)	W	911,669	47.1	Lost
<u>2004</u>				
President	W	1,366,149	41.4	Lost
Senator	B	1,287,690	40.0	Lost
Pub. Serv. Comm'n (Barber)	W	1,217,443	39.5	Lost
<u>2006</u>				
Governor	W	811,049	38.2	Lost
Lieutenant Governor	W	887,506	43.2	Lost
Secretary of State	W	862,412	41.8	Lost
Attorney General	B	1,185,366	57.2	Won
State School Supt.	B	734,702	35.0	Lost
Comm'r of Insurance	W	713,324	34.4	Lost
Comm'r of Agriculture	W	1,168,371	56.0	Won
Comm'r of Labor	B	1,127,182	54.8	Won
Pub. Serv. Comm'n (Burgess)	B	994,619	48.8	Runoff required
Pub. Serv. Comm'n (Wise)	W	823,681	40.4	Lost
<u>2006 Runoff</u>				
PSC (Burgess)	B	102,860	47.8	Lost

Source: Georgia Election Results, *supra* note 140.

In 2000, Democrats won two of the four contests in which all Georgians could vote, and one of the winners was the only African-American nominee. White Democrats, vying for the three other spots, won only one. In 1998, African-American Democrats won two of three contests, and white Democrats did approximately the same, winning five of eight contests. The Insurance Commissioner race, the sole 1998 contest that was lost by an African-American candidate, is somewhat anomalous. Not only did the candidate have to run against a Republican incumbent, but some questioned the seriousness of her campaign.<sup>196</sup>

In sum, it appears that the politics of Georgia have undergone a dramatic transformation in all aspects of minority participation. African-Americans have won hundreds of offices elected from constituencies of various sizes. In recent general elections, African-American statewide Democratic candidates have fared better than their white colleagues. And while Georgia's electorate as a whole supports Republicans,<sup>197</sup> African-American Democrats are doing about as well in attracting white voters as are white Democratic candidates, and that support has been crucial to the success of African-American candidates. Without the support of white voters, African-American candidates could not have achieved the notable success that they have enjoyed in statewide and congressional contests in recent years. As stated in the post-trial brief filed by Georgia's African-American Attorney General, Thurbert Baker, in *Georgia v. Ashcroft*:

The [s]tate[']s racial and political experience in recent years is radically different than it was ten or twenty years ago, and that is exemplified on every level of politics from statewide elections on down. The election history for legislative offices in Georgia—House, Senate and Congress—reflect a high level of success by African-American candidates.<sup>198</sup>

## VI.

### CONCLUSION

In the years since the enactment of the VRA, African-American participation in Georgia elections has reached unprecedented levels,

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196. Plaintiff's Exhibit 24 at 22–23, *Georgia v. Ashcroft*, 195 F. Supp. 2d 25 (D.D.C. 2002) (No. 01-2111) (statement by Charles Walker, the African-American majority leader of the state senate at the time, that she “did not have the support of the black community nor did she have a credible campaign. No one took her seriously. . . . [S]he never even campaigned. She never even put signs up. She didn't do anything.”).

197. See Bookman, *supra* note 128.

198. Post-Trial Brief for the State of Georgia at 2, *Georgia v. Ashcroft*, 195 F. Supp. 2d 25 (D.D.C. 2002) (Civ. A. No. 01-2111).



suggesting that the institutionalized racism that necessitated the VRA has been largely eliminated. In some recent years, the Census Bureau has estimated that African Americans and whites have registered and voted in elections at roughly comparable rates, although figures reported by Georgia's Secretary of State show that white registrants continue to go to the polls at higher rates than African-American registrants. Nonetheless, the state figures also show growing African-American participation; African-American registration in 2004 equaled the proportion of African Americans in Georgia's citizen adult population. From 1996 to 2004, the Secretary of State's data show an increase in African-American registration of almost 25% and in 2004, 72% of this enlarged African-American electorate went to the polls.

African Americans have also made impressive gains in getting elected to office. Currently the state has four African Americans in Congress and, after the 2006 election, fifty-four in the state legislature. More than a quarter of the statewide officials are African American, including two constitutional officers. As the success in winning statewide posts suggests, African Americans are now winning races in districts in which African Americans are not a majority of the population. Additionally, in a number of majority-white districts, African-American voters can determine the Democratic nominee. Finally, another factor facilitating the election of African-American candidates from majority-white districts has been the greater willingness of whites to vote for African-American candidates than vice versa.

Future prospects for African-American candidates depend in part on the future of the Democratic Party. White voters increasingly identify with the Republican Party,<sup>199</sup> and Republicans are at historic highs in terms of the offices they control.<sup>200</sup> African Americans now hold more statewide, state legislative, and congressional offices than do white Democrats, but Democratic candidates, both African-American and white, are increasingly failing to win elections statewide and in most congressional and state legislative districts. If these trends continue, African Americans may lose some of the statewide posts they currently have, but they seem unlikely to lose congressional or state legislative seats in districts that have substantial African-American populations.

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199. Bullock, 2007, *supra* note 124, at 60–63.

200. *Id.* at 51.

