

Chapter 4: Renewing America's Commitment to Political Equality:
Alabama's Role in Shaping the Voting Rights Act in the Age of Reagan, 1981-1983

"We are going down the road to hell, a white road and a black road. And if you can't find some part to get together and do away with this racism . . . I guarantee you we're all going to hell."³²¹

-Judge William McKinley Branch, Greene County, Alabama

"Until you ask for what is rightfully yours, you'll never get it. It took us over a hundred years to get two blacks to the Alabama Legislature. From 1872 to 1972, it wasn't a single black person down here. We went four years with only two. Then we picked up a few more. Now we have a pittance of thirteen."³²²

-State Representative Thomas Reed, Macon County, Alabama

Following the House hearing in Montgomery, ADC activists worked to swell the moral force behind the movement to extend the Voting Rights Act by holding three major marches in Alabama. ADC activists felt that black civil rights was at a crossroads in the United States, as many Americans accepted the popular notion that the challenges of racial equality had been overcome in the 1960s. The Voting Rights Act renewal process in 1981-1982 was a critical moment in shaping the legacy of the civil rights movement, and Alabama became, as it was in 1965, the proving ground for political equality. In August of 1981, ADC leaders organized voting rights marches in Montgomery, Selma, and Mobile to demonstrate grassroots support and to commemorate President Johnson's signing of the Voting Rights Act into law on August 6, 1965. Articles in the *Montgomery Advertiser* and *Alabama Journal* recounted the march in Montgomery on August 9. The ADC invited a number of nationally known civil rights leaders. In front of the Alabama State Capitol building, thousands of civil rights advocates gathered to hear John Lewis, Jesse Jackson, Coretta Scott King, Julian Bond, and others. Joe Reed, Jerome Gray, and

³²¹ Transcript of Public Hearing Before the Joint Reapportionment Committee, 6-25-82 in Supplemental Files, Box 16 *Burton v. Hobbie* (Civil Action No. 81-0617-N) in National Archives and Records Administration, Southeast Region, Morrow, GA.

³²² Transcript of Public Hearing Before the Joint Reapportionment Committee, 6-25-82 in Supplemental Files, Box 16 *Burton v. Hobbie* (Civil Action No. 81-0617-N) in National Archives and Records Administration, Southeast Region, Morrow, GA.

other ADC activists locked arms with national leaders as they made their way toward the Capitol.³²³ As they marched, the crowd joined together in singing “We Shall Overcome.”³²⁴ Prior to the march more than a thousand people met at the Old Ship AME Zion Church, which had a history as a gathering place for civil rights activists during the Montgomery bus boycott led by Dr. Martin Luther King and the Montgomery Improvement Association in 1955 and 1956.³²⁵ Montgomery Mayor Emory Folmar, who opposed extending the Voting Rights Act, observed the march joined by Police Chief Charles Swindall in an unmarked police car. The *Advertiser* noted that “[a]t one point the marchers parted and swarmed past the mayor’s car, but few seemed to notice whom the car contained.”³²⁶

Jesse Jackson set the tone for the march telling the media that “[w]e will not be satisfied until the Voting Rights Act as we now know it is enforced and extended.”³²⁷ Also speaking was John Lewis, wearing the same vest he had worn in the 1965 Selma-to-Montgomery march for voting rights. John Lewis reminded the crowd that black people had been politically dead in the South prior to the passage of the Voting Rights Act. The act “is the life blood of blacks’ political progress,” Lewis proclaimed, adding “[w]e’ve had the first transfusion and we need a second transfusion.”³²⁸

In the wake of the Reagan Revolution and the emergence of the New Right, the SCLC President Rev. Joseph Lowery cautioned the crowd that many Americans “have forgotten those who fought so hard . . . and, helped establish justice as a hallmark of

³²³ Dr. Joe L. Reed, interview by author, 8 February 2012. Darryl Gates, “‘Vigilance’ keynote of march,” *Montgomery Advertiser*, 10 August 1981.

³²⁴ Nancy Dennis, “Voting Act Called Blacks’ Life Blood,” *Alabama Journal*, 10 August 1981.

³²⁵ Nancy Dennis, “Voting Act Called Blacks’ Life Blood,” *Alabama Journal*, 10 August 1981.

³²⁶ Darryl Gates, “‘Vigilance’ keynote of march,” *Montgomery Advertiser*, 10 August 1981.

³²⁷ Darryl Gates, “‘Vigilance’ keynote of march,” *Montgomery Advertiser*, 10 August 1981.

³²⁸ Nancy Dennis, “Voting Act Called Blacks’ Life Blood,” *Alabama Journal*, 10 August 1981.

American strength.” Lowery had biting words for President Reagan and reprimanded the White House’s indifference to political equality: “[w]e’ve gone from Reaganomics to Reagamnesia.”³²⁹ Lowery’s point was clear: “[s]ome people are trying to turn back the clock and deny blacks their civil rights.”³³⁰ Jesse Jackson agreed, arguing that in the 1980s schemes for “annexation, at-large elections, and gerrymandering . . . deny us the right to vote.” Jackson told listeners that it would take “active and diligent” local citizens to secure extension of the act and to fight against the newest forms of disfranchisement.³³¹

Reminding the crowd that the civil rights movement had not ended, Coretta Scott King proclaimed, “I thought we had come here for the last time in 1965, but oh no. The message is clear today that we have got to come back again and again.”³³² Mrs. King also recalled that her husband, the late Dr. Martin Luther King, had said to her that “[t]he whole campaign in Alabama depends on the right to vote.”³³³

On the eve of the House passage of the revised version of the Voting Rights Act, some Alabama congressmen still expressed reservations about the need for continuing protections. Republican U.S. Representative Bill Dickinson of Montgomery explained his position, saying “let’s don’t just put in on the states that voted for Goldwater. Let’s don’t be punitive.”³³⁴ In 1964, Dickinson was one of the first Republicans elected in Alabama since Reconstruction. In that election, Senator Barry Goldwater of Arizona was the Republican nominee for president challenging Lyndon B. Johnson. Goldwater, who

³²⁹ Nancy Dennis, “Voting Act Called Blacks’ Life Blood,” *Alabama Journal*, 10 August 1981.

³³⁰ Nancy Dennis, “Voting Act Called Blacks’ Life Blood,” *Alabama Journal*, 10 August 1981.

³³¹ Darryl Gates, “‘Vigilance’ keynote of march,” *Montgomery Advertiser*, 10 August 1981.

³³² Nancy Dennis, “Voting Act Called Blacks’ Life Blood,” *Alabama Journal*, 10 August 1981.

³³³ Nancy Dennis, “Voting Act Called Blacks’ Life Blood,” *Alabama Journal*, 10 August 1981.

³³⁴ “Congressmen may seek voting law expansion,” *Montgomery Advertiser*, 5 October 1981.

boldly opposed the Civil Rights Act of 1964, carried Alabama and the states of Louisiana, Mississippi, Georgia, and South Carolina. Goldwater's presidential bid was the fire bell of the New Right, foreshadowing the trend of southern whites increasingly supporting the Republican Party in future elections. Fellow Republican Congressman Albert Lee Smith of Birmingham took offense at the idea that the Voting Rights Act be extended. Smith retorted, "The South should be treated with dignity. Why should we be treated differently from other parts of the country?"³³⁵ The remaining Republican House member, Jack Edwards of Mobile, thought it preposterous that the act be extended, exclaiming, "Everyone that wants to vote can vote."³³⁶

Alabama Democrats in the House were equally wary in how they spoke about the Voting Rights Act. U.S. Representatives Tom Bevill and Bill Nichols agreed that it was only fair if the preclearance and other special provisions of the act were extended to apply to all fifty states. Congressman Richard Shelby concurred that all states should have to be under the same voting regulations and oversight, but, Shelby lamented "politicians being politicians, I feel the majority of the Congress will extend the voting rights act in its basic form and make it only applicable to the Southern states."³³⁷

The next day an Associated Press report in the *Advertiser* covered the House's passage of the extension of the Voting Rights Act by a vote of 389-24. Bill Dickinson was joined by Bill Nichols and Richard Shelby in voting against the act.³³⁸ The remaining four Alabama congressmen voted yes, and the news story hailed the bill's

³³⁵ "Congressmen may seek voting law expansion," *Montgomery Advertiser*, 5 October 1981.

³³⁶ "Congressmen may seek voting law expansion," *Montgomery Advertiser*, 5 October 1981.

³³⁷ "Congressmen may seek voting law expansion," *Montgomery Advertiser*, 5 October 1981.

³³⁸ At the Montgomery voting rights march on August 9, Jesse Jackson had predicted Rep. Nichols, Rep. Shelby, and probably a few other Alabama Congressmen had already "joined Reagan and turned their back on us." Nancy Dennis, "Voting Act Called Blacks' Life Blood," *Montgomery Advertiser*, 10 August 1981.

passage as “a rare congressional victory for liberal Democrats and civil rights leaders.”³³⁹

The report also noted that the Voting Rights Act faced “a much tougher fight” in the Republican-controlled Senate.³⁴⁰ Republican Representative James Sensenbrenner of Wisconsin, who served on the House Judiciary Committee, specifically pointed to the significance of evidence presented in the 1981 Montgomery hearing. Sensenbrenner was one of many who spoke on the House floor in favor of the act’s extension, and he pointed to the fact that Alabama laws such as the re-identification bill singled out and targeted only majority-black counties, as Joe Reed and others had exposed in Montgomery. Sensenbrenner argued these discriminatory laws were “no accident.”³⁴¹ On the other hand, a white Republican Congressman from South Carolina, Thomas Hartnett, felt that the continuation of racially motivated laws in the South was not as significant as the fact that extending the Voting Rights Act “keeps the heel of the federal government on my neck.”³⁴² Judiciary Committee Chairman Peter Rodino (D-NJ) cheered the act’s passage, joined by many black and Hispanic representatives who cited the Voting Right Act as the reason they had been elected to Congress.³⁴³

After passage of the House bill and prior to the Senate hearings, President Reagan stated, in December 1981, that the new “results” test included in Section 2 “‘could lead to the type of things in which [discriminatory] effect could be judged if there was some disproportion in the number of public officials who were elected at any government level,’” and he warned that it could set a standard in which “‘all of society had to have an

³³⁹ “House OKs voting act extension,” *Montgomery Advertiser*, 6 October 1981.

³⁴⁰ “House OKs voting act extension,” *Montgomery Advertiser*, 6 October 1981.

³⁴¹ “House OKs voting act extension,” *Montgomery Advertiser*, 6 October 1981.

³⁴² “House OKs voting act extension,” *Montgomery Advertiser*, 6 October 1981.

³⁴³ “House OKs voting act extension,” *Montgomery Advertiser*, 6 October 1981.

actual quota system.”³⁴⁴ Reagan’s statements, employing fear tactics, set the tone for Republican leaders and other opponents of extending the Voting Rights Act during the debate in the Senate.

The Senate Judiciary Committee began investigating the matter in January, 1982. Committee Chairman Strom Thurmond (R-SC) and Senator Orrin Hatch (R-UT), chairman of the Judiciary Subcommittee on the Constitution, led the process. Senators had closely watched the debate in the House and how the Voting Rights Act was evolving. Senators Thurmond and Hatch had both expressed reservations about the extension of the act with the new changes. Thurmond joined some other southern members of Congress in calling for the act to cover all fifty states.³⁴⁵ Voting rights activists saw this proposal as a maneuver to water down the bill and reduce its efficacy. Edward Kennedy (D-MA), a leading Senate supporter of extending the Voting Rights Act, challenged President Reagan saying, “We need more than a passive president on this fundamental issue. The extension of the act could be in danger because the administration refuses to fight for it.”³⁴⁶ After the hearings and debates in the House had convinced many lawmakers that Section 5 should be extended—even though the period of time for extension was still contested—the focus in the Senate now turned toward Section 2 and the “results” test for proving voting discrimination.

According to some conservatives in the Senate, H. R. 3112 directly challenged the original meaning and purpose of Section 2 by adding that any discriminatory result or effect in election laws would be unconstitutional. This change amounted to, according to

³⁴⁴ Reagan’s statements are from his news conference on 17 December 1981. Lawson, *In Pursuit of Power*, 288.

³⁴⁵ “President endorses extension of voting law,” *Montgomery Advertiser*, 7 November 1981.

³⁴⁶ “President endorses extension of voting law,” *Montgomery Advertiser*, 7 November 1981.

Hatch, “redefining the very concepts of discrimination and civil rights.”³⁴⁷ According to many moderate and liberal senators, however, the *Bolden* case’s “intent” standard was a change in the law that would make genuine voting injustices virtually impossible to prove in court.³⁴⁸

At the outset, Senator Hatch stated that he was intent on bringing in a series of “balanced” witnesses to clear up what he viewed as “much misunderstanding and misconception” regarding the Voting Rights Act’s renewal debate.³⁴⁹ A number of conservative leaders argued that the House debate over voting rights in 1981 had not thoroughly examined the issues. Hatch declared in his opening statement that Section 5 and preclearance “ought to be maintained” as is.³⁵⁰ However, the proposed changes to Section 2 contained in H.R. 3112 had the potential to dramatically alter “the nature of American representative democracy, federalism, civil rights, and the separation of powers,” according to Hatch.³⁵¹ The Senate version of H.R. 3112 was S. 1992, sponsored by Senator Charles Mathias (R-MD) and Senator Edward Kennedy (D-MA). This bill contained the same language regarding discriminatory “results” from the successful House bill. Hatch preferred the Supreme Court’s interpretation in *Mobile v. Bolden* and

³⁴⁷ Hearings before the Subcommittee on the Constitution of the Committee on the Judiciary, U.S. Senate, 97th Congress, 2nd session on S. 53, S. 1761, S. 1975, S. 1992, and H.R. 3112, Bills to Amend the Voting Rights Act of 1965, January-March 1982 (hereafter cited as “1982 Senate hearings”), 3.

³⁴⁸ Chandler Davidson explains that in legal challenges to election laws there had been various factors used to determine whether minority vote dilution—meaning the results of a law or system were unfair toward members of minority groups—existed. These factors include a “long history of state-sanctioned discrimination against blacks”; few minority officeholders; and “the existence of a powerful white-dominated slating group . . . that ignored blacks’ interests and engaged in racial campaign tactics to defeat candidates of blacks’ choice.” In the process of legal challenges and judicial interpretations the “totality of circumstances” had been the crucial precedent, and no single factor was given ultimate weight in making determinations of discrimination. Chandler Davidson, “The Recent Evolution of Voting Rights Law Affecting Racial and Language Minorities,” in *Quiet Revolution in the South: The Impact of the Voting Rights Act, 1965-1990*, ed. Chandler Davidson and Bernard Grofman, 27-8.

³⁴⁹ 1982 Senate hearings, 1.

³⁵⁰ 1982 Senate hearings, 2.

³⁵¹ 1982 Senate hearings, 2.

agreed with President Reagan that a results-based test could “promote proportional representation by race.”³⁵² The goal of the “results” language, Hatch proclaimed, “is the elimination of at-large systems of voting throughout the country.”³⁵³ Finally, Hatch declared that the proposed revision of Section 2 represented a “radical” change and an attack on “traditional ideas of equal protection.”³⁵⁴

Archibald Cox testified before the subcommittee representing Common Cause. Cox was a noted legal scholar, former U.S. Solicitor General for President Kennedy, and also served as the first special prosecutor in the Watergate scandal. Cox articulated an alternative to Hatch’s views on Section 2. Cox favored the proposed changes to Section 2, arguing that this crucial clarification “would outlaw laws pertaining to voting, representation, and districting that result in discriminatory denials of effective participation in self-government, regardless of race or color.”³⁵⁵ If specific groups of people are “denied that equality of political opportunity by local voting law or practice . . . [t]he injustice is there, regardless of purpose,” Cox explained. The *Mobile* case standard, requiring proof of discriminatory “intent,” constituted in Cox’s view “an almost insuperable obstacle” to securing the basic right of all citizens to equal access to the political process.³⁵⁶ Cox not only illuminated the difficulties of recovering the subjective intent—both collectively and individually—of a body of legislators, but also pointed out “the likelihood that if the purpose is invidious, that purpose will be concealed.”³⁵⁷

³⁵² 1982 Senate hearings, 4.

³⁵³ 1982 Senate hearings, 5.

³⁵⁴ 1982 Senate hearings, 6.

³⁵⁵ 1982 Senate hearings, 1416.

³⁵⁶ 1982 Senate hearings, 1417.

³⁵⁷ 1982 Senate hearings, 1417.

In addressing fears that Section 2 could lead to a legal standard of proportional representation by race, Cox pointed to the line in the proposed Section 2 that stated that “[t]he fact that members of a minority group have not been elected in numbers equal to the group’s proportion of the population shall not, in and of itself, constitute a violation of this section.”³⁵⁸ Therefore, Cox argued, claims that proportional representation would result from a new Section 2 were, at best, a farce or, at worst, utterly disingenuous. Further, Cox summarized in one sentence the proposed changes to Section 2 in the following manner: “to proscribe any law relating to voting or representation that had the effect, in its particular context, of substantially or systematically excluding voters of a particular race from equal opportunities for meaningful participation in the democratic process.”³⁵⁹ For many conservative commentators, if “opportunity” to register and cast a ballot existed that was all the Voting Rights Act required.

Speaking on behalf of President Reagan, U.S. Attorney General William French Smith testified on the first day of the subcommittee hearings. As Attorney General, Smith had hoped to focus the energies of the Justice Department on new priorities. These new initiatives included “organiz[ing] crime and drug enforcement task forces; prosecution of fraud, waste, and abuse in the conduct of government programs” as well as a tougher immigration policy, among other things.³⁶⁰ Citing the *Mobile* decision, Smith declared that legal precedent demands “[p]roof that the challenged election practice was intended to discriminate against a racial minority [as] essential to a claim under both the 15th amendment and section 2 of the Voting Rights Act.”³⁶¹ Smith warned against a

³⁵⁸ 1982 Senate hearings, 1418.

³⁵⁹ 1982 Senate hearings, 1418.

³⁶⁰ Howard Ball and Kathanne Green, “The Reagan Justice Department,” in Yarbrough, 3.

³⁶¹ 1982 Senate hearings, 70-71.

proposed effects or results test, arguing that “[h]istoric political systems incorporating at-large elections and multimember districts, which had never before been questioned under either the act or the Constitution, would suddenly be subject to attack.”³⁶² In a heated interchange with Senator Kennedy, Smith professed his “abhorrence of discrimination in any form” adding “that the President does not have a discriminatory bone in his body.”³⁶³

The Attorney General also argued that “intent” has been a central part of all civil rights law. He explained that “the Supreme Court and other courts have long since held that the standard of proof required for intent in civil rights areas is substantially less than in other situations.” No “smoking gun” was necessary, French explained, adding that “what has been referred to as effects . . . are themselves a large element in the establishment of intent.”³⁶⁴ Further, echoing President Reagan, Smith claimed that the new language in Section 2 would no longer deal with breaking down discriminatory barriers, but instead would result “ultimately [in] proportional representation.”³⁶⁵ Finally, Smith proclaimed that the new language proposed for Section 2 would be necessary only if “there is an evil out there that needs that kind of remedy to correct. You don’t come up with remedies to nonexistent problems.”³⁶⁶ Attorney General Smith and Senator Hatch agreed that “intent and effect were used in the 1965 debate to refer to what we presently think of as intent.”³⁶⁷

³⁶² 1982 Senate hearings, 71.

³⁶³ 1982 Senate hearings, 78. Historian Dan Carter points out that just prior to the Senate hearings on the Voting Rights Act Reagan had rejected legal provisions that barred racially discriminatory educational institutions from receiving federal funding. Dan T. Carter, *From George Wallace to Newt Gingrich*, 56-7.

³⁶⁴ 1982 Senate hearings, 83.

³⁶⁵ 1982 Senate hearings, 83.

³⁶⁶ 1982 Senate hearings, 85.

³⁶⁷ 1982 Senate hearings, 91.

Benjamin Hooks, the executive director of the National Association for the Advancement of Colored People (NAACP) and the chairman of both the Leadership Conference on Civil Rights and the Black Leadership Forum, testified in favor of the changes to Section 2. Hooks, who had been a lawyer for more than thirty years and had served as a trial court judge, declared that “until the *Mobile v. Bolden* case the law was considered by us to include effects or results.”³⁶⁸ Hooks offered compelling testimony of his experiences in Tennessee in which election as well as jury selection procedures were finagled without sure signs of “intent.” Adamantly, Hooks declared “we are not seeking proportional representation . . . [w]e are simply seeking the unfettered right to vote without having to prove that which sometimes is not susceptible to proof.”³⁶⁹ Hooks believed that the Reagan Administration and Attorney General William French Smith aimed to set “a higher standard” with the intent test in order to “make it much harder for those who have been outside of the mainstream to get in.”³⁷⁰ Hooks’s view reflected widely accepted theories that Jim Crow laws had cast a long shadow over the South and that the enduring effects of this officially by-gone era had created separate black and white “worlds.” The intent standard, Hooks argued, amounted to applying “the criminal standard of proof,” that is specifically “beyond a reasonable doubt and to a moral certainty,” to the “civil issue” of voting rights.³⁷¹ Hooks continued his passionate testimony with some hard-hitting charges. The proponents of the “intent” standard, he claimed were using the potentiality of court ordered “proportional representation” as a “scare tactic” to undermine the cause of protecting the fundamental civil right of all

³⁶⁸ 1982 Senate hearings, 245.

³⁶⁹ 1982 Senate hearings, 246.

³⁷⁰ 1982 Senate hearings, 246.

³⁷¹ 1982 Senate hearings, 246-47.

Americans to cast a fair ballot.³⁷² Whether these claims were deviously devised is an issue that must be seriously considered. Code words and fear tactics had become part of the more subtle racial politics throughout the South and the nation in the 1980s.

Through days of questions and answers, the meanings of “results” and “intent” proved to be a moving target. Depending on their political persuasions, different individuals defined these crucial terms in disparate ways. Hooks was one witness who helped to clarify what support for “results” language in Section 2 would mean in practical terms. In defending some NAACP leaders who had called for redistricting plans that take proportions of the black population into account, Hooks said it did not mean “we have 42 percent, we want 42 percent representation. But it does mean there must be some appearance of equity.”³⁷³ When Hooks asked Senator Hatch what made “intent” better than “results” Hatch claimed that “ ‘intent’ focuses on discrimination analysis upon processes . . . which lead to a given results [*sic*].”³⁷⁴

Laughlin McDonald, director of the southern regional office of the American Civil Liberties Union (ACLU), testified to the difficulty of the burden of proving intent to discriminate in voting and election laws. McDonald brought a wealth of experiences in trying an array of civil rights lawsuits. According to McDonald “very few [voting] dilution suits have been filed . . . because minority plaintiffs simply do not have the resources to bring these kinds of lawsuits.”³⁷⁵ Also, McDonald testified to the complexity of issues and difficulty of trying voting dilution cases, arguing that that made it unlikely that changing Section 2 would result in a deluge of dilution cases, as some had

³⁷² 1982 Senate hearings, 247.

³⁷³ 1982 Senate hearings, 252.

³⁷⁴ 1982 Senate hearings, 254-55.

³⁷⁵ 1982 Senate hearings, 368-69.

posited.³⁷⁶ He echoed the theme that the *Mobile v. Bolden* decision had altered the law, and the proposed language in Section 2 was merely a clarification of the original purposes of the Voting Rights Act.³⁷⁷ Before that decision “a violation of voting rights could be made out upon proof of a bad purpose or effect.”³⁷⁸ McDonald called *Mobile* “a radical decision” that established an intent standard without precedent. Driving his point home, McDonald declared that proving guilt under a new intent standard “will be impossible, short of having the smoking pistol, the body buried in the shallow grave.”³⁷⁹

Regarding the primary concern over the proposed results language, McDonald argued that “[t]here is no way that the court . . . can insure proportional representation. All the court can do is establish a system of access.”³⁸⁰ Citing a number of localities with majority black populations that elect white officials, McDonald told the subcommittee that “[w]hites aren’t hurt when blacks are allowed political access. The society as a whole is improved . . . what causes intense division in these jurisdictions is the exclusion of blacks from office . . . Blacks only want to participate on some basis of equality,” McDonald explained.³⁸¹

Testifying to the importance of “the intent standard” to civil rights law was philosophy professor Michael Levin of the City University of New York. Levin is known for espousing some controversial theories on race and genetics. In his view, the

³⁷⁶ 1982 Senate hearings, 369.

³⁷⁷ 1982 Senate hearings, 369.

³⁷⁸ 1982 Senate hearings, 369.

³⁷⁹ 1982 Senate hearings, 371. Frank Parker argues similarly that intent to discriminate “is very difficult to prove in court because ultimately it requires proof of what was in the minds of the legislators or other public officials when they adopted or decided to retain a voting law that disadvantages minority voters.” Also, Parker points out, it makes no difference what was in some lawmaker’s mind when he supported an election law—especially for many at-large election systems that were established at the dawn of the twentieth century—if that “law operates today to deny minority voters an equal opportunity to participate in the political process.” Frank R. Parker, *Black Votes Count*, 175, 179.

³⁸⁰ 1982 Senate hearings, 373.

³⁸¹ 1982 Senate hearings, 373.

Mobile decision was merely a reiteration of legal precedent requiring proof of “discriminatory intent.”³⁸² Proposed changes to Section 2 “would be a catastrophic error” leading “to enormous mischief” in the court system, according to Levin.³⁸³ Articulating a view diametrically opposed to McDonald’s, Levin exclaimed that results language would “pervert the very meaning of the right to vote and violations of that right.”³⁸⁴ American citizens sitting on “juries” decide intent “everyday,” and Levin told the subcommittee that “[i]ntent is not all that difficult to determine.”³⁸⁵ In accord with the general consensus among Hatch and Reagan allies, Levin argued, “Discrimination is the act of thwarting [someone’s choice to vote] and other liberties on the basis of race. Like any act, discrimination requires intent.”³⁸⁶

Levin explained that the House bill’s “results” language means an “a priori standard [of] proportionality” and that standard, he argued, “is not consistent with democracy.”³⁸⁷ Furthermore, Levin hypothesized, “The logic of the House bill leads . . . to runoffs between designated minority spokesmen for reserved positions while the white population votes as usual. Surely, in selectively protecting the so-called interests of groups by color, the House bill violates equal protection.”³⁸⁸ In comparing differences in voting patterns by race, Levin cited a study by Thomas Sowell that provides “considerable evidence that different value traditions, not discrimination, explain group differences in economic success.”³⁸⁹ Sowell, an African American, is an economist by training. He is known for writing op-ed pieces expressing his views of minimal

³⁸² 1982 Senate hearings, 717.

³⁸³ 1982 Senate hearings, 717.

³⁸⁴ 1982 Senate hearings, 717.

³⁸⁵ 1982 Senate hearings, 718.

³⁸⁶ 1982 Senate hearings, 718.

³⁸⁷ 1982 Senate hearings, 719.

³⁸⁸ 1982 Senate hearings, 720.

³⁸⁹ 1982 Senate hearings, 720.

governmental involvement in economic and social affairs. Levin concluded that substituting result for intent “would change the right to vote into a wholly different and a wholly antidemocratic presumptive right to a racially predetermined result.”³⁹⁰

Senator Mathias viewed the new language in Section 2 as reaffirming the standard in which “you look at the results of some municipal action, State action, or whatever unit . . . and see how it excludes citizens from the electoral process, not how the citizens act within that process.” Further, Mathias believed that the new language in Section 2 was “needed to clarify the burden of proof in voting discrimination cases and to remove the uncertainty caused by the failure of the Supreme Court to articulate a clear standing in *City of Mobile v. Bolden*.”³⁹¹

Senator Mathias believed that decision had marked a new interpretation of Section 2 in which “violations of the section must be based on specific evidence of discriminatory purpose.”³⁹² Senator Arlen Specter (R-PA), who switched to the Democratic Party in 2009 after more than forty years as a moderate Republican, pointed out that in civil law intent “is not required customarily.” “On the civil side, it usually turns on the effect on the allegedly wronged party—what the consequence is or what the deprivation is, or to use the word what the effect is on the injured party.”³⁹³ In accord with this idea, Senator Mathias argued that prior to the *Mobile* decision “a violation in voting discrimination cases can be shown by reference to a variety of factors that, when taken together added up to a finding of illegal discrimination.” Now, however, the Court

³⁹⁰ 1982 Senate hearings, 721.

³⁹¹ 1982 Senate hearings, 92.

³⁹² 1982 Senate hearings, 199.

³⁹³ 1982 Senate hearings, 96.

had “abandoned this totality of circumstance test and . . . replaced it with a requirement of specific evidence . . . of intent to discriminate.”³⁹⁴

Senator Hatch countered that the intent standard did, in fact, consider “the totality of circumstances” to arrive at a conclusion of whether there was discrimination in a given situation. The current intent standard, Hatch claimed, asks the question: “Do these circumstances—the totality of the circumstances—add up to an inference of intent?” Hatch expressed his interpretation of potential changes that could result from the revised Section 2 as “a statistical numbers game and proportional representation.”³⁹⁵ What was worse, in Hatch’s view, was that “the proposed changes in section 2 would result in people being branded as discriminators without any showing of intent.”³⁹⁶ The connotations associated with “proportional representation” and accusations of being a “discriminator” elicited fear in many white Americans’ minds and mischaracterized the purpose of the Voting Rights Act.

Senator Hatch argued that people from the South should be especially concerned about the potential change to Section 2 because it would exacerbate long-standing problems, “creating divisiveness all over the region, with a system where only blacks represent blacks, whites whites, and polarizing is encouraged.” Hatch added “that it will make the situation considerably worse throughout the entire country as well.”³⁹⁷

Leading conservative Senator John P. East (R-NC) echoed concerns that were founded in political representation theory, and he explained how a revised Section 2 could alter long-existing theoretical bases of American democracy. East explained that

³⁹⁴ 1982 Senate hearings, 199.

³⁹⁵ 1982 Senate hearings, 202.

³⁹⁶ 1982 Senate hearings, 203.

³⁹⁷ 1982 Senate hearings, 429.

senators, representing an entire state at-large, are “sensitive to the broad base, to the broad coalition [they] represent.” Therefore, at-large officials, East said, “can’t get away with just representing solely and exclusively a particular clientele, be it racial or otherwise.”³⁹⁸

What many adversaries of the results language failed to acknowledge or, perhaps, to even comprehend is that racial discrimination was still in the 1980s entrenched in institutional structures and frameworks, especially in states like Alabama. Various forms of institutionalized discrimination, such as at-large election systems, will be analyzed in chapters 5 and 6 of this dissertation. Institutional discrimination is a form of denying equal treatment or rights to individuals in the sense that it is “embedded in human institutions that cause behavior by victims, as well as those who discriminate, which perpetuates the patterns.”³⁹⁹ In situations of institutional discrimination, “if legal machinery deals only with specific overt acts...it is not dealing with the main problem and will have very limited impact” on problems of racial injustice.⁴⁰⁰

The Voting Rights Act extension passed in the U.S. Senate on June 18, 1982. Enacted by President Reagan’s signature, the final version of the bill represented a major victory for voting rights advocates. The work of ADC activists and national civil rights organizations had secured a bill with stronger Section 2 protections than many had imagined was possible. The 1982 renewal of the Voting Rights Act extended Section 5 preclearance for twenty-five years, and the “results” test was included in Section 2. This meant that in law suits filed in federal courts, judges could find that state or local

³⁹⁸ 1982 Senate hearings, 468.

³⁹⁹ Ray Marshall, “Civil Rights and Social Equity: Beyond Neoclassical Theory,” in *New Directions in Civil Rights Studies*, ed. Armstead L. Robinson and Patricia Sullivan (Charlottesville: University Press of Virginia, 1991), 150.

⁴⁰⁰ Marshall, “Civil Rights and Social Equity,” 151.

jurisdiction was in violation of the Voting Rights Act if a law or action of that jurisdiction had “result” or “effect” of discriminating against black voters. Senator Robert Dole (R-KS) was instrumental in hammering out compromises to gain broad approval for the bill. It passed with a resounding 85-8 margin in the Senate. Interestingly, Senator Strom Thurmond cast his first vote for any civil rights bill with his vote in favor of approving the Voting Rights Act renewal in 1982.⁴⁰¹ The changes to Section 2, emphasizing that the “results” of an election system must be considered, were critical to voting rights protections and ensuring equal political opportunities for all Americans. Thus, the precedent for proving intent, as established in *Mobile v. Bolden*, was invalidated by the language of the final bill.⁴⁰²

Alabama Senator Howell Heflin voted for the bill, but was hesitant to announce his position until roll call came for senators to cast their votes. Heflin, a Democrat, was a strong ally of the ADC and African Americans, but to survive in Alabama politics he had to walk a careful line in how he approached any issue regarding race. Alabama’s other senator, Jeremiah Denton, was a proud member of the New Right and cast one of the eight votes against the extension of the Voting Rights Act. Denton joined fellow southern Republicans, Senators Jesse Helms and John East, both of North Carolina, in leading the “hard-core conservative” opposition to the bill.⁴⁰³ Senator Helms attempted a

⁴⁰¹ *Congressional Quarterly Almanac*, “House Passes Bill to Extend Voting Rights Act,” 10 October 1981, 415.

⁴⁰² Frank Parker notes that these changes were the first incorporation into federal law of “the minority vote dilution principle” blocking laws in “which minority voters ‘have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.’” Parker emphasizes not only equality of access but also the importance of laws to address “the structural barriers to equal participation in the political process” as well as “political massive resistance strategies” A plethora of evidence exists of both overt and covert strategies for discriminatory practices in states with histories of denying rights to minorities. Parker, *Black Votes Count*, 167-68.

⁴⁰³ Peggy Roberson, “Senate approves extension of voting act,” *Montgomery Advertiser* 19 June 1982.

filibuster, and both he and Senator Denton proposed a number of amendments to the bill that were defeated by margins of two- or three-to-one. Senator Heflin supported some of the Denton amendments, in what were likely politically-calculated and largely symbolic votes, since Heflin could easily have predicted that the Denton amendments would fail.⁴⁰⁴ Heflin was under constant pressure from the remaining white supremacist elements in the Alabama electorate and accordingly learned to “bob and weave” his stances and votes on civil rights and racially-charged issues.⁴⁰⁵ Yet, on the important votes, such as the final vote on extension of the Voting Rights Act, Heflin’s support was never in doubt.⁴⁰⁶

In many ways, the 1982 renewal of the Voting Rights Act was a turning point for defining discrimination in a way that acknowledged the racial injustices of the past so that this nation could continue the odyssey for equal rights and liberties. Armed with the strengthened language in Section 2, leaders of the ADC, such as Jerome Gray, Joe Reed, and ADC local activists, made Alabama the proving ground for the meaning of political equality as promised by the Voting Rights Act. ADC members advocated equal voting rights through a focus on three issues. First, ADC activists legally challenged the legislative districts drawn by the Alabama Legislature following the 1980 census. Pressure from the ADC and federal judges forced legislators to re-draw districts that were fairly apportioned and accurately reflected the demographics in the districts so that blacks

⁴⁰⁴ Peggy Roberson, “Senate approves extension of voting act,” *Montgomery Advertiser* 19 June 1982.

⁴⁰⁵ Earl and Merle Black use the phrase “bob and weave” to describe how another southern Democrat, Governor Bill Clinton, side-stepped the racially-charged land mines in running for statewide office in Arkansas. Earl Black and Merle Black, *The Rise of Southern Republicans* (Cambridge: The Belknap Press of Harvard University, 2002), 27. It is fair to presume that Senator Heflin was doing the same here as he always voted for civil rights legislation. He had worked to get the first black federal judges in Alabama’s history appointed, and according to Joe Reed, “Heflin never left us.” Dr. Joe L. Reed, interview by author, 8 February 2012.

⁴⁰⁶ Senator Heflin stated this a brief conversation with the press after the vote on the bill. Peggy Roberson, “Senate approves extension of voting act,” *Montgomery Advertiser* 19 June 1982.

had opportunities to elect candidates of their choice. Second, ADC activists worked to make sure black Alabamians were part of the process of administering elections through serving as poll officials as well as registrars and deputy registrars, which is discussed in chapter 5. Third, ADC members all across Alabama employed Section 2 to attack the many discriminatory at-large election systems for various local political offices. After Reconstruction, white politicians in Alabama constructed these at-large systems with the expressed purpose of preventing blacks from the chance to elect a black candidate at virtually all levels of Alabama's government. The fight to dismantle discriminatory at-large election systems is the topic of the final chapter.

In the midst of the fight for renewal of the Voting Rights Act, several Alabama voting rights activists filed suit in federal court challenging the legislative reapportionment plan that the Alabama Legislature following the 1980 census. On November 5, 1981, William L. Burton, Percy D. Bell, Abraham Lincoln Woods, Jr., Bobby Jo Johnson, Andrew Hayden, Felix Nixon, and Euralee A. Haynes, all activists of the ADC, initiated their challenge to the new legislative districts in the United States District Court for the Middle District of Alabama.⁴⁰⁷ Chief Judge of the Eleventh Circuit Court of Appeals, John C. Godbold, assigned a three-judge court to hear and determine action in the case. The panel included District Judge Myron H. Thompson, who had just completed his first year on the bench, and a pair of veteran judges, District Judge Truman M. Hobbs and Circuit Judge Frank M. Johnson, Jr.⁴⁰⁸

⁴⁰⁷ Docket Sheet entry 5 November 1981, *William L. Burton, et al., v. Walker Hobbie, etc., et al.* (Civil Action No. 81-0617-N) in Middle District of Alabama Clerk's Office, Montgomery, AL.

⁴⁰⁸ Case Files Vol. I, 11-9-81 *Burton v. Hobbie* (Civil Action No. 81-0617-N) in National Archives and Records Administration, Southeast Region, Morrow, GA.

The plaintiffs alleged that Alabama legislators who drafted and voted for the reapportionment plan, Act No. 81-1049, did so with race as a motivation. The reapportionment act had “the purpose and the effect of diluting or minimizing the voting strength of black citizens of Alabama and of minimizing the number of black members of the Alabama Legislature,” ADC activists claimed.⁴⁰⁹ ADC members were specifically incensed by what they saw as the “systematic” effort to marginalize black voters by “split[ting] or divid[ing] black voting majorities in the so-called Black Belt counties of Alabama, including Lowndes, Wilcox, Perry, Hale, Sumter, and Greene.” In addition the plan concentrated or stacked Jefferson County’s black voters and diminished the black population in what would otherwise be majority-black districts in Montgomery County.⁴¹⁰ Pointing to the fact that Alabama’s politics has been plagued by a commitment to white supremacy for the state’s entire history, the ADC members filing suit argued that even though the Civil Rights Act of 1964 and Voting Rights Act of 1965 illegalized white supremacy, “the continuing effects of . . . [white supremacy] still linger.”⁴¹¹ The 1981 reapportionment plan was a violation of the Voting Rights Act, the plaintiffs argued, asking the federal court to disallow the scheduled 1982 state legislature elections to be held under this discriminatory plan.⁴¹²

In a letter to Assistant U.S. Attorney General William Bradford Reynolds, the attorney for the plaintiffs, James Blacksher, objected to the 1981 reapportionment act

⁴⁰⁹ Case Files Vol. I, 11-5-81 *Burton v. Hobbie* (Civil Action No. 81-0617-N) in National Archives and Records Administration, Southeast Region, Morrow, GA.

⁴¹⁰ Case Files Vol. I, 11-5-81 *Burton v. Hobbie* (Civil Action No. 81-0617-N) in National Archives and Records Administration, Southeast Region, Morrow, GA.

⁴¹¹ Case Files Vol. I, 11-5-81 *Burton v. Hobbie* (Civil Action No. 81-0617-N) in National Archives and Records Administration, Southeast Region, Morrow, GA.

⁴¹² Case Files Vol. I, 11-5-81 *Burton v. Hobbie* (Civil Action No. 81-0617-N) in National Archives and Records Administration, Southeast Region, Morrow, GA.

under Section 5 of the Voting Rights Act.⁴¹³ As evidence of the continuing racial polarization in Alabama elections and the underrepresentation of black Alabamians in the state legislature, the plaintiffs presented the fact that no black person had ever won election to a legislative seat unless that district contained “a clear black voting majority.”⁴¹⁴ Also, they submitted an article from the *Mobile Press Register* that analyzed how through some of his recent decisions, U.S. Senator Howell Heflin, had “tarnished” his political “image” in Alabama. This article, which was printed at the same time that the U.S. Senate was debating the renewal of the Voting Rights Act, pointed out Senator Heflin’s votes against anti-busing legislation and his support for the appointments of Alabama’s first black federal judges, U. W. Clemon and Myron Thompson. The article explained that Heflin had taken a lot of heat for his support of issues that were perceived as helping black people, saying “[h]e learned, in the most difficult of ways that the racist emotions on which George Wallace built his political career have yet to disappear in Alabama.” According to the Mobile newspaper, the senator had misjudged the opinions of his white electorate and had “offended not only hardcore segregationists, but the political centrists who put Howell Heflin in the United States Senate.”⁴¹⁵

According to the letter to the Assistant Attorney General Reynolds, the process by which the Alabama Legislature handled the 1981 reapportionment reveals the intent of those who supported the plan. The plan was primarily devised to protect “incumbent’s

⁴¹³ Case Files Vol. II, 3-9-82 *Burton v. Hobbie* (Civil Action No. 81-0617-N) in National Archives and Records Administration, Southeast Region, Morrow, GA.

⁴¹⁴ Case Files Vol. II, 3-9-82 *Burton v. Hobbie* (Civil Action No. 81-0617-N) in National Archives and Records Administration, Southeast Region, Morrow, GA.

⁴¹⁵ Case Files Vol. II, 3-9-82 *Burton v. Hobbie* (Civil Action No. 81-0617-N) in National Archives and Records Administration, Southeast Region, Morrow, GA.

interests,” yet it did place two incumbents in the same district with each other, forcing a potential race between two incumbent members in 1982. “Not surprisingly,” the letter declares, “these two were black House members, Fred Horn and Ron Jackson, in Jefferson County.”⁴¹⁶ State Senator Michael Figures, a black legislator from Mobile, presented an alternative to the plan. But Figures’s plan was not allowed a hearing in committee since it did not aim to protect incumbents, the overwhelming majority of whom were white.⁴¹⁷ State Representative Manley, who was both co-chairman of the reapportionment committee and a co-sponsor of Act No. 81-1049, justified the rejection of Figures’s plan under the “local courtesy” rule. In the Alabama Legislature a custom known as “local courtesy” meant that all legislators agreed not to interfere in local issues that did not pertain to their specific districts. In cases where a bill affected a particular locality, all legislators tacitly deferred to the legislator or legislators who represented that locality. Obviously, a reapportionment bill necessarily affects all localities in the state and, therefore, as Senator Figures explained “the local courtesy procedure made it inappropriate and useless for a black legislator representing one district to complain or suggest changes concerning a district represented by a white legislator [from another district].”⁴¹⁸ Furthermore, it appears that no attempt was made to reapportion the Alabama Legislature in accordance with the Voting Rights Act. The act was “never discussed” in committee hearings on reapportionment and the committee “did not . . . attempt to determine whether or not the plan finally adopted violated Section 5 . . . and

⁴¹⁶ Case Files Vol. II, 3-9-82 *Burton v. Hobbie* (Civil Action No. 81-0617-N) in National Archives and Records Administration, Southeast Region, Morrow, GA.

⁴¹⁷ Case Files Vol. II, 3-9-82 *Burton v. Hobbie* (Civil Action No. 81-0617-N) in National Archives and Records Administration, Southeast Region, Morrow, GA.

⁴¹⁸ Case Files Vol. II, 3-9-82 *Burton v. Hobbie* (Civil Action No. 81-0617-N) in National Archives and Records Administration, Southeast Region, Morrow, GA.

did not consult counsel about it.”⁴¹⁹ Representative Manley even admitted that he did not understand “the meaning of racial vote dilution.”⁴²⁰ Regardless of the racial makeup of an area, one white Alabama state senator supported changes to districts only in circumstances where “a black district is becoming blacker and a white district whiter.”⁴²¹

One problematic result of the 1981 Alabama Legislature’s reapportionment bill was intentional racial gerrymandering with the purpose of re-electing white incumbent legislators from Black Belt counties. Sumter, Greene, Hale, and Perry counties, all of which had black populations greater than sixty percent, were divided into four separate House districts that contained black populations of no greater than the low fifty-percent-range. Considering that far fewer than 100 percent of blacks were registered in these areas, white legislators would probably be able to win re-election with a unified bloc of white voters supporting them.⁴²² White legislative leaders followed the pattern of dividing up areas with heavy black populations for many of the new legislative districts created in the 1981 bill. One example of how this was achieved elsewhere was placing majority-black Lowndes County in a district with majority-white Autauga and Montgomery counties, when Lowndes had very little in common with the other two counties in racial composition, economy, or social structure.⁴²³

The plaintiffs claimed that there could be no other motivation than race in the splitting up of majority black counties and dispersing black voters in those counties into

⁴¹⁹ Case Files Vol. II, 3-9-82 *Burton v. Hobbie* (Civil Action No. 81-0617-N) in National Archives and Records Administration, Southeast Region, Morrow, GA.

⁴²⁰ Case Files Vol. II, 3-9-82 *Burton v. Hobbie* (Civil Action No. 81-0617-N) in National Archives and Records Administration, Southeast Region, Morrow, GA.

⁴²¹ Case Files Vol. II, 3-9-82 *Burton v. Hobbie* (Civil Action No. 81-0617-N) in National Archives and Records Administration, Southeast Region, Morrow, GA.

⁴²² Case Files Vol. II, 3-9-82 *Burton v. Hobbie* (Civil Action No. 81-0617-N) in National Archives and Records Administration, Southeast Region, Morrow, GA.

⁴²³ Case Files Vol. II, 3-9-82 *Burton v. Hobbie* (Civil Action No. 81-0617-N) in National Archives and Records Administration, Southeast Region, Morrow, GA.

multiple districts, which they dubbed the “southwest Alabama charade.”⁴²⁴ One white incumbent who had narrowly defeated a black candidate in the previous two elections saw to it that his district, which would have been 55.6 percent black, was redrawn to reduce it to 51.6 percent black.⁴²⁵ Another white House member who had narrowly defeated a black candidate by less than 300 votes in the previous election made sure his opponent, who was expected to run again, was drawn out of his district and put into a new one. In reconstructing the districts in his area, State Senator Cordy Taylor, a white legislator from Autauga County, said he desired to “please the people as much as possible” in their wishes not to divide up cities or towns into multiple legislative districts. Yet, Senator Taylor “gave more weight to the objections of a white municipality, Millbrook,” and granted their request while rejecting the same request of two black municipalities in Wilcox and Lowndes counties.⁴²⁶ In Dallas County, one House district was so grossly gerrymandered that it was dubbed the “Selma Dragon.” The “dragon” was complete with fangs that cut just around communities with significant black populations.⁴²⁷

Many black citizens in these counties, even if they were in a numerical majority, often were intimidated by some local whites from participating in the political process. Upon the sight of many black citizens lined up at a polling place to vote on election day in 1978, the mayor of Pine Apple, in Wilcox County, stood on a table and screamed at the

⁴²⁴ Case Files Vol. II, 3-9-82 *Burton v. Hobbie* (Civil Action No. 81-0617-N) in National Archives and Records Administration, Southeast Region, Morrow, GA.

⁴²⁵ Case Files Vol. II, 3-9-82 *Burton v. Hobbie* (Civil Action No. 81-0617-N) in National Archives and Records Administration, Southeast Region, Morrow, GA.

⁴²⁶ Case Files Vol. II, 3-9-82 *Burton v. Hobbie* (Civil Action No. 81-0617-N) in National Archives and Records Administration, Southeast Region, Morrow, GA.

⁴²⁷ Case Files Vol. II, 3-9-82 *Burton v. Hobbie* (Civil Action No. 81-0617-N) in National Archives and Records Administration, Southeast Region, Morrow, GA.

black voters: “What are you all doing here?”⁴²⁸ Especially in rural areas, many Alabama blacks still worked on the land of white landowners. Many of these rural black citizens did not vote for a number of reasons. For one, these farmhands and sharecroppers usually had to work until after polling places were closed on election days. Also, black people in rural areas often avoided politics altogether. A black candidate for a Dallas County Commission seat explained that rural

blacks will often walk away from a black candidate because they are afraid to be seen in his presence by their employer. To them, it is a question of survival. They want to keep their jobs and put food on the table. In some instances, they are permitted to maintain their place of residence on the plantation owner’s property on the condition that they do not become politically involved.⁴²⁹

This practice of attempting to take black citizens’ votes “captive” could be achieved by malevolent whites in a variety of ways. One ADC activist described a practice common at some Alabama polling places as follows:

There is a certain white person who works at that polling place who knows most of the blacks. He will say to a black voter, “Hey John, you going to vote today? I thought you were working John.” Of course, John will be fearful that the polling official is going to tell his employer that he was down there voting. The next time, John will stay away from the polls because he knows he may lose his job.⁴³⁰

Also, many black Alabamians who worked in domestic capacities in white people’s homes “are often given a list of names [from their white employers] indicating for whom they are expected to vote.” In many cases these black workers vote how they are told to avoid the possibility of losing their jobs. It is hard for many black people to believe that

⁴²⁸ Case Files Vol. II, 3-9-82 *Burton v. Hobbie* (Civil Action No. 81-0617-N) in National Archives and Records Administration, Southeast Region, Morrow, GA.

⁴²⁹ Case Files Vol. II, 3-9-82 *Burton v. Hobbie* (Civil Action No. 81-0617-N) in National Archives and Records Administration, Southeast Region, Morrow, GA.

⁴³⁰ Case Files Vol. II, 3-9-82 *Burton v. Hobbie* (Civil Action No. 81-0617-N) in National Archives and Records Administration, Southeast Region, Morrow, GA.

there is a truly secret ballot since whites seem to oversee and control the whole election process, and there are rarely any blacks serving as local polling place officials.⁴³¹

In May 1982, less than a month prior to the beginning of the qualifying period for candidates to run for state legislative seats, the U.S. Attorney General's office sent a letter to Alabama Attorney General Charles Graddick explaining that reapportionment under Act No. 81-1049 violated the Voting Rights Act.⁴³² The letter from the Department of Justice explained that they had not yet had adequate time to offer a district-by-district analysis, but from a general investigation, it appeared that the 1981 reapportionment plan would effect a retrogression of black Alabamians' votes and influence in the state legislature.⁴³³ The letter also stated that a comprehensive analysis of the plan would follow, but it was now clear to the three federal judges working to sort through this as well as to all parties involved that the scheduled legislative elections for 1982 would continue to proceed without a legitimate map of districts in place.

Following the notice of objections by the U.S. Justice Department, the plaintiffs filed an amended complaint with the federal court noting that the 1981 plan did not pass preclearance. The court responded by requesting the plaintiffs to submit proposals for an interim reapportionment plan. In the meantime, the Alabama Legislature went back to work and the reapportionment committee began hastily putting together a new bill, hoping to pass it in time to have a clear understanding of the district boundaries for legislative seats for candidates were already campaigning. At the reapportionment

⁴³¹ Case Files Vol. II, 3-9-82 *Burton v. Hobbie* (Civil Action No. 81-0617-N) in National Archives and Records Administration, Southeast Region, Morrow, GA.

⁴³² Case Files Vol. III, 5-10-82 *Burton v. Hobbie* (Civil Action No. 81-0617-N) in National Archives and Records Administration, Southeast Region, Morrow, GA.

⁴³³ Case Files Vol. III, 5-10-82 *Burton v. Hobbie* (Civil Action No. 81-0617-N) in National Archives and Records Administration, Southeast Region, Morrow, GA.

hearings, some black leaders expressed their doubts that the new plan that had been put together as a quick replacement for the 1981 plan actually represented progress toward fair and equitable legislative districts. State Representative Thomas Reed of Macon County was one of the leading voices of dissent regarding the 1982 proposal for redistricting. In 1970, ADC activists had worked to get Thomas Reed and Fred Gray elected to the Alabama Legislature. Representative Thomas Reed and Representative Fred Gray were the first blacks to serve in the state legislative body since Reconstruction. Representative Reed had seen much progress for black Alabamians, but he also knew how long they had waited and how slow that any steps forward had been. Representative Reed declared that he was in “total opposition” to the new 1982 proposals for redistricting because he believed they were tools to perpetuate the old system, just as the 1981 bill had been.⁴³⁴ He said the new proposals only allowed for “token representation” and he called for the farce of equal representation to end:

We can speak for ourselves. Black people, let me tell you something: Until you ask for what is rightfully yours, you’ll never get it. It took us over a hundred years to get two blacks to the Alabama Legislature. From 1872 to 1972, it wasn’t a single black person down here. We went four years with only two. Then we picked up a few more. Now we have a pittance of thirteen.⁴³⁵

Representative Reed continued, explaining that if the ADC and black citizens had to continue to pursue justice in representation through the force of federal court orders they would, but he hoped the legislature would do the right thing without coercion. In concluding, Representative Reed called on all white legislators who had a “conscience,”

⁴³⁴ Transcript of Public Hearing Before the Joint Reapportionment Committee, 6-25-82 in Supplemental Files, Box 16 *Burton v. Hobbie* (Civil Action No. 81-0617-N) in National Archives and Records Administration, Southeast Region, Morrow, GA.

⁴³⁵ Transcript of Public Hearing Before the Joint Reapportionment Committee, 6-25-82 in Supplemental Files, Box 16 *Burton v. Hobbie* (Civil Action No. 81-0617-N) in National Archives and Records Administration, Southeast Region, Morrow, GA.

asking them “how would you feel if we were doing you the same way?”⁴³⁶ Another Black Belt leader, Judge William McKinley Branch of Greene County, added to Representative Reed’s sentiments: “We are going down the road to hell, a white road and a black road. And if you can’t find some part to get together and do away with this racism and all this stuff here, I guarantee you we’re all going to hell.”⁴³⁷

On June 4, the plaintiffs filed their proposed plans for redistricting with the Middle District Court. Just a few days prior, on June 1, the Alabama Legislature passed a new redistricting bill, Act No. 82-629 to replace Act No. 81-1049. The new bill, in the eyes of ADC activists and most black leaders, was no better than the previous one. With the election cycle underway for the 1982 legislative races, Judges Johnson, Hobbs, and Thompson had to make a quick decision about how to proceed. On June 8, the U.S. Department of Justice sent notice that they were unable to come to a conclusion as to the legality of the plan under the time constraints. Thus, the plans for elections would continue as the judges and Justice Department lawyers poured over the redistricting act for the next several weeks. Judges Johnson and Hobbs agreed that the 1982 plan would go forward as an “interim” plan.⁴³⁸ Johnson and Hobbs also agreed that the plaintiffs’ proposed plans were not necessarily remedies to the problems of the 1981 and 1982 plans passed by the legislature. Judge Johnson chided state lawmakers, writing

this Court remains aware that for the third consecutive decade the Alabama Legislature has abrogated its duty and failed to adopt a reapportionment plan that is constitutionally acceptable. Furthermore, this Court is cognizant of that the

⁴³⁶ Transcript of Public Hearing Before the Joint Reapportionment Committee, 6-25-82 in Supplemental Files, Box 16 *Burton v. Hobbie* (Civil Action No. 81-0617-N) in National Archives and Records Administration, Southeast Region, Morrow, GA.

⁴³⁷ Transcript of Public Hearing Before the Joint Reapportionment Committee, 6-25-82 in Supplemental Files, Box 16 *Burton v. Hobbie* (Civil Action No. 81-0617-N) in National Archives and Records Administration, Southeast Region, Morrow, GA.

⁴³⁸ *Burton v. Hobbie*, 543 F. Supp. 235, 235-239 (M.D. Ala., 1982).

legislature continues to employ questionable reapportionment practices that suggest some form of racial gerrymandering.⁴³⁹

Judge Thompson dissented, writing that allowing elections to continue under an unacceptable plan was a denial of justice. He argued that Judge Hobbs's and Judge Johnson's opinions signaled that the "Court winks at Section 5 of the Voting Rights Act of 1965 . . . and turns its back on the specific group of people that section was intended to protect."⁴⁴⁰ ADC Chairman Joe Reed, who had helped to devise the plaintiffs' proposed reapportionment plans, said of the federal court decision, "This was not a knockout. It was a knockdown." Chairman Reed added that he believed that the court was "serving notice on the Alabama Legislature" that fair reapportionment would have to happen soon.⁴⁴¹

In August, the Civil Rights Division of the U.S. Department of Justice notified Alabama Attorney General Charles Graddick that redistricting Act No. 82-629 was "legally unenforceable."⁴⁴² After extensive review, the lawyers in the Civil Rights Division concluded that the 1982 plan "offers less prospect for black voters" in the Black Belt districts "to participate fully in the electoral process."⁴⁴³ Legislative candidates now knew they were running to be elected to districts that were deemed illegitimate.

After the legislative elections in the fall of 1982, Alabama lawmakers assembled in Montgomery and put together yet another legislative reapportionment plan, Act No. 83-154. The 1983 plan was drawn by ADC Chairman Joe Reed and another black leader,

⁴³⁹ *Burton v. Hobbie*, 543 F. Supp. 235, 243 (M.D. Ala., 1982).

⁴⁴⁰ *Burton v. Hobbie*, 543 F. Supp. 235, 243 (M.D. Ala., 1982).

⁴⁴¹ Mary Reeves and Cynthia Smith, "Federal judges approve remap plan," *Montgomery Advertiser*, 22 June 1982.

⁴⁴² Case Files Vol. V, 8-3-82 *Burton v. Hobbie* (Civil Action No. 81-0617-N) in National Archives and Records Administration, Southeast Region, Morrow, GA.

⁴⁴³ Case Files Vol. V, 8-3-82 *Burton v. Hobbie* (Civil Action No. 81-0617-N) in National Archives and Records Administration, Southeast Region, Morrow, GA.

Representative John Buskey. The U.S. Department of Justice reviewed and approved Act No. 83-154. In April 1983, Judges Johnson, Hobbs, and Thompson also approved the plan. Judge Thompson hailed it as “the first time in Alabama’s history that its Legislature has provided an apportionment plan that is fair to all the people of Alabama.”⁴⁴⁴ However, the court ordered, as a condition of the new plan’s approval, that all legislators run again under the legitimate plan and that current legislative terms would expire on December 31, 1983 rather than serving a full four-year term until January 1987.⁴⁴⁵

The *Montgomery Advertiser* and *Alabama Journal* covered the breaking news that state legislators would have to run for office again in 1983. A number of both black and white leaders had tried to persuade the court that as a compromise the new plan should go into effect for the 1986 legislative elections. But, as Judge Johnson explained, “We refuse to approve a settlement which would result in the continuation in office for four years of legislators who were not elected under a valid reapportionment plan.” Alabama House Speaker Tom Drake was “stunned” that the court ordered legislators to run again in the first year of their terms.⁴⁴⁶ One of the reapportionment committee leaders, State Senator Lister Hill Proctor, criticized the idea that legislators be required to run for office again saying, “[b]lacks had made real gains under the other plan . . . I think the court owed it to us to go along” with the compromise of the 1983 reapportionment plan going into effect for the 1986 elections. The federal judges did not see any justification for that,

⁴⁴⁴ *Burton v. Hobbie*, 561 F. Supp. 1029, 1030 (M.D. Ala., 1983).

⁴⁴⁵ *Burton v. Hobbie*, 561 F. Supp. 1029, 1034-1036 (M.D. Ala., 1983).

⁴⁴⁶ Tom Gardner, “Run again, court tells legislators,” *Montgomery Advertiser*, 12 April 1983.

and refused to reward the state legislature “for assuming its responsibilities at the expense of the citizens of Alabama.”⁴⁴⁷

Further litigation ensued over how the elections would be administered. The Alabama Democratic Party proposed that their party nominees be selected by the State Democratic Executive Committee with the stated purpose of saving the state and candidates money. In several cases two current legislators now resided in the same legislative district. Under the 1983 reapportionment plan, nine House members and twelve Senators would be required to run against other incumbents. All of the incumbents who would face the potential of running against another incumbent were Democrats. Refusing to get involved in a state constitutional issue, the federal court left it up to the state political parties to decide how they would select nominees.⁴⁴⁸ The Alabama Republican Party planned primary elections for September. Meanwhile, the Alabama Democratic Executive Committee set October 1 as the date that the committee would vote and select the nominees for the November General Election.

As the Republican primary election approached, observers wondered how many people would show up to vote. The Republican Party in Alabama had been virtually dead since the end of Reconstruction, but since the 1960s it had made some slow gains. Just as it had since the years following Reconstruction, the Alabama Democratic Party still dominated state politics. Two disgruntled Montgomery legislators switched from the Democratic to Republican Party in protest to the Democratic Executive Committee’s decision not to hold a primary. Democrat State Senator Larry Dixon, who faced the conundrum of running against another white Democratic incumbent in 1983, was angry

⁴⁴⁷ Mike Sherman, “Elections May Cost \$3 Million,” *Alabama Journal*, 12 April 1983.

⁴⁴⁸ Case Files Vol. VII, 7-37-83 *Burton v. Hobbie* (Civil Action No. 81-0617-N) in National Archives and Records Administration, Southeast Region, Morrow, GA.

with the Democratic Party's decision not to hold primaries and consequently decided to switch party affiliation. Senator Dixon called the decision not to hold primaries the "most undemocratic" thing the Party could choose to do.⁴⁴⁹ Republican candidates prepared for their primary in September with predictions that turnout would be low. The Alabama Republican Party had worked hard to field as many candidates as they could for the legislative races, but was still unable to run candidates in a majority of the legislative districts. In Pickens County's House District 5, Republican Ganus Gray believed he would be the best representative for the majority-black district even though he was white. Gray said that he expected ADC Chairman Joe Reed to oppose his candidacy, but explained why he chose to run anyway, saying, "I'm not a racist, but they (blacks) make good followers if they have a leader."⁴⁵⁰ Although Democrats would still control the legislature no matter the outcome of the 1983 election, the Alabama Republican Party looked at this as a major step forward since they had more legislative candidates in this election than they had had in decades.

Leading up to the 1983 General Election, an article in the *Montgomery Advertiser* featured ADC state field director Jerome Gray touting recent successes in black voter registration drives. Gray estimated that more than 350,000 Alabama black citizens were registered and ready to vote in the 1983 elections. "The most exciting thing about the effort [to register black voters] is its quiet nature," Gray explained. The ADC state field director added, "We in Alabama don't need a Jesse Jackson to motivate us. ADC, the

⁴⁴⁹ Mike Sherman, "'If There Is An Election, I'll Be In It,' Sen. Dixon Says," *Alabama Journal*, 12 April 1983. Mike Sherman, "Elections May Cost \$3 Million," *Alabama Journal*, 12 April 1983.

⁴⁵⁰ "GOP hopefuls fear low turnout for primary," *Montgomery Advertiser*, 4 September 1983.

NAACP, and SCLC are working together, and doing an effective job.”⁴⁵¹ Also, another article in the *Advertiser* noted that the “number of black registered voters in Birmingham has surpassed the number of white registered voters.” This news came as Birmingham’s first black mayor, Richard Arrington, was on the ballot for re-election in the October municipal elections for Birmingham.⁴⁵² By the early 1980s, to be sure, the efforts of ADC activists to open the political process in Alabama to blacks were beginning to yield signs of progress.

On October 1, the Democratic Executive Committee was responsible for choosing who the Democratic Party nominees would be for forty contested legislative seats. Some—particularly the more conservative Democrats—questioned the Party’s decision to choose nominees by committee vote. Republicans and some Democrats claimed that Democratic Party leaders made the decision to select nominees in that way so they could “rig the nominations in favor of those backed by a coalition of labor, teachers, trial lawyers, and blacks.”⁴⁵³ Former Democratic Executive Committee Chairman George Lewis Bailes called the decision not to hold a primary election “absolutely unconscionable,” adding “[t]his is grossly unfair to the candidates, the committee members, and the people.” Wiley Hickman, another member of the committee, said the decision and selection process was “the worst thing that’s ever happened to the Democratic Party.”⁴⁵⁴ In selecting the nominees, the committee denied twelve incumbent

⁴⁵¹ Mike Sherman, “Blacks sign up to vote in record numbers,” *Montgomery Advertiser*, 4 September 1983.

⁴⁵² “Black voters take the lead,” *Montgomery Advertiser*, 6 September 1983.

⁴⁵³ Hoyt Harwell, “Democratic Executive Committee courted by candidates,” *Montgomery Advertiser*, 1 October 1983.

⁴⁵⁴ Hoyt Harwell, “Democratic Executive Committee courted by candidates,” *Montgomery Advertiser*, 1 October 1983.

legislators a nomination to run in the 1983 General Election.⁴⁵⁵ Seven of the twelve ousted Democrats filed qualifying papers with the Secretary of State to run as Independent candidates in November.⁴⁵⁶ As Democratic, Republican, and Independent candidates all set their eyes on the General Election, it seemed to many observers that the 1983 election would be remembered as one of the most eventful in Alabama history.

The ADC became a major political issue in one of Montgomery's legislative races. The campaign for House District 73 featured a rematch of Democrat Ham Wilson, Jr., who had been elected to his first term in 1982, and Republican Perry Hooper, Jr., the son of Montgomery County's only Republican Circuit Court Judge. Both Wilson and Hooper are white. In the 1982 election, Wilson had received the endorsement of the ADC, and Hooper used this to paint Wilson as the "handpicked" black candidate as they ran against each other again in 1983. State Representative Wilson fired back at Hooper, claiming that he did not want the ADC endorsement and that as a House member for the past year he had voted against some of the proposals supported by Reed and the ADC. In a newspaper story, Representative Wilson said he "has not sought and does not want the ADC endorsement in this race."⁴⁵⁷ Angry at Wilson's comments, Chairman Reed exclaimed, "I'm blowing the whistle on those who seek the support of ADC and then turn around and attack the group." Reed described Wilson's actions as a pattern he had observed over his years of involvement in Alabama politics: "[s]ome politicians always try to seek out black support, but when it is convenient they attack us."⁴⁵⁸ In the

⁴⁵⁵ Mark J. Skoneki, "Democrats choose state candidates," *Montgomery Advertiser*, 2 October 1983.

⁴⁵⁶ Mike Sherman, "7 Denied Incumbents File to Run," *Alabama Journal*, 3 October 1983.

⁴⁵⁷ Nancy Dennis, "Political Ads Draw Ire Of ADC Chairman," *Alabama Journal*, 2 November 1983.

⁴⁵⁸ Nancy Dennis, "Political Ads Draw Ire Of ADC Chairman," *Alabama Journal*, 2 November 1983.

newspaper that same day, Hooper ran a political advertisement entitled “DON’T BE MISLED!” The ad featured a picture of the ADC’s primary election guide ballot for September 7, 1982 that showed Ham Wilson’s name marked as receiving the ADC endorsement. At the bottom of the ad the caption charged voters to cast their ballots for Perry Hooper, “THE TRUE CONSERVATIVE CANDIDATE – WITH NO TIES TO JOE REED!”⁴⁵⁹ Following these attacks by Hooper, Wilson’s campaign ads increasingly focused on proving his anti-Reed and anti-ADC credentials.

In response to Wilson’s denials of affiliation with the ADC and Chairman Reed, Hooper heightened his attacks. In a blatantly racist advertisement, reminiscent of Alabama political campaigns of the 1950s and 1960s, Hooper tried to make sure white voters knew that he was the “white candidate” and Wilson was the “black candidate.” At the top of Hooper’s ad in bold letters it read “LAST YEAR, JOE REED ELECTED HAM WILSON, JR. HERE IT IS IN BLACK AND WHITE.” Below this bold caption that took up nearly half of the space of the ad, Hooper listed the vote totals for the four predominately white polling places in the district and the vote totals for the two predominately black precincts in the district. Although Wilson had significant support in the four white precincts, Hooper had received more votes at all those locations. But, in the black precincts Wilson had won by such a wide margin that he narrowly defeated Hooper in the overall vote totals for the House seat in 1982. Next to the vote totals for the predominately black precincts, Hooper’s ad referred to them, for example, as “Joe Reed’s Cleveland Avenue.” At the Cleveland Avenue precinct, Hooper received 82 votes to Wilson’s 1,567 votes. Next to the black polling place totals, the ad read “Wilson and Reed win.” At the bottom of the ad, Hooper admonished white voters: “This time, have

⁴⁵⁹ Perry Hooper, Jr. advertisement, *Montgomery Advertiser*, 2 November 1983.

it your way! On Tuesday, elect a strong representative with no ties to Joe Reed!” Notice, in the caption that Hooper underlined our in the word “your” as a signal to white voters they should unite whites against candidates supported by black people.⁴⁶⁰

As the 1983 legislative election neared, Alabama Republican Party Chairman Marty Connors predicted a significant gain for his party. Connors told the *Advertiser* that there were “a lot of people who are running on our ticket that are disenchanted Democrats who have seen the light.” Connors also believed that the Alabama Republican Party would continue to grow since the Alabama Democratic Party had “become more closely aligned with the national party and, thus, more ‘liberal.’” Connors was beaming with the prospect that the Republican Party could “double its numbers in the Alabama Legislature” as Alabama Democrats continued their “swing to the left.”⁴⁶¹ On the day before the election, Democratic leaders predicted they would have success. Also, when asked again about the Wilson-Hooper contest, Joe Reed called it “racism at its highest . . . designed to appeal to the worst side of white voters.”⁴⁶² By less than 150 votes, Hooper defeated Wilson in the rematch, making Montgomery County’s legislative delegation all white Republicans and all black Democrats.⁴⁶³ The 1983 Alabama Legislature elections yielded gains for blacks and Republicans, while also tarnishing the image of the Alabama Democratic Party. Republicans now had more seats in the state legislature than they had since Reconstruction. Likewise, there were more black Alabamians in the legislature than there had been since the 1870s. The results of the 1983 election led to twenty-four black citizens serving in the state legislature, which at that time represented the highest

⁴⁶⁰ Perry Hooper, Jr. advertisement, *Montgomery Advertiser*, 5 November 1983.

⁴⁶¹ Mark J. Skoneki, “Special legislative election may be most unusual in state’s history,” *Montgomery Advertiser*, 6 November 1983.

⁴⁶² “Few voters expected at polls,” *Montgomery Advertiser*, 8 November 1983.

⁴⁶³ Mark J. Skoneki, Hooper claims House 73 victory, *Montgomery Advertiser*, 9 November 1983.

percentage of black people in any state legislative body in the United States.⁴⁶⁴ ADC activists had worked to secure equal voting rights for all, and in the process had begun over two decades to transform the composition of state and local political leaders. ADC leaders continued to partner with political officials on the state, local, and national level in efforts to realize political equality under the Voting Rights Act. By the mid-1980s, ADC activists were just beginning to make the promises of the Second Reconstruction a reality in local politics. ADC activists knew the federal law was on their side in their fight for voting rights, and they planned their strategies for ridding Alabama government and politics of discriminatory laws and customs accordingly. It took more legal and political battles in the 1980s to rid the state of remaining discriminatory legacies embedded within its political system.

⁴⁶⁴ Mark J. Skoneki, Hooper claims House 73 victory, *Montgomery Advertiser*, 9 November 1983. Dr. Joe L. Reed, interview by author, 8 February 2012.

Chapter 5: Leveling the Playing Field: Equal Access to the Local Voting and Election Process, 1984-1986

“[M]any blacks, in particular the elderly and the uneducated, still labor under these past memories of personal humiliation, intimidation and violence. They understandably still harbor fears of entering all-white public places, even though they are now legally entitled to do so. They find the simple act of registering and voting, especially when the voting officials are all white, an extremely intimidating experience; and as a result, many of them do not register, and many of those who do register do not vote. For these persons, the political process is still not open, is still not available to the same extent it is and has been available to white persons.”

-U.S. District Judge Myron H. Thompson⁴⁶⁵

ADC activists turned the new Section 2 “results” test into a powerful weapon for promoting equality in the administration of elections by the state of Alabama. Still in the early 1980s, the administration of elections and the process of voter registration reflected the institutionalized discrimination that persisted in Alabama on the local level despite the fact that the Voting Rights Act had been in place nearly twenty years. On April 30, 1984 Charlie Harris and Mose Batie, black citizens and registered voters of Pike County, filed suit in the U.S. District Court for the Middle District of Alabama, located in Montgomery. Harris and Batie submitted their complaint on behalf of all black citizens in Alabama, and they were suing the state of Alabama and the State Democratic Party Executive Committee of Alabama for violations of Section 2 of the Voting Rights Act as well as the Fourteenth and Fifteenth Amendments. Harris and Batie charged the defendants with “discriminat[ion] against black citizens in the appointment of poll officials.”⁴⁶⁶ The complaint cited Attorney General Charles Graddick and Governor George C. Wallace, since according to the *Alabama Code* they are charged with the

⁴⁶⁵ *Harris v. Graddick*, 593 F. Supp. 128, 131 (M.D. Ala., 1984).

⁴⁶⁶ Case Files Vol. I, 4-30-84, *Charlie Harris and Mose Batie v. Charles A. Graddick in his official capacity as Attorney General, etc., et al.* (Civil Action No. 84-T-0595-N) in Middle District of Alabama Clerk’s Office, Montgomery, AL (hereafter abbreviated).

duties of upholding the Constitution of the state as well as “examin[ing] all state statutes to determine their constitutional validity and to advise county officers . . . about any question of law concerning their duties.”⁴⁶⁷ The *Harris v. Graddick* litigation also named the state Democratic Party Executive Committee as a defendant. In 1970 under the leadership of Chairman Bob Vance, the state party had adopted new rules that gave it “supervisory power and jurisdiction of all Democratic Party matters,” such as the appointment of poll officials, “throughout the state, and each district, county, and other subdivisions thereof.”⁴⁶⁸ Candidates for local political offices and Democratic Party county executive committee members, who were almost always white, controlled the process of appointing poll officials. According to the Harris, Batie, and other ADC members this procedure for appointing poll officials had “both the purpose and the effect” of keeping black Alabamians circumscribed from election day processes.⁴⁶⁹

The plaintiffs grounded their argument in the fact that at least since the end of Reconstruction, no black citizens had served as poll officials at any precinct in the entire state until the enactment of the Voting Rights Act. Furthermore, in the years since the Voting Rights Act, a few black Alabamians had been appointed poll officials in some counties but usually in numbers that were grossly disproportionate with the total black population in the county. The most egregious example the plaintiffs exposed was Crenshaw County, where not one black citizen had served as a poll official in the previous election, despite the fact that the county’s population was nearly 27 percent

⁴⁶⁷ Plaintiffs cited *Ala. Code*, Secs. 36-15-1 (5), 36-15-1 (9), 36-15-18 and *Ala. Const.*, Sec. 120 in Case Files Vol. I, 4-30-84, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk’s Office.

⁴⁶⁸ Case Files Vol. I, 4-30-84, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk’s Office.

⁴⁶⁹ Case Files Vol. I, 4-30-84, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk’s Office.

black.⁴⁷⁰ In several other Alabama counties that had black populations ranging between twenty and more than forty percent, the number of black poll officials percentage-wise was in the single digits or teens.⁴⁷¹ The plaintiffs were prepared to offer extensive historical testimony to the fact that black Alabamians had, since the end of Reconstruction, been denied the right of political participation that the Fifteenth Amendment had promised. For over a century, white supremacist politicians in Alabama had constructed a political edifice with layers and layers of complex institutional structures to prevent black people from voting. Charlie Harris and the plaintiffs argued that the present system for appointing poll officials was “a vestige” of the “white-only Democratic Party Primary” elections that, prior to the U.S. Supreme Court’s *Smith v. Allwright* (1944) decision, decided virtually every state and local political contest.⁴⁷²

The plaintiffs also pointed out that county officials, such as the Probate Judge, Sheriff, and Clerk of the Circuit Court, who are all elected by an at-large vote of the county’s citizens are the ones who make the ultimate selection of who will serve as poll officials. Due to the presence of a “persistent white-bloc” voting against black candidates, there were no black officials serving in at-large elected county offices, except in majority-black counties. Thus, the plaintiffs claimed that in most counties with white majorities the white county officials “usually are not sufficiently familiar with members of the black community who are willing and able to serve as poll officials and are

⁴⁷⁰ Case Files Vol. I, 4-30-84, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk’s Office.

⁴⁷¹ Case Files Vol. I, 4-30-84, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk’s Office.

⁴⁷² Case Files Vol. I, 4-30-84, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk’s Office.

otherwise unwilling to appoint a fair number of blacks.”⁴⁷³ Furthermore, the plaintiffs used data compiled by ADC leaders to argue that although for over a decade black Alabamians have had significant participation and access to the business of the State Democratic Party, “in most counties, black citizens still do not have full and effective representation on county executive committees” that provide lists of potential polling place officials.⁴⁷⁴

As for the defendants, Attorney General Graddick, speaking on behalf of himself and Governor Wallace, fully denied the allegations advanced by Charlie Harris and the class of Alabama’s black citizens.⁴⁷⁵ In the briefs that the Governor and Attorney General submitted, they argued that the plaintiffs’ complaint “fails to allege any exceptional circumstances” that lead to a violation of the U.S. Constitution requiring federal court involvement. Graddick and Wallace expressed resentment at the federal courts attempting to interfere in state and local politics. Here, in the Second Reconstruction, we see themes that had shaped the political consciousness of many southern whites during and immediately after the first Reconstruction: the notion that an overbearing federal government was imposing its will on the South and thereby violated states’ rights and threatened white supremacy. The lead plaintiffs’ attorneys, James Blacksher, was astounded by the audacity of the Governor’s and the Attorney General’s failure to realize that “the denial of black citizens’ voting rights and the dilution of their

⁴⁷³ Case Files Vol. I, 4-30-84, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk’s Office.

⁴⁷⁴ Case Files Vol. I, 4-30-84, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk’s Office.

⁴⁷⁵ Case Files Vol. I, 5-23-84, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk’s Office.

voting strength, as alleged in the Complaint, are about as exceptional as you can get.”⁴⁷⁶

Also, Blacksher declared that the defendants’ denial that county officials were acting under state law when appointing poll officials was “a patently frivolous contention,” since the complaint clearly cites the precise section of the *Alabama Code* that grants county officials such powers.⁴⁷⁷ The State Democratic Executive Committee’s (SDEC) attorney did not respond in the same tone as Governor Wallace and Attorney General Graddick. The SDEC proclaimed, “It is the policy of the Democratic Party to encourage full and fair participation by all qualified electors in primaries and elections. If the allegations of racial discrimination by the plaintiffs are true, then they should be corrected.”⁴⁷⁸ However, the SDEC asserted that since polling officials are appointed “separately in each county, the existence of discrimination must be shown on a county-by-county basis.”⁴⁷⁹

ADC activists from various Alabama counties testified to the underrepresentation of black citizens as polling place officials. ADC state field director Jerome Gray and ADC member Jerry Henderson traveled to Albertville, Alabama to look through archives of past polling place officials in Alabama elections.⁴⁸⁰ Up to this point, the state of Alabama did not keep track of the race of poll officials. Thus, Gray and Henderson had to get copies of all lists of poll officials for every county in the elections since the Voting Rights Act and verify the race of the workers. They accomplished this by spending hours

⁴⁷⁶ Case Files Vol. I, 5-25-84, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk’s Office.

⁴⁷⁷ Case Files Vol. I, 5-25-84, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk’s Office.

⁴⁷⁸ Case Files Vol. I, 5-22-84, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk’s Office.

⁴⁷⁹ Case Files Vol. I, 5-25-84, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk’s Office.

⁴⁸⁰ Jerome A. Gray, phone interview, October 30, 2011.

talking with the members of each of ADC's county-wide branches who would verify to Gray and Henderson the names of black citizens on the lists of poll officials.⁴⁸¹

Through depositions and testimony in hearings, several ADC activists offered evidence that the process of appointing poll officials in their counties perpetuated the institutionalized discrimination that had long governed the way the State of Alabama administered elections. The ADC activists who testified were Charlie Harris, Mose Batie, Harrison Shipman, James Smith, Lindburgh Jackson, Mary Kate Stovall, Courtney Crenshaw, Leu Hammonds, and Jerome Gray. These activists argued that the scarcity of black poll officials was one of the vestiges of the all-white primary election system that dominated Alabama's politics until the Supreme Court outlawed the practice in 1944.

Not only did the ADC activists compile evidence that showed the underrepresentation of black poll officials, they also presented astonishing examples of the persistence of racial injustice in election day processes. Much of this evidence echoed the testimony of ADC activists to the Montgomery field hearing of the U.S. House members when Congress was considering renewal of the Voting Rights Act in 1981. In many counties poll officials held lifetime positions, so they were given first priority to serve as election officials until they were no longer living or had moved out of the county.⁴⁸² Following the passage of the Voting Rights Act in 1965, Alabama was slow to welcome black citizens to take part in administering and organizing elections. In some counties it was the mid- to late-1970s before local leaders permitted any black

⁴⁸¹ Jerome A. Gray, phone interview, October 30, 2011. Case Files Vol. II, 7-10-84, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk's Office.

⁴⁸² Case Files Vol. II, 7-10-84, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk's Office.

person to serve as a poll official.⁴⁸³ For many black southerners, law enforcement officials signified danger because countless African Americans had been arrested for crimes they had allegedly committed. Following Reconstruction, many of the black people arrested were victims of lynching soon after their arrests. As Harrison Shipman of Coffee County testified the Sheriff would stand outside polling places in an effort “to intimidate blacks” and keep them from voting. With the presence of white law enforcement officials and no black poll officials, Shipman argued, many black citizens would choose to not vote. Shipman explained, “If you see some blacks at the polling place . . . they feel better about it and don’t feel like they are going to be looked upon as not having a place. It’s not the black’s place to go in and vote because resistance has been so strong in the past.” As a black Alabamian, Shipman revealed how the Jim Crow era rule, assigning blacks and whites to a circumscribed place and space in southern society, was still very much a part of the cultural memory and cultural expectation in Alabama in the 1980s. If blacks were present at polling places, Shipman added, “they feel more secure . . . [and] less threatened. They feel there is less possibility of reprisal. It has happened in the past. Some are reluctant . . . especially some of the older people.”⁴⁸⁴ Houston County ADC Chairman James Smith testified that “[t]here is still the feeling on the part of some blacks that elections are taken from them.” Black voters “would feel more comfortable and feel that they can really relate to another black in getting assistance in voting,” argued Lindburgh Jackson. ADC member Courtney Crenshaw explained that in his experiences he had found that particularly the elderly and

⁴⁸³ Case Files Vol. II, 7-10-84, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk’s Office.

⁴⁸⁴ Case Files Vol. II, 7-10-84, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk’s Office.

poorer black citizens “will refuse [to vote] . . . if they are not up on using the machine and they don’t understand it, they will refuse to go if they can’t get some assistance from black persons.”⁴⁸⁵ Mr. Shipman noted that in recent years the atmosphere at some polling places had grown increasingly contentious as black Alabamians had begun to come closer to reaching political equality. Shipman explained that in the 1980 election for the first time ever white poll officials prevented him from going into the voting booth with his wife. For many years Shipman had assisted his wife “to help her . . . identify the various things about the machines and the candidates,” but beginning in 1980 poll workers said Mrs. Shipman could not receive voter assistance because she “could read and was not handicapped.”⁴⁸⁶ From Mr. Shipman’s perspective, “once [white poll officials] found out that blacks were helping blacks . . . understanding [*sic*] . . . who to vote for . . . then [white poll officials] decided they were not going to let” any black citizens offer assistance to voters unless the voter was in some way disabled.⁴⁸⁷ Charlie Harris reported that in Pike County “white poll officials will not allow anyone but themselves to render any needed assistance.”⁴⁸⁸

Beyond the lack of black citizens serving as poll officials, ADC activists described a climate in some counties in which white poll workers took “active steps to deter black voters from voting or casting ballots for candidates of their choice.”⁴⁸⁹ James Smith explained that “[t]he thing that disturbs black voters the most about the problems

⁴⁸⁵ Case Files Vol. II, 7-10-84, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk’s Office.

⁴⁸⁶ Case Files Vol. II, 7-10-84, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk’s Office.

⁴⁸⁷ Case Files Vol. II, 7-10-84, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk’s Office.

⁴⁸⁸ Case Files Vol. II, 7-10-84, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk’s Office.

⁴⁸⁹ Case Files Vol. II, 7-10-84, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk’s Office.

they encounter at the polls is the hostile, discourteous attitude of some white poll officials.”⁴⁹⁰ As Smith asserted, “So often there is this attitude, especially if you’re black, that you automatically are wrong. Which also has to do with why some blacks are reluctant to go to the polls.”⁴⁹¹ Many black voters had stories of being sent away from the polls for their names not appearing on the voter list for that precinct, and often they were not advised that they could cast a challenged ballot nor were they offered any other plausible method to vote. Mr. Smith, who had voted at the same precinct his entire life, was left off the voter list in an election just prior to the *Harris* litigation. As a local ADC activist, Smith was well versed in local elections, and he knew how to handle the situation even though the white poll official gave him misinformation about how to attempt to correct the situation.⁴⁹² Russell County ADC activist Mary Kate Stovall recalled that in 1981 when a local polling place was moved due to damage from a tornado, white officials sent a number of black voters “from one box to another, claiming their names were not on the correct lists.”⁴⁹³ Since Reconstruction, many black southerners had experienced various schemes of white officials switching polling places and ballot boxes in an effort to bewilder or practically remove black voters’ voices from the election process. In Montgomery County, ADC member Leu Hammonds had served as a poll official in the most recent election and noted that blacks were not given misinformation at the polls. Hammonds believed that the better treatment was due to the

⁴⁹⁰ Case Files Vol. II, 7-10-84, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk’s Office.

⁴⁹¹ Case Files Vol. II, 7-10-84, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk’s Office.

⁴⁹² Case Files Vol. II, 7-10-84, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk’s Office.

⁴⁹³ Case Files Vol. II, 7-10-84, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk’s Office.

fact that at many Montgomery precincts “there were both blacks and whites serving as poll workers and as chief inspectors.”⁴⁹⁴

With memories of the Jim Crow era still looming over black Alabamians, the hostile and suspicious attitudes of some white polling place officials seemed to many black citizens to be an all-too-familiar example of the persistent racism that had plagued Alabama for more than a century. The cultural memory of racism in Alabama framed all interactions between black and white citizens at the polling places and left many blacks wondering if the promise of political equality was yet again more symbolic than real. Hammonds claimed that “one thing we have in our community is people telling other people about their bad experiences and that frightens a lot of people away. It discourages people from voting because they hear their uncle say what a hard time they [*sic*] had voting.”⁴⁹⁵ Mr. Shipman agreed that “[m]any black people who run into these problems at the polls just give up and don’t try to vote.”⁴⁹⁶ Shipman added that if there were a closer to equitable number of black poll officials the attitude toward black voters “would improve tremendously,” and that a black poll worker “can make the difference between whether a confused black voter gets to cast his or her ballot or not.”⁴⁹⁷

In addition to black citizens serving as poll officials at precincts “where blacks vote in substantial numbers,” ADC activists argued that “[i]t is equally important that

⁴⁹⁴ Case Files Vol. II, 7-10-84, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk’s Office.

⁴⁹⁵ Case Files Vol. II, 7-10-84, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk’s Office.

⁴⁹⁶ Case Files Vol. II, 7-10-84, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk’s Office.

⁴⁹⁷ Case Files Vol. II, 7-10-84, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk’s Office.

blacks be appointed to supervisory positions.”⁴⁹⁸ Jerome Gray and other ADC members conducted research and compiled numbers that showed “an even greater disproportion in the number of blacks who served as chief inspector, chief clerk and returning officer than exists with respect to polling officials overall.”⁴⁹⁹ In regards to supervisory positions at the polls in Alabama, local leaders replicated the familiar pattern of white people in a dominant role over black people, who white officials placed in a subservient position. Courtney Crenshaw explained that “[i]t doesn’t make any difference where we come from or who we are” blacks are always in a clerical role as poll workers and “[t]he inspector is always white.”⁵⁰⁰ James Smith concurred, arguing “[B]lacks need to be seen there [at polling places] in something other than a clerical role or a flunkie type role with the white boss who gives orders. I think some of the chief polling officials should be black.”⁵⁰¹ Four Alabama counties, Coosa, Crenshaw, Escambia, and Hale, had no black citizens in a supervisory role at the polls. Other counties where blacks served in less than five percent of the supervisory polling official positions included Autauga, Barbour, Bibb, Chambers, Chilton, Clarke, Clay, Coffee, Covington, Dallas, Fayette, Franklin, Geneva, Henry, Houston, Lauderdale, Lawrence, Limestone, Monroe, Pike, Randolph, Russell, St. Clair, Shelby, St. Clair, Walker, and Washington. These telling statistics spoke to the racial injustices in the local election processes of many Alabama counties. ADC activists presenting these staggering numbers even though they were unable to

⁴⁹⁸ Case Files Vol. II, 7-10-84, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk’s Office.

⁴⁹⁹ Case Files Vol. II, 7-10-84, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk’s Office.

⁵⁰⁰ Case Files Vol. II, 7-10-84, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk’s Office.

⁵⁰¹ Case Files Vol. II, 7-10-84, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk’s Office.

gather data on supervisory poll official positions for 31 out of 67 Alabama counties prior to the date for depositions and presenting evidence to Judge Thompson.⁵⁰²

The ADC plaintiffs were undivided in arguing that “the appointment of a fair share of poll officials would increase black voter turnout and even black voter registration.”⁵⁰³ In the litigation the plaintiffs linked the number of black poll officials with the prospects of electing black candidates and with making the “votes of all black citizens . . . more meaningful.”⁵⁰⁴ Thus, they argued “the present underrepresentation of blacks as poll officials, as a practical matter, dilutes black voting strength.”⁵⁰⁵ As always, ADC activists used historical evidence to support their claims. Since the end of Reconstruction in Alabama, white political leaders had constructed a complex and multi-layered edifice to thwart black political participation. The process of selecting poll officials had been viewed as a key piece of this edifice since at least the 1890s which is apparent in the Sayre Election Law.⁵⁰⁶ Post-Reconstruction white politicians crafted the Sayre Law of 1893 as a veiled form of indirect disfranchisement. According to one historian, white supremacist Democrats constructed the law with the following purpose: “to let the Negro vote, even urge him to vote—but to establish an intricate procedure and partisan election officials in order to place the votes of Negroes in the conservative

⁵⁰² Case Files Vol. II, 7-10-84, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk’s Office.

⁵⁰³ Case Files Vol. II, 7-10-84, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk’s Office.

⁵⁰⁴ Case Files Vol. II, 7-10-84, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk’s Office.

⁵⁰⁵ Case Files Vol. II, 7-10-84, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk’s Office.

⁵⁰⁶ Case Files Vol. II, 7-10-84, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk’s Office.

[Democratic Party] column.”⁵⁰⁷ This law and various similar methods had for nearly a century shaped Alabama politics and elections in such a way that profoundly disadvantaged black citizens. ADC plaintiffs in the *Harris v. Graddick* case used historical evidence, such as the Sayre Law, to demonstrate both the intentions and effects of white politicians’ efforts to construct institutionalized discrimination against black Alabamians since the end of Reconstruction. What ADC activists had long understood and demonstrated through their persistence was that it would take local activism combined with political officials and federal law to fully eradicate Alabama’s racially unjust political order.

Since the renewed version of Section 2 in the Voting Rights Act of 1982 specified that a violation exists when African Americans “have less opportunity than other members of the electorate to participate in the political process,” ADC members argued that the “substantial, systemic, and pervasive underrepresentation” of black poll workers was a problem that required an immediate remedy.⁵⁰⁸ Congress had made it clear that the revised Section 2 barred “practices which, while episodic and not involving permanent structural barriers, result in the denial of equal access to any phase of the electoral process for minority group members.”⁵⁰⁹ As defendants, the Governor, Attorney General, and the State Democratic Executive Committee attempted to claim they did not and could not control local decisions over the appointment of poll officials. But, the plaintiffs argued to Judge Thompson, the linchpin

⁵⁰⁷ Case Files Vol. II, 7-10-84, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk’s Office. David Ashley Bagwell, “The ‘Magical Process’: The Sayre Election Law of 1893,” *Alabama Review* (April, 1972) 83-104, 95.

⁵⁰⁸ Case Files Vol. II, 7-10-84, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk’s Office.

⁵⁰⁹ Case Files Vol. II, 7-10-84, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk’s Office.

of the federal voting rights violation is that Alabama's statutory scheme so abdicates to white-dominated political interests the practical say-so over who gets recommended and selected as poll officials that it perpetuates past de jure discrimination and results in continuing unfairness to blacks. The state, whether acting through its political subdivisions or not, must take ultimate responsibility for seeing that its election practices comply with federal statutory and constitutional requirements.⁵¹⁰

Following the depositions and the plaintiffs' presentation of evidence, the State

Democratic Executive Committee filed a memorandum with Judge Thompson declaring they had no objection to the injunctive relief that the plaintiffs were requesting.⁵¹¹

Governor Wallace and Attorney General Graddick continued to deny that they had any legal or political responsibility or authority to ensure that Alabama had a fair level of black citizens serving as polling place officials. Some member of the defendant party offhandedly suggested that Judge Thompson might be unfit to hear this case since he was a black citizen of Alabama, and all black citizens of the state had the potential to benefit from the outcome of this case. Judge Thompson wrote an opinion in which he denied the unsubstantiated and undocumented claim, and he offered extensive case law to support his refusal to recuse himself.⁵¹² The defendant's racist assumptions could easily be overlooked an impropriety or, perhaps, a legal maneuver or in the course of lengthy litigation, but it stands as a testament to one of the central themes of this dissertation: that race and racist assumptions are embedded in the political culture—and the entire social fabric—of Alabama, and that racism persisted into the 1980s and beyond, requiring the

⁵¹⁰ Case Files Vol. II, 7-10-84, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk's Office.

⁵¹¹ Case Files Vol. II, 7-11-84, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk's Office.

⁵¹² Case Files Vol. II, 8-2-84, "Opinion on Recusal," *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk's Office.

efforts of many local activists working in various areas and levels of Alabama's political system to begin the process of undoing the obstacles to black political participation.

Three months after Charlie Harris and Mose Batie filed the lawsuit, Judge Thompson delivered his first of four major opinions in the case. Judge Thompson cited several historical examples as well as federal court decisions that attested to longstanding "open and official racial discrimination" that black citizens of Alabama have been subjected to "from their cities, their counties and their state."⁵¹³ For many black Alabamians, this meant they had lived most "of their lives under state and local governments that treated them as inferior citizens" in a place where the "rule of law and social order was usually enforced by humiliation, intimidation, and even violence."⁵¹⁴ Based on the evidence presented by the ADC activists, Judge Thompson found that all African Americans in the state, especially elderly people who lived through the years of official and state-sanctioned segregation and discrimination, still felt afraid of and uninvited to participate in activities, such as voting, that had for a long time been for whites only and off-limits to blacks. Judge Thompson found that for black Alabamians in the 1980s, "the political process is still not open, is still not available to the same extent it is and has been available to white persons."⁵¹⁵ The underrepresentation of black citizens serving as poll officials, Judge Thompson argued, was compounding the problem of Alabama's discriminatory election practices. Specifically, he cited that the "elderly and uneducated black persons are most likely to need assistance from poll officials" and, therefore, having black poll officials at precincts where many African Americans vote

⁵¹³ *Harris v. Graddick*, 593 F. Supp. 128, 130 (M.D. Ala., 1984).

⁵¹⁴ *Harris v. Graddick*, 593 F. Supp. 128, 131 (M.D. Ala., 1984).

⁵¹⁵ *Harris v. Graddick*, 593 F. Supp. 128, 131 (M.D. Ala., 1984).

would be a symbol that those voters who need help are encouraged to participate in the political process.⁵¹⁶

The evidence compiled by Jerome Gray, ADC activists, and their attorneys demonstrated the significant impact that the presence of black poll officials would have on making the election process more open to Alabama blacks. Judge Thompson argued that “the open and substantial presence of black poll officials, according to the evidence, is a significant indication to many black persons that voting places are now open to all, that black persons not only have a legal right to come and vote, *they are welcome*.” Judge Thompson added that the “substantial evidence detailing recent unpleasant encounters between black voters and white poll officials” proved “that while the law may have changed, racial customs and practices have not, with the result that many of these persons do not venture to vote again.”⁵¹⁷ The ADC’s data showed that in more than half of Alabama’s counties, the percentage of black poll officials did not represent even one-half of the percentage of black citizens in the county population.⁵¹⁸ As Judge Thompson explained, the plaintiffs had provided abundant proof that the practices of selecting polling place officials in Alabama were in violation of Section 2 of the 1982 amended version of the Voting Rights Act of 1965. In his opinion, Judge Thompson pointed out that the amended Section 2 is violated simply “if a protected class has ‘less opportunity than other members of the electorate to participate in the political process.’”⁵¹⁹ Thompson set forth the following guidelines to take effect immediately for the upcoming 1984 elections:

⁵¹⁶ *Harris v. Graddick*, 593 F. Supp. 128, 131 (M.D. Ala., 1984).

⁵¹⁷ *Harris v. Graddick*, 593 F. Supp. 128, 131 (M.D. Ala., 1984).

⁵¹⁸ *Harris v. Graddick*, 593 F. Supp. 128, 131 (M.D. Ala., 1984).

⁵¹⁹ *Harris v. Graddick*, 593 F. Supp. 128, 132 (M.D. Ala., 1984).

- (1) Each county appointing authority falling within the defendant class . . . must comply with the following requirements in appointing poll officials:
 - A. The total number of black persons appointed as poll officials in each county must reasonably correspond to the percentage of black persons in the population of that county.
 - B. The number of black persons appointed as poll officials at each polling place in the county must reasonably correspond to the percentage of black registered voters assigned to that polling place; and reasonable effort must be made to assure that at least one black poll official is assigned to any polling place where black persons constitute at least 20% of the registered voters.
 - C. Appointments to particular offices at the polls – e.g., chief inspector, chief clerk, and returning officer – must be apportioned to black poll officials in a manner that reflects the percentage of black persons in the county.
- (2) Each county appointing authority falling within the defendant class must obtain the race of and keep a record of the race and name of all those nominated for poll officials and those appointed.
- (3) The State Democratic Executive Committee must be required to notify each county Democratic Executive Committee of the above requirements for the appointment of black poll officials.
- (4) The Governor and Attorney General of the State of Alabama must be required to coordinate the efforts of the county appointing authorities to meet the above requirements regarding the appointment of black poll officials and must take all steps necessary to assist the appointing authorities in meeting the requirements.
- (5) To the extent necessary to meet the above requirements for the appointment of black poll officials, county appointing authorities falling within the defendant class must be allowed to appoint poll officials from sources other than those authorized by law.⁵²⁰

All Alabama counties were subject to the above guidelines except those that had a black population of less than 5 percent or those where, in the most recent elections, black citizens had served as 95 percent or more of the poll officials.⁵²¹ This meant that 66 out of Alabama's 67 counties would initially be subject to the Court's guidelines. Judge Thompson ruled unequivocally that appointing more black citizens as poll officials immediately would serve as one necessary method for tearing down the institutionalized discrimination against blacks in Alabama's political process.

⁵²⁰ *Harris v. Graddick*, 593 F. Supp. 128, 134 (M.D. Ala., 1984).

⁵²¹ *Harris v. Graddick*, 593 F. Supp. 128, 134 (M.D. Ala., 1984).

In response to ADC's efforts and the opinion of Judge Thompson, the State Democratic Executive Committee began working closely with the ADC to ensure that black poll officials increased. Executive Director of the Alabama Democratic Party Albert LaPierre informed all county-level Democratic Party organizations of the ramifications of Judge Thompson's August 1 opinion, and explained "[i]f we Democrats are to retain control of who gets appointed, we have to make racially balanced nominations."⁵²² Further, LaPierre instructed the county organizations to contact the ADC or Jerome Gray "[i]f you or your beat committee members need help in finding blacks who are willing and able to serve as polling officials."⁵²³

Several county appointing authorities for poll officials filed either objections to Judge Thompson's findings or motions to intervene for the "purpose of seeking clarification and guidance" in implementing Judge Thompson's prescriptions.⁵²⁴ As always, practical political considerations shaped defendants' reactions to the Court's opinion. Many county authorities chose to either fight the court order by objecting to the request to appoint poll officials on a racially fair basis or to request clarification on exactly how they should go about achieving Judge Thompson's order.⁵²⁵ Through both responses, some county authorities exploited race as a political issue while leaving

⁵²² Case Files Vol. II, 8-7-84, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk's Office.

⁵²³ Case Files Vol. II, 8-7-84, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk's Office.

⁵²⁴ The county appointing authorities for poll officials in most Alabama counties consisted of the Probate Judge, the Circuit Clerk, and the Sheriff. Case Files Vol. II, 8-10-84 through 8-21-84, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk's Office.

⁵²⁵ Of course, some of the counties' motions and requests were made in earnest, but the racially polarized political climate in Alabama attests to the cynical motives of many local politicians who faced changes in the prevailing racial order. Also, there were examples like Macon County where Sheriff Lucius Amerson and other officials provided statistical data proving they had already achieved racial fairness in the administration of local elections. For an example of a motion requesting clarification see Montgomery County's Motion in Case Files Vol. II, 8-13-84, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk's Office.

themselves a political cover in which they could claim that the appointment of more black citizens as poll workers was not their doing but, instead, something imposed upon them by the federal court. Again, familiar themes in white Alabamians' memories of Reconstruction made the federal government a politically convenient culprit.

Pickens County, which was almost 42 percent black, was another Alabama county where whites still tightly controlled the administration of local elections. Pickens County ADC leader Maggie Bozeman was a long-time voting rights activist in her county. Bozeman was a teacher in her mid-50s who had lived in Pickens County, near the town of Aliceville, most of her life.⁵²⁶ Ms. Bozeman also served as president of the local NAACP. In 1979, an all-white jury convicted Bozeman of "illegal voting" in Pickens County Circuit Court for offering assistance to elderly black voters at the polls.⁵²⁷ A federal judge subsequently found Ms. Bozeman's conviction to be invalid "on the grounds that there was insufficient evidence to support the jury verdict."⁵²⁸ However, the Pickens County Registrar still denied Ms. Bozeman the right to be included on the roll of qualified voters. On appeal her conviction was overturned, and Bozeman had continued to aid voters who desired assistance at the polls.

In the most recent primary election in September 1984, white poll officials harassed Ms. Bozeman for offering assistance to some black voters at the precinct located in the National Guard Armory in Aliceville.⁵²⁹ The majority of registered voters at this precinct were black, yet the returning officer and other administrative polling official

⁵²⁶ Case Files Vol. II, 11-5-84, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk's Office.

⁵²⁷ Case Files Vol. II, 11-5-84, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk's Office.

⁵²⁸ Case Files Vol. II, 11-5-84, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk's Office.

⁵²⁹ Case Files Vol. II, 11-5-84, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk's Office.

positions were held by whites. Mr. Ted Ezell, the returning officer, and his wife served as poll workers at the Armory precinct. Mr. Ezell threatened Bozeman, telling her, “If you assist this woman [voter], the ballot will not be counted. Do you hear me, Maggie?”⁵³⁰ Mr. Ezell ordered Bozeman to leave the precinct and did not allow her to assist any additional voters, including those who specifically requested that Ms. Bozeman aid them. After Ms. Bozeman refused to leave the polling place, Mr. Ezell shouted at her and pointed his finger at her and said, “You will not assist anyone else. I mean for you to get out of here,” adding, “You are not supposed to be assisting anyone. You are a criminal.”⁵³¹ After his tirade, Mr. Ezell and his wife began reading off the numbers on the voters’ sign-in list that corresponded to the people Bozeman had assisted that day. Mr. and Mrs. Ezell exclaimed that those ballots “should be thrown out.”⁵³² After Mr. Ezell chased her out of the polling place, Maggie Bozeman called the Justice Department, and Ezell called the local police. When the police officer arrived, he closely watched Ms. Bozeman and instructed her not to cause any more “trouble.” Later that afternoon, a registered voter asked Ms. Bozeman for her assistance, but Mr. Ezell blocked Bozeman from entering the polling place. When the voter exited the precinct, he said that he requested Ms. Bozeman’s aid, but Mr. Ezell denied the request and “selected another person to help” him.⁵³³ In this instance in Pickens County, it is clear that a fair political system depends on the administration of local elections in a way that welcomes all citizens’ participation and is racially balanced. As Maggie Bozeman testified,

⁵³⁰ Case Files Vol. II, 11-5-84, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk’s Office.

⁵³¹ Case Files Vol. II, 11-5-84, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk’s Office.

⁵³² Case Files Vol. II, 11-5-84, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk’s Office.

⁵³³ Case Files Vol. II, 11-5-84, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk’s Office.

I believe the actions of Mr. Ezell and the other white polling officials intimidated black voters, interfered with their rights to be assisted by a person of their choice and prevented some of them from casting their ballots for the candidates of their choice. I believe that the presence of additional black polling officials, especially black returning officers, would help give black voters more confidence that they could be assisted by someone of their choosing and could vote for the candidates they want.

In 1984, ADC activists also advocated for political equality at the local level through lobbying for a voter registration bill in the Alabama Legislature. In May, the ADC and voting rights supporters were successful in securing the passage of Alabama Act Number 84-389. The bill was sponsored by State Representative Fred Horn in the House and by John Teague in the Senate. State Representative Horn was a black Democrat from the Birmingham area who was first elected to the House in 1978. State Senator Teague was a white Democrat who had received ADC support in his election campaigns. This act repealed and replaced bills from 1980 and 1981 that white supremacist legislators from Black Belt counties sponsored, referred to as “re-identification bills.” These so-called re-identification bills were designed to purge voters from the rolls in counties with significant black populations, and make it extraordinarily difficult for qualified voters who had been removed to re-register.⁵³⁴ These bills did not apply to the entire state; instead, they were specifically sponsored to target counties that had large numbers of black voters.

Act 84-389 acknowledged that race was a political reality in Alabama, and empowered local activists, such as ADC members, to take an active part in the local voter registration process. Act 84-389 required the board of registrars for each county to keep the list of registered voters “by precinct and by race.”⁵³⁵ Also all county boards of

⁵³⁴ Jerome A. Gray, interview by author, 17 March 2005.

⁵³⁵ Alabama Act No. 84-389. *Acts of Alabama 1984, Vol. II*, 898.

registrars were now required to appoint at least one deputy registrar for each precinct.

Through the act, deputy registrars were granted authority “to reidentify and register any elector at any time, up to ten days prior to an election.”⁵³⁶ ADC state field director

Jerome Gray personally helped draft this bill and lobbied for its passage. Gray remembers what a major shift this represented in the local political process of Alabama: it led to more black people taking part in the process of registering fellow voters, thus signaling to black citizens that they were officially part of their state’s political system and that they were encouraged to have a voice in shaping state and local politics.⁵³⁷ Gray also recalls that prior to the enactment of this law, county boards of registrars were not required to appoint any deputy registrars, and this allowed many counties to make voter registration largely inaccessible to some of its residents. ADC activists often had to appeal to the governor and state auditor to put pressure on local county officials to appoint deputy registrars.⁵³⁸

The voter registration act in 1984 was not something that made headlines in Alabama’s newspapers. Even though the bill was largely unnoticed in the news, ADC Chairman Joe Reed had to go to Governor Wallace’s office to request his signature on the act. Reed recalls that Governor Wallace was initially reluctant to commit his support for the bill.⁵³⁹ In that meeting Reed told Wallace, “Governor, the only reason you would not sign this bill is if you don’t want black folks to have the right to vote.” Wallace replied to Reed, “Joe, what would happen if I allowed this bill to become law without my signature?” To that Reed argued, “Governor, you don’t want that. Let history reflect that

⁵³⁶ Alabama Act No. 84-389. *Acts of Alabama 1984, Vol. II*, 899.

⁵³⁷ Jerome A. Gray, telephone interview, 30 October 2011.

⁵³⁸ Jerome A. Gray, telephone interview, 30 October 2011.

⁵³⁹ Dr. Joe L. Reed, interview by author, 8 February 2012.

you signed a bill that opened the political process in Alabama to black voters.”⁵⁴⁰ After the meeting with Chairman Reed, Governor Wallace signed the voter registration act into law.

Following Judge Thompson’s initial opinion and injunction in August of 1984 that county appointing authorities select more black poll officials, Jefferson County became the focus of attention when its officials filed a request not to be included in the Court’s injunction.⁵⁴¹ Jefferson County was home to the 1963 desegregation campaign led by the Rev. Fred Shuttlesworth and Dr. Martin Luther King, Jr. Birmingham, Jefferson County’s major city, was the focus of national attention in 1963 as Commissioner of Public Safety Bull Connor directed law enforcement officials to ruthlessly attack participants of the non-violent direct action campaign who were attempting to break down the color line in the city.

White local officials from Jefferson County presented testimony revealing that not much had changed in racial attitudes since the civil rights campaigns in the 1960s. On October 30, 1984 the appointing authority of Jefferson County filed a motion to request exemption from Judge Thompson’s orders.⁵⁴² County officials claimed there was no proof of discrimination in the administration of their elections. In hearing testimony, it became clear to Judge Thompson that Jefferson County officials’ motive was “to avoid the appointment of black poll officials with supervisory authority at polling places where the majority of the voters are white.”⁵⁴³ County officials proposed that black poll

⁵⁴⁰ Dr. Joe L. Reed, interview by author, 8 February 2012.

⁵⁴¹ Case Files Vol. II, 8-13-84, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk’s Office.

⁵⁴² Case Files Vol. III, 10-30-84, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk’s Office.

⁵⁴³ *Harris v. Graddick II*, 601 F. Supp. 70, 73 (M.D. Ala., 1984). Case Files Vol. III, 11-13-84, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk’s Office.

officials be appointed “according to the percentage they represent in each legislative district, rather than according to county-wide population” as Judge Thompson had originally ordered.⁵⁴⁴ Jefferson County Probate Judge George Reynolds’s testimony revealed the racist intentions of the proposed plan:

- A. Where you got 75 percent of the voters are white and you are going to throw them in a black chief inspector, you are all asking for something, or somebody is that don’t make sense. And I can’t get re-elected with that kind of program, I will just tell you like it is.
- Q. I see. They would vote against you when you ran for office next time?
- A. You damn right. Man, these folks campaign fiercely against your party. People that are primarily working at the polls are the most biased, prejudiced, politically affiliated people in the world and they are the ones that go out and make three or four thousand phone calls every election.⁵⁴⁵

Probate Judge Reynolds later added that “even if [the white chief inspector and assistant inspector] both died tomorrow, if that’s a predominantly white box . . . then, man, the people in that area ain’t going to stand for me appointing some black to run the voting place when the blacks are the minority at that box.”⁵⁴⁶ Reynolds explained that “we got no problem” with overwhelmingly black legislative districts having majority black polling place officials. The “problem” was when blacks were allowed to serve as poll workers and especially in supervisory positions in majority white voting precincts.

Based on the testimony of Probate Judge Reynolds and other Jefferson County officials, Judge Thompson delivered a second opinion in December of 1984 that specifically addressed Jefferson County’s desires. In his December opinion, Judge Thompson asserted that Jefferson County officials were requesting “by its motion to have this court validate its intentionally discriminatory practice.”⁵⁴⁷ The Jefferson County

⁵⁴⁴ *Harris v. Graddick II*, 601 F. Supp. 70, 73 (M.D. Ala., 1984).

⁵⁴⁵ *Harris v. Graddick II*, 601 F. Supp. 70, 72-73 (M.D. Ala., 1984).

⁵⁴⁶ *Harris v. Graddick II*, 601 F. Supp. 70, 73 (M.D. Ala., 1984).

⁵⁴⁷ *Harris v. Graddick II*, 601 F. Supp. 70, 73 (M.D. Ala., 1984).

appointing authority's past actions and proposed plan were both glaring violations of the revised Section 2 of the Voting Rights Act. The "county appointing authority has denied and seeks to continue to deny persons an opportunity to serve as poll officials simply because they happen to be black."⁵⁴⁸ These actions represented "a vestige of Alabama's insidious past in its most resistant strain" and compelled Judge Thompson not only to deny Jefferson County's motion but to add an additional injunction against the officials from perpetuating intentional discrimination.⁵⁴⁹

The new version of Bull Connor's politics was alive in Birmingham in the 1980s. Judge Thompson concluded his second opinion in the *Harris* litigation with an acknowledgment of how little had changed in the two decades since the civil rights campaigns:

In a democratic society, public officials occupy a high trust. They undertake to uphold society's moral standard, not bow to its basest biases. They take an oath to enforce the law of the land, and the law of the land is clear: intentional discrimination on the basis of race in the appointment of poll officials is illegal. That public officials today would practice open and intentional discrimination of the kind now evidenced before this court is lawless and inexcusable. That these officials would try to excuse the practice under cover of the purported intolerance of their own constituents is indefensible and repugnant.⁵⁵⁰

Following Judge Thompson's second opinion, Attorney General Graddick took the lead in opposing the orders of the Court. With his ambitions set on the governor's race in 1986, Graddick emerged as the new "George Wallace" of Alabama politics.⁵⁵¹

⁵⁴⁸ *Harris v. Graddick II*, 601 F. Supp. 70, 73 (M.D. Ala., 1984).

⁵⁴⁹ *Harris v. Graddick II*, 601 F. Supp. 70, 73 (M.D. Ala., 1984).

⁵⁵⁰ *Harris v. Graddick II*, 601 F. Supp. 70, 74 (M.D. Ala., 1984).

⁵⁵¹ Allen Tullos, *Alabama Getaway: The Political Imaginary and the Heart of Dixie* (Athens: University of Georgia Press, 2011), 122. Tullos cites writer Randall Williams who writes that "Graddick is the new version of the Old Wallace . . . Many who remember only the extremists of the past find it hard to call Graddick a racist because he actually does nothing overtly against blacks; his popularity with racists is due to the fact that he largely ignores the quarter of the state's citizens who are black, and that he is a demagogue for the Eighties, a subtle master of euphemisms and code phrases that communicate racial meaning without the blatantly nasty words of the previous generation."

Graddick is famous for his tough-on-crime approach, proclaiming that he would proudly carry out justice for convicted murderers by “fry[ing] *them* until their eyeballs pop out and you can smell their flesh burn[ing]!”⁵⁵² Here, race was subtly employed by Graddick since the “*them*” Graddick refers to was perceived as black people in the minds of many white Alabamians. The Attorney General fought Judge Thompson’s orders in public opinion and legal briefs by employing emotionally charged code words such as “racial quotas.”

Attorney General Graddick denied any responsibility in addressing the underrepresentation of black citizens as poll officials on several grounds: that Section 2 as amended was “unconstitutional”; that Section 2 “does not apply to the appointment of poll officials”; that “no legal right” existed for poll officials to be appointed by “race in numbers equal to their proportion in the population”; and that Alabama’s statutes pertaining to poll officials in no way “operate[d] to perpetuate past discrimination.”⁵⁵³ Graddick was also speaking for Governor Wallace in his legal briefs, and both Graddick and Wallace continued to stall and stonewall any court orders requesting them to increase the number of black poll officials.⁵⁵⁴ By May of 1985 all defendants, except Attorney General Graddick and Governor Wallace, had reached a settlement agreement with the plaintiffs in the *Harris* case.⁵⁵⁵

The consent decree settlement stated that all parties in the case would follow, until December 31, 1988, the prescriptions largely as described in Judge Thompson’s first

⁵⁵² Tullos, *Alabama Getaway*, 122.

⁵⁵³ Case Files Vol. IV, 2-1-85, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk’s Office.

⁵⁵⁴ Case Files Vols. IV, V, and VI, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk’s Office.

⁵⁵⁵ Case Files Vols. IV, V, and VI, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk’s Office.

opinion of August 1, 1984. It was thus agreed that black Alabamians would be appointed as poll officials and supervisory positions at the polls in numbers that resembled the number of black voters in each county.⁵⁵⁶ Attorney General Graddick and Governor Wallace persisted in denying that they had any “part in the process of appointing poll officials.”⁵⁵⁷ Further, they argued that the proposed settlement “requires state officials (the circuit clerks) to appoint blacks as poll officials on the basis of an arbitrary and capricious quota which violates Section 2 of the Voting Rights Act” and also requires appointing authorities “to ignore minority groups other than blacks.”⁵⁵⁸ Wallace and Graddick also claimed that the primary reason that the plaintiffs had filed suit against the State of Alabama was not because the state had failed in its responsibilities, but so that the plaintiffs could “avail themselves of the state’s deep pocket upon an award of attorneys fees rather than facing the difficult task of collection from various and independent counties.”⁵⁵⁹ In July, 1985 Judge Thompson approved the proposed consent decree after minor changes. In his third opinion in the *Harris* case, Thompson explained that the “race-conscious” solution to the appointment of poll officials was necessary to combat the remnants of official racism that Alabama political leaders had embedded in the state’s political structure following Reconstruction.⁵⁶⁰

Alabama citizens had won a major victory furthering political equality on the local level. The persistence of racially discriminatory practices in regards to voting and

⁵⁵⁶ Case Files Vol. VI, 5-2-85, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk’s Office.

⁵⁵⁷ Case Files Vol. VI, 5-3-85, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk’s Office.

⁵⁵⁸ Case Files Vol. VI, 5-3-85, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk’s Office.

⁵⁵⁹ Case Files Vol. VI, 6-14-85, *Harris v. Graddick* (Civil Action No. 84-T-0595-N) in M.D. Ala. Clerk’s Office.

⁵⁶⁰ *Harris v. Graddick III*, 615 F. Supp. 239, 243 (M.D. Ala., 1985).

the administration of elections had been possible by allowing local authorities, usually white citizens, to continue the old system of assuming that whites should always hold power over blacks. The result of the efforts of ADC activists were that black poll officials increased from less than 600 to more than 6,000 by the next election cycle. In addition ADC worked to secure the appointment of 40 black Alabamians as registrars or deputy registrars in their respective counties. The new black registrars and deputy registrars constituted 24 percent of the registrars in the state, making Alabama the state with the highest percentage of African Americans serving as registrars in the United States.⁵⁶¹

In the 1986 Alabama elections, Charlie Graddick was defeated by Lieutenant Governor Bill Baxley in a close and controversial Democratic run-off contest. The contentious run-off result exposed deep divisions within the state Democratic Party. The fragmentation was largely the result of increased black participation in Democratic politics. One faction, which largely supported Graddick for governor, represented the “Old South” ways of Alabama politics and wanted blacks to remain subordinate.⁵⁶² The coalition of whites and blacks who voted for Baxley represented the other faction of New South, progressive Democrats who had embraced the civil rights movement and welcomed black participation in politics. The Democratic Party split in the governor’s race led to the election of the first Republican governor of Alabama since Reconstruction: former Cullman County Probate Judge Guy Hunt. Also in the 1986 elections with the support of the ADC, Don Siegelman won the Attorney General’s race. Siegelman was a

⁵⁶¹ Jerome A. Gray, telephone interview, 30 October 2011.

⁵⁶² Graddick is now a Republican and serves as the presiding Circuit Court Judge for Mobile County. He ran unsuccessfully for Alabama Supreme Court Chief Justice in the 2012 Republican Primary Election.

New South Democrat who received his most enthusiastic support from blacks as well as working class and middle class whites.

Attorney General Siegelman viewed the legal issues involved in the voting rights litigation from a drastically different perspective than his predecessor. Siegelman offered his assistance to the ADC and voting rights advocates in the continued monitoring of the poll official selection process. Siegelman also offered the help of the Alabama Attorney General's office in another legal battle, which is discussed in the next chapter.⁵⁶³ Filed in late 1985, the case *Dillard v. Crenshaw County* would begin a struggle for black Alabamians who desired to rid local election systems of discriminatory schemes that continued in the 1980s to deny them opportunities to elect candidates of their choice.

⁵⁶³ Jerome A. Gray, telephone interview, 30 October 2011.

Chapter 6: Winning Political Equality on the Grassroots Level and the Emergence of the Second Reconstruction in Local Politics, 1985-1990

“[I]n the 1960's the State of Alabama enacted numbered place laws with the specific intent of making local at-large systems more effective and efficient tools for keeping black voters from electing black candidates . . . the at-large systems, as modified in the 1960's and used today . . . are still having their intended racist impact.”

-U.S. District Judge Myron H. Thompson⁵⁶⁴

On November 12, 1985 ADC members John Dillard and Havard Richburg filed a lawsuit against Crenshaw County, Alabama under the Fourteenth and Fifteenth Amendments and Section 2 of the Voting Rights Act.⁵⁶⁵ This case in the U.S. District Court for the Middle District of Alabama became transformative for black Alabamians in realizing equal opportunities to run for political office and elect candidates of their choice on the local level. The local activists and lawyers who filed the complaint in *Dillard v. Crenshaw County* had begun a process of finally tearing down some of the most deeply rooted forms of institutionalized discrimination against black citizens within the political structure of Alabama. In the process, these Alabamians would define for the nation what the ideals of equal voting rights and equal access to politics for all Americans meant in practical terms. In this case, citizens of Crenshaw County, Alabama, which was eventually joined by eight other counties, comprised class action law suits to challenge the at-large elections of county commissioners. In *Dillard v. Crenshaw County* the plaintiffs pursued, first, a claim that the at-large election systems consisted of intentional discrimination as defined under Section 2, while asserting that the discriminatory effects

⁵⁶⁴ *Dillard v. Crenshaw County*, 640 F. Supp. 1347 (M.D. Ala. 1986).

⁵⁶⁵ Docket Sheet entry 12 November 1985, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk's Office, Montgomery, AL. Case Files Vol. I, No. 1, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk's Office, Montgomery, AL.

were plainly obvious in that no African Americans had been elected county commissioners in any of these counties. Since the passage of the Voting Rights Act in 1965, more than twenty black citizens had run for county commission or other local offices in the counties under consideration in the *Dillard* litigation, and not one of those candidates had won an election.⁵⁶⁶ The plaintiffs’ discriminatory intent claim hinged on historical evidence that in earlier decades the State of Alabama Legislature had methodically constructed and modified the laws governing elections for county commissions and other local political offices in reaction to black citizens’ attempts to exercise political rights and to federal laws and federal court case decisions that would have the effect of furthering political equality for African Americans.

Five commissioners who were elected by an at-large vote of the citizens of the county governed Crenshaw County. Candidates for commissioner all ran for the office in specific numbered places that require a majority vote with a runoff election if necessary. The runoff election ensures that the winners must receive a majority of all voters in the county. The Alabama Legislature had in 1971 modified this system to be set up with those stated requirements. Although African Americans comprised more than 26 percent of Crenshaw County’s population, there had never been a black citizen elected to the county commission. This lack of black representation, the plaintiffs argued, had prevented African Americans from “effectively participating in the election process” and had the effect of the commission’s “continued policy of being less responsive to the needs and rights of black citizens.” The case was assigned to Judge Myron Thompson, and the plaintiffs requested the court to intervene in ordering a new election system for

⁵⁶⁶ Case Files Vol. III, No. 73, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk’s Office, Montgomery, AL.

the Crenshaw County Commission that would “provide equal access to the political process” and prevent the dilution of black citizens’ votes.⁵⁶⁷ Alton L. Turner, attorney for the Crenshaw County defendants, responded by denying all allegations put forward by the plaintiffs, and thereby set the stage for a lengthy legal battle that Judge Thompson would have to sort through.

The *Dillard* case was critical to voting rights activists in Alabama, as it put the entire state’s record of subtle and institutionalized forms of discrimination on trial. On December 11, several black citizens from seven other counties joined John Dillard and Havard Richburg in claiming that their at-large county commission systems were similarly discriminatory and violated their political rights under the Voting Rights Act. Crenshaw County citizens were now joined by other black Alabamians from Etowah, Lawrence, Coffee, Calhoun, Escambia, Talladega, and Pickens counties. Attorneys Larry Menefee, James Blacksher, and others for the plaintiffs argued that their clients were prepared to show that there was a history of inequity in the state’s political process that stretched back at least to the end of Reconstruction in Alabama in 1875. Since that period, white state political leaders had crafted and manipulated laws governing election systems at various critical points in Alabama’s history “whenever there was any perceived possibility of black citizens electing candidates of their choice, or having any significant influence on the election of candidates of their choice to the county governing bodies.”⁵⁶⁸ The evidence of such laws that plaintiffs presented pointed to many years of race-based governing in Alabama.

⁵⁶⁷ Case Files Vol. I, No. 1, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk’s Office, Montgomery, AL.

⁵⁶⁸ Case Files Vol. I, No. 11, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk’s Office, Montgomery, AL.

At the time of the filing of the original complaint in the *Dillard* case in November of 1985 and when seven other counties were added to the lawsuit a few weeks later, it appeared that Lee County would make changes through the force of local activism rather than at the behest of a federal judge. Due Lee County legislators stalling the process, by February 1986 attorneys for the plaintiffs felt compelled to file a motion in February 1986 requesting that Judge Thompson add Lee County to the lawsuit. In August and September of 1985, members of the Lee County ADC had appeared before the county commission to request a change from at-large to district elections in accordance with the spirit of the Voting Rights Act. The Lee County Commission appointed a bi-racial committee to consider the possibility and process of making such a change to the way citizens of the county choose their commissioners. By a vote of 4 to 1, the Lee County Commission approved the recommendation of the bi-racial committee to change to single-member districts. However, in the opening weeks of 1986 and during the 1986 Alabama legislative session, Lee County legislators appeared to be stalling on presenting a bill changing the commission to single-member districts. Instead, they had disregarded the county commission's recommendation and scheduled public hearings to get additional input as to whether they should present a bill to change the county commission's election system.⁵⁶⁹ The day after the plaintiffs' motion to add Lee County to the *Dillard* litigation, Judge Thompson issued an order granting that motion.⁵⁷⁰ Following the addition of Lee County, the nine county commission systems that were challenged in the *Dillard* case began to attempt to devise a single-member district

⁵⁶⁹ Case Files Vol. II, No. 52, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk's Office, Montgomery, AL.

⁵⁷⁰ Case Files Vol. II, No. 54, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk's Office, Montgomery, AL.

election system, or to attempt to circumvent federal intervention of both the judiciary and the Justice Department, or to propose a system that appeared to comply with Section 2 standards, while maintaining some vestiges of the at-large system that had dilutive effects on black citizens' political influence.

With nine county commissions now challenged, the legal battle had begun to take shape, and there was a great deal at stake. John Dillard and the other citizens who filed the suit argued that the 1982 extension of the Voting Rights Act was a clear mandate from Congress to end “continuing voting discrimination, not step by step, but comprehensively and finally.”⁵⁷¹ The history of actions taken by Alabama’s state Legislature and other political leaders since the 1870s, the plaintiffs claimed, would show that the “racially motivated pattern and practice” of state political leaders has had the effect of “infect[ing] the election systems of all county commissions in Alabama.”⁵⁷² Therefore, the plaintiffs were pursuing a claim that the defendant counties were in violation of Section 2 of the Voting Rights Act by maintaining systems that had been constructed with “a racially discriminatory purpose.” The plaintiffs pursued this claim based on purpose because by showing a pattern of actions by the state Legislature all counties could be examined in the same law suit, since all counties fell under the jurisdiction and decisions of Alabama’s legislative body. Thus, according to the citizens suing their counties, the *Dillard* case would serve as a precedent that could potentially

⁵⁷¹ Report of the Committee on the Judiciary, United States Senate on S. 992, May 25, 1982 quoted in Case Files Vol. II, No. 48, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk’s Office, Montgomery, AL.

⁵⁷² In all other Alabama counties not part of the *Dillard* case, changes had already been made or changes were in the process of being made to commission election systems, and in every county those changes had come about by force of federal laws or legal challenges in federal courts. Report of the Committee on the Judiciary, United States Senate on S. 992, May 25, 1982 quoted in Case Files Vol. 2, No. 48, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk’s Office, Montgomery, AL.

establish “a statewide violation of Section 2 of the Voting Rights Act” rather than having to examine the results of the commission systems in each county individually.⁵⁷³ If Judge Thompson found the plaintiffs’ argument of a state-wide historical pattern to have merit it could serve as a precedent upon which other local government election systems could be legally challenged in a comprehensive, state-wide manner rather than challenging each local governing system one-by-one for municipalities, school boards, and other community-level authority structures.

The historical evidence presented by the plaintiffs stretched all the way back to the “Redemption” period, as white supremacists had called it, meaning the years during the 1870s and 1880s in the former Confederate states when the Ku Klux Klan and white Democratic Party leaders wrested political control in their states from the Republican Party and used violence to intimidate African Americans and Republicans from voting in elections.⁵⁷⁴ During the 1870s and 1880s, the Alabama Legislature authorized the governor to appoint commissioners in several Black Belt counties where black citizens were a majority or significant proportion of the population. In other words, white legislators, fearing the election of any blacks to political office, changed the law so that elections for county commission positions were eliminated altogether during those years and gave the power to select those positions to the white state governors. Alabama’s

⁵⁷³ Case Files Vol. II, No. 48, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk’s Office, Montgomery, AL.

⁵⁷⁴ Dr. Peyton McCrary, who at the time was professor of history at the University of South Alabama, served as the expert historian for the plaintiffs in the case. McCrary testified and prepared reports with historical evidence of the racially discriminatory policies that defined Alabama’s election laws.

gubernatorial appointment system applied to Montgomery, Dallas, Wilcox, Autauga, Macon, Barbour, Butler, Lowndes, and Chilton counties.⁵⁷⁵

Many counties that did elect their county commissioners on a district basis began to shift back to at-large systems during the period of the Populist movement in Alabama during the 1890s. Democrats feared that if Populists joined with blacks through a rational choice to privilege class interests over racial issues they could win some elections at the district level and threaten the control of white supremacy and the Democratic Party over the political structures of the state. A potential alliance between poor whites and blacks was taken as such a serious threat because until Alabama's 1901 Constitutional Convention, which met with the stated purpose of taking away black Alabamians' voting and citizenship rights, there were still a substantial number of black voters registered in the state.⁵⁷⁶

Once the new Alabama Constitution of 1901 was in place, it had effectively disfranchised a large percentage of Alabama's black and poor white citizens, which gave the Legislature and many local county leaders the confidence to allow county commission positions to be elected by district-level elections and thereby throwing out the at-large system for selecting members of the county commissions.⁵⁷⁷ The 1901 Alabama Constitution was so effective in its disfranchising schemes that only about 4,000 of more than 180,000 eligible black voters remained on the official register of

⁵⁷⁵ Testimony of Dr. Peyton McCrary in Transcript of Testimony for Hearing on March 5, 1986 found in Supplemental Files: EXHIBITS 2-4-88, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk's Office, Montgomery, AL, 37-38.

⁵⁷⁶ Testimony of Dr. Peyton McCrary in Transcript of Testimony for Hearing on March 5, 1986 found in Supplemental Files: EXHIBITS 2-4-88, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk's Office, Montgomery, AL, 39-42.

⁵⁷⁷ Extensive tables showing the dates of adopting single-member districts and shifting to at-large systems and as in some counties back to single-member districts again were assembled and entered as evidence by the plaintiffs. Case Files Vol. III, No. 73, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk's Office, Montgomery, AL.

voters.⁵⁷⁸ Also after the 1901 Constitution was firmly in place, several Alabama counties with significant black populations adopted systems in which candidates ran for county commission seats in single-member districts in the Democratic Party primary elections that allowed only whites to vote. Nine out of nineteen counties that adopted single-member districts after 1901 had black majorities, so politicians must have felt certain that disfranchisement of blacks was sufficiently secure. Also, in twelve additional counties candidates ran in single member districts in the primary elections, but in general elections the same county commission seats were elected on an at-large basis. White politicians set up the “dual system” of electing county commissioners in twelve Alabama counties in an effort to dilute the impact of the very few black voters who had an opportunity to cast a ballot in general elections.⁵⁷⁹ In presenting evidence of the “dual system,” the plaintiffs had clearly demonstrated discriminatory intent, while also illustrating the heart of the injustice that many black citizens faced at the present time: that white political leaders conceived and constructed the at-large elections with the purpose of minimizing black Alabamians’ impact and influence on political affairs, and that the same at-large systems continued to have the effect of muting African Americans’ voices in the political process during the 1980s.

Evidence the plaintiffs presented established a pattern of white political leaders changing the rules governing how elections were conducted at critical junctures when threats to the white-supremacist power structure—such as black citizens having increased opportunities to vote and influence politics—arose or were effected either by the popular

⁵⁷⁸ *Dillard v. Crenshaw County*, 640 F. Supp. 1347, 1358 (M.D. Ala. 1986).

⁵⁷⁹ Case Files Vol. III, No. 73, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk’s Office, Montgomery, AL.

activism of Alabamians or by an outside force, such as the federal government. The first major challenge since Reconstruction to the white-supremacist political structure in Alabama came with the U.S. Supreme Court's ruling in *Smith v. Allwright* (1944), which declared that only allowing white people to vote in the Democratic Primary was unconstitutional as it specifically violated the Fourteenth and Fifteenth Amendments. This decision in many ways signaled the emergence of a Second Reconstruction in which federal authorities would once again scrutinize the former Confederate states' laws and intervene on behalf of equal citizenship rights for all Americans. Following the *Smith v. Allwright* decision, more than twenty Alabama counties that did not have at-large elections for county commission positions restructured and adopted at-large systems.⁵⁸⁰ Also, it was well documented by political scientist V. O. Key and others that between 1946 and 1948 many Alabama legislators began to advocate a state constitutional amendment, which became known as the Boswell Amendment. Approved by the Alabama Legislature in 1945 and ratified by the state's voters in 1946, white supremacist politicians crafted this law in response to the *Smith v. Allwright* decision that illegalized the whites-only Democratic Party primary elections in Alabama. The law required applicants for voter registration to adequately—in the opinion of a white registrar—interpret sections of the United States Constitution. Supporters of the Boswell Amendment made it clear that they with the expressed purpose of obstructing African Americans from registering to vote.⁵⁸¹ In the World War II era and afterward, black

⁵⁸⁰ Case Files Vol. III, No. 73, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk's Office, Montgomery, AL.

⁵⁸¹ The Boswell Amendment was ruled unconstitutional by the U.S. Supreme Court in 1949 (*Davis v. Schnell*). See V. O. Key, *Southern Politics in State and Nation* and Testimony of Dr. Peyton McCrary in Transcript of Testimony for Hearing on March 5, 1986 found in Supplemental Files: EXHIBITS 2-4-88, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk's Office, Montgomery, AL, 50-52.

southerners could increasingly count on the federal courts to rule racially discriminatory laws unconstitutional. The *Smith v. Allwright* decision signaled this trend, and, likewise, *Davis v. Schnell* outlawed the Boswell Amendment in 1949. Again, a trend was established by evidence the plaintiffs presented that demonstrated a pattern of white political leaders changing the rules governing how elections were conducted at critical junctures when threats to the white-supremacist power structure—such as black citizens having increased opportunities to vote and influence politics—arose or were effected either by the popular activism of Alabamians or by an outside force, such as the federal government.

The centerpiece of the plaintiffs’ historical evidence of the discriminatory intent of Alabama state political leaders was their argument that in the two decades following *Smith v. Allwright*, state legislative leaders and the governor enacted laws that were explicitly aimed at limiting the influence of any black people who did manage to register and cast a vote in local elections. In addition, the Civil Rights Acts of 1957, 1964, and 1965 drove state political leaders to craft new schemes for disfranchising black Alabamians. The first such law was established through a bill that White Citizens Council founder and Macon County Representative Sam Englehardt sponsored. State Representative Englehardt was a proud segregationist and later became well known for the Tuskegee gerrymandered district that he drew with twenty-eight sides to it in an attempt to “fence out” virtually all black voters. ADC activist Dr. C. G. Gomillion legally challenged Englehardt’s gerrymandered district, and it was consequently struck down by the U.S. Supreme Court in the 1960 decision, *Gomillion v. Lightfoot*.⁵⁸²

⁵⁸² Case Files Vol. III, No. 73, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk’s Office, Montgomery, AL.

Englehardt's bill outlawed "single-shot voting," which was a practice that would allow a minority group of voters to vote as a group in an at-large election for one candidate of their choice rather than voting for the same number of candidates as there were slots to fill. "Single-shot" voting has been described as follows:

Consider [a] town of 600 whites and 400 blacks with an at-large election to choose four council members. Each voter is able to cast four votes. Suppose there are eight white candidates, with the votes of the whites split among them approximately equally, and one black candidate with all the blacks voting for him and no one else. The result is that each white candidate received about 300 votes and the black candidate receives 400 votes. The black has probably won a seat. This technique is called single-shot voting.⁵⁸³

As described, the practice of single-shot voting gave a minority group that voted cohesively and strategically a greater chance to elect a candidate of their choice in an at-large system in which the top vote-getters fill the available number of positions. As reported in the *Mobile Register*, State Senator Miller Bonner of Wilcox County, who was Englehardt's father-in-law and a leader of the Dixiecrat Party in Alabama, said that the law was designed to assuage the fears of white people "that the colored voters might be able to elect one of their own race" through the "single-shot" strategy.⁵⁸⁴ Between 1951 and 1957, the Alabama Legislature passed three "anti-single-shot laws" for the primary elections of both municipal officers and county commissioners for the entire state.⁵⁸⁵

To further complicate the possibility that black citizens might elect a candidate of their choice to local offices, in 1961 the Alabama Legislature passed laws that required

⁵⁸³ *Dillard v. Crenshaw County*, 640 F. Supp. 1347, 1356 (M.D. Ala. 1986).

⁵⁸⁴ Quote from the *Mobile Register*, August 29, 1951, cited in Case Files Vol. III, No. 73, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk's Office, Montgomery, AL. Testimony of Dr. Peyton McCrary in Transcript of Testimony for Hearing on March 5, 1986 found in Supplemental Files: EXHIBITS 2-4-88, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk's Office, Montgomery, AL, 62.

⁵⁸⁵ These laws were Alabama Acts No. 606, 1951; No. 44, 1956; and No. 478, 1957. Case Files Vol. III, No. 73, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk's Office, Montgomery, AL.

candidates to run in “numbered places” for any elections that selected two or more office-holders to a particular governing board, such as a county commission.⁵⁸⁶ One of these laws actually repealed the “anti-single-shot laws” that were rendered irrelevant by the new numbered place laws “because,” the plaintiffs pointed out, “numbered posts accomplished the same result, namely, requiring candidates favored by blacks to end up in head-to-head contests with candidates favored by whites.”⁵⁸⁷ This law was sponsored by State Senator Archer of Madison County in which the city of Huntsville is located. At the time of the *Dillard v. Crenshaw* case, the numbered place law was still the rule for all Alabama elections. The plaintiffs buttressed their claim of discriminatory intent under Section 2 with a “smoking gun” piece of evidence found in the record of minutes of the State Democratic Executive Committee meeting in January of 1962. Montgomery committee member Frank Mizell said,

[W]e [white people] have got a situation in Alabama that we are becoming more painfully aware of every passing day, that we have increasing Federal pressure too, and a concerted desire and a campaign to register negroes in masse, regardless of the fact that many of them ordinarily cannot qualify because of their criminal records, or criminal attitudes, because of the fact that they are illiterate and cannot understand or pass literacy tests, but those qualifications are things that don’t worry the people from Washington, the army of people who are here in Montgomery County harassing our Board of Registrars, who are harassing the Registrars throughout most of the State of Alabama; some counties they haven’t moved into yet, but it is just a matter of time before they get into all of them, and in one county where they [sic] were few darkies registered, there has been probably increased 4 or 5 hundred percent already . . . it has occurred to a great

⁵⁸⁶ These laws were Alabama Acts No. 221, 1961 and No. 570, 1961. The idea for numbered place laws originated from Alabama Act No. 19, 1956, written by White Citizens’ Council leader and State Senator E. O. Eddins of Marengo County, who had used this numbered-place system to minimize black voters influence in the black majority cities of Tuskegee and Demopolis. Eddins had vehemently defended segregation and white supremacy in numerous battles one of the most memorable examples being when he fought against Alabama Public Libraries possessing copies of the children’s book *The Rabbit’s Wedding* in library collections since the book featured a white rabbit marrying a black rabbit. Case Files Vol. III, No. 73, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk’s Office, Montgomery, AL.

⁵⁸⁷ Case Files Vol. III, No. 73, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk’s Office, Montgomery, AL.

many people, including the Legislature of Alabama, that to protect the white people of Alabama, that there should be numbered places . . . Now as you all know that we have had up until recently a law that prohibits single-shot votes, that the law against single-shot votes has been repealed, and consequently if you have a group of people who want to vote as a bloc, whether they be negroes or otherwise, of course we do know from past experience you can go into the negro boxes, each of the counties where they have heavy registration, see where they vote right down the line for this person or that person. We know that they are easily manipulated by the connivors [sic] and that they would be manipulated into single shotting, and if they did, it could happen as it did up in Huntsville.

In Huntsville they had a couple of negroes, as I understand, that ran for the State—I mean for the City Council. And they eased in there with the group, and the might near got elected, and those people at Huntsville up there go [sic] so worried about it they came down and got the law changed, so as far as Huntsville is concerned, and made the City Commissioners run by place number, so that you could spot them, and if you have this type of thing in the primaries, so far as the Committees are concerned, it would have the effect as a lot of people has advanced the idea of this, in the first place if you got a negro or scallowag [sic] who wants to come in with the group, he just get in there, say, “Well, I will get in there and they can single shot for me,” and if you got three of four thousand negro voters, you will have more than that in a District, of course, you will have several thousand over a Congressional District, they come in, single shot vote for that one man, and you will begin to see Negroes on your State Committee; because with that single shot they can assure that one of them will get a majority to start with.⁵⁸⁸

Since Mizell was speaking as an official of the Alabama Democratic Party, his statement was a linchpin in their case to prove the discriminatory intent of Alabama policymakers in making voting and election laws. His statements demonstrate not only the purposes of and the connection between the anti-single-shot laws and numbered place laws but also the degree to which the Alabama Democratic Party of the 1950s and early 1960s remained a political party committed to white supremacy (just look at the Party’s emblem that was printed on official Alabama ballots until 1964: the white rooster that

⁵⁸⁸ It is important to note that Sam Englehardt was presiding over this meeting of state Democratic Party officials because it shows that white racists were still operating the functions of the only influential political party in Alabama at that time. Quote cited by plaintiffs from Proceedings of the State Democratic Executive Committee of Alabama in Montgomery, January 20, 1962 found in Case Files Vol. III, No. 73. Full text found in Plaintiff’s Exhibit 117 in Supplemental Files: EXHIBITS for Hearing on 3-5-86, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk’s Office, Montgomery, AL.

read “White Supremacy for the Right”). Furthermore, Mizell’s words offer testimony to the fact that white officials within the Alabama Democratic Party closely and carefully managed and inspected who voted in Alabama’s polling places and for whom voters cast their ballots. More significantly, Mizell’s fears of “Federal pressure,” “the army of people” from Washington, D.C., and scalawags all attest to the persistence of the historical memories of Reconstruction in the white psyche. Mizell clearly understood that this was a second attempt to achieve what had been left “unfinished,” to borrow Eric Foner’s phrase, in America’s First Reconstruction from 1863 to 1877. And Mizell’s conviction that it is necessary “to protect the white people of Alabama” is an echo heard across Alabama’s past from the “Redemption” period as well as the culmination of the disfranchisement process in 1901 and through the recurrent enactment of Jim Crow laws.

Following the increased activism for equal suffrage and the passage of the Voting Rights Act of 1965, Barbour County politicians began to alter the local election systems from single-member to at-large for various local offices, including positions on the Barbour County Democratic Executive Committee. State Senator James S. Clark of Barbour County told a local newspaper that such changes were made “to lesson [*sic*] the impact of any block [*sic*] vote in any districts which has a relatively small number of eligible voters.”⁵⁸⁹ Another State Senator, Albert H. Evans, Jr., from Choctaw County justified his support for shifting to at-large elections on similar grounds: as the most effective method of eliminating “the threat” of “the increasing number of Negro voters”

⁵⁸⁹ Quote from the *Clayton Record*, March 25, 1965 and the bill cited is Alabama Act No. 10, 1965. In the 1966 case *Smith v. Paris* (257 F. Supp 901), Judge Frank Johnson ruled that adoption of an at-large election system for the Barbour County Democratic Executive Committee was constructed “to frustrate and discriminate against Negroes in the exercise of their right to vote,” which violated the Fifteenth Amendment and the Voting Rights Act. Case Files Vol. III, No. 73, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk’s Office, Montgomery, AL.

who, through exercising their political rights, could “increase the likelihood of a Negro being elected.”⁵⁹⁰ A report in the local newspaper explained that the Choctaw County measure received its most enthusiastic support at polling precincts that were known to be Ku Klux Klan strongholds.⁵⁹¹ Within a decade of the enactment of the Voting Rights Act of 1965, only six out of 67 Alabama county commissions had not switched to at-large elections systems. All six of those counties had a black population that was less than 15 percent.⁵⁹²

At a hearing on March 5, 1986, the plaintiffs presented numerous exhibits attesting to the historical record of state political leaders’ discriminatory intent. One example was a political advertisement supporting the 1956 “Freedom of Choice” Amendment that, if approved by Alabama voters, would protect segregation in schools and public parks and playgrounds. The ad declared that, “Our public schools in every County now face the real threat of forced mixing of white and negro children—a situation intolerable to every white citizen of Alabama.”⁵⁹³ This proposed amendment to the state constitution was specifically aimed at circumventing the U.S. Supreme Court’s monumental *Brown v. Board of Education of Topeka, Kansas* (1954) ruling. Supporters of the “Committee for Segregated Schools” promoted this amendment and another similar amendment on the ballot that election year as the best way “to preserve our

⁵⁹⁰ Quote from the *Choctaw Advocate*, November 18, 1965 found in Case Files Vol. III, No. 73, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk’s Office, Montgomery, AL.

⁵⁹¹ Plaintiff’s Exhibit 16 in Supplemental Files: EXHIBITS for Hearing on 3-5-86, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk’s Office, Montgomery, AL.

⁵⁹² Case Files Vol. III, No. 73, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk’s Office, Montgomery, AL.

⁵⁹³ Plaintiff’s Exhibit 8 in Supplemental Files: EXHIBITS for Hearing on 3-5-86, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk’s Office, Montgomery, AL.

Southern way of life” and to prevent potential “racial strife and discord such as we have never seen since Reconstruction Days.”⁵⁹⁴ Other political advertisements for candidates also attested to appeals to racism as a pervasive feature of elections in Alabama during this era. An ad promoting the selection of Governor George C. “Wallace Backed Electors” to be sent to the Democratic National Convention in 1964 implied that these men would oppose President Lyndon B. Johnson and “the evils of the civil rights bill.”⁵⁹⁵ An ad printed in Alabama newspapers for John Patterson’s 1966 gubernatorial candidacy derided the recent “passage of punitive civil rights legislation.”⁵⁹⁶ A 1968 editorial endorsement of Alabama Congressman George Andrews declared, “If you are a Negro who is seeking ‘first class citizenship’ through the channels of arson, rape, murder, sabotage, armed robbery, protest marches, and threats to burn down other people’s property then you should not vote for Congressman Andrews. He is against all of these things. However, if you are an average Bullock County Negro, you seek none of these things.”⁵⁹⁷ A 1976 political appeal for electing President Gerald Ford threatened that Alabamians should be “afraid of Jimmy Carter” because Carter would allow “busing.”⁵⁹⁸ This, of course, was referring to the practice of black children being brought by a bus into a school district that was primarily white, and it demonstrates that many white citizens in

⁵⁹⁴ Plaintiff’s Exhibit 8 in Supplemental Files: EXHIBITS for Hearing on 3-5-86, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk’s Office, Montgomery, AL.

⁵⁹⁵ This ad was run in many major newspapers in the state. Plaintiff’s Exhibit 102 in Supplemental Files: EXHIBITS for Hearing on 3-5-86, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk’s Office, Montgomery, AL.

⁵⁹⁶ Plaintiff’s Exhibits 105 and 106 in Supplemental Files: EXHIBITS for Hearing on 3-5-86, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk’s Office, Montgomery, AL.

⁵⁹⁷ Quote from the *Clayton Record*, May 2, 1968, Plaintiff’s Exhibit 165 in Supplemental Files: EXHIBITS for Hearing on 3-5-86, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk’s Office, Montgomery, AL.

⁵⁹⁸ Plaintiff’s Exhibits 109 and 110 in Supplemental Files: EXHIBITS for Hearing on 3-5-86, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk’s Office, Montgomery, AL.

Alabama still feared living in a society in which whites and blacks possessed equal rights. In an ad against the candidacy of Donald Stewart for U.S. Senate in 1978, the “Concerned Christians for Better Government” warned that the ADC had backed Stewart with the agreement that he would “[w]ork for the appointment of two federal judges from Alabama who are from Minority groups” and “[s]upport electoral systems at the local level which will guarantee more Minority officials—*without a vote of the people.*”⁵⁹⁹ In 1982, a white lawyer, George Williams, ran against Alabama Supreme Court Justice Oscar Adams. Justice Adams had been appointed to the court by Governor Fob James in 1980, and in 1982 he became the first black person ever elected to statewide office in Alabama. Williams’s ad admonishes voters to “LOOK CLOSELY” at the candidates in the race. Under the caption “LOOK CLOSELY,” the ad features photographs of the three candidates in the race, two of which are white men and Adams, who is black. The ad also features various qualifications for each candidate and at the bottom of the page it reads “The choice is yours.”⁶⁰⁰ All these political advertisements and commentaries attest to the fact that voting in Alabama was polarized by race and that race itself was often what defined competing political factions within the Democratic Party and, in more recent years, between the Democratic Party and the Republican Party. These pieces of evidence attest to the institutionalized discrimination within Alabama’s political structure and served as context for the entire period following *Smith v. Allwright* when white

⁵⁹⁹ Plaintiff’s Exhibits 111 and 112 in Supplemental Files: EXHIBITS for Hearing on 3-5-86, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk’s Office, Montgomery, AL.

⁶⁰⁰ Plaintiff’s Exhibits 113 and 114 in Supplemental Files: EXHIBITS for Hearing on 3-5-86, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk’s Office, Montgomery, AL.

Alabama leaders put in place countless laws to prevent black Alabamians from possessing and exercising the same rights and freedoms as white people in the state.

In 1986, for the duration of several months of hearings, arguments, and counter-arguments, the nine county commissions arrived at settlement agreements with the plaintiffs. Three of the counties, Crenshaw, Escambia, and Lee, settled prior to Judge Thompson's first major opinion, which he issued on May 28, 1986. Coffee, Etowah, and Talladega counties reached settlements after the May 28 opinion, but prior to a second memorandum opinion of Judge Thompson on October 21, 1986. The remaining three, Calhoun, Lawrence, and Pickens, were the slowest to concede to ridding themselves of at-large elections.

ADC activists began to see the effectiveness of the federal courts in eliminating racial discrimination in local politics. Crenshaw County, where this class action suit originated, had a black population of close to 27 percent.⁶⁰¹ In March, 1986 Crenshaw County parties had reached a settlement to begin restructuring their county commission system from at-large to single member districts in time for the new system to go in effect for the 1986 elections. They agreed to set up five single-member districts, and Judge Thompson required that notice of this change be published in the *Luverne Journal*.⁶⁰² Since there were no objections raised to the court following the publicity of the new plan by the middle of April, Judge Thompson enjoined the Probate Judge and other officials in Crenshaw County to follow the guidelines of the proposed settlement and to submit the proposed plan for single-member county commission districts to the Justice Department

⁶⁰¹ Case Files Vol. II, No. 55, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk's Office, Montgomery, AL.

⁶⁰² Case Files Vol. III, No. 96, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk's Office, Montgomery, AL.

for preclearance under Section 5 of the Voting Rights Act.⁶⁰³ Gerald W. Jones from the Justice Department’s Civil Rights Division, Voting Section, sent a letter on June 2 to the Crenshaw County defendant’s attorney approving the new election system for the county commission. In his letter, Jones also pointed out “that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes.”⁶⁰⁴ By the middle of June, a final consent decree approved the court-ordered plan for electing Crenshaw County commissioners on the basis of single-member districts.⁶⁰⁵

A similar pattern followed for Escambia and Lee counties. Almost one-third of Escambia County’s population was black.⁶⁰⁶ By mid-March Escambia county defendants and plaintiffs had begun to reach a compromise and settlement.⁶⁰⁷ Escambia County officials complied with the same process in the interim of publishing the proposed change in the local newspaper and submitted the proposed plan to the Justice Department for preclearance. On May 5, Judge Thompson approved the final consent decree that created five single-member districts for Escambia County’s commission.⁶⁰⁸ Lee County also had a population that was nearly one-third black.⁶⁰⁹ The County Commission of Lee County had signaled their approval for restructuring the at-large system to a single-member-

⁶⁰³ Case Files Vol. IV, No. 109, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk’s Office, Montgomery, AL.

⁶⁰⁴ Case Files Vol. IV, No. 155, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk’s Office, Montgomery, AL.

⁶⁰⁵ Case Files Vol. V, No. 173 and No. 174, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk’s Office, Montgomery, AL.

⁶⁰⁶ Case Files Vol. II, No. 55, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk’s Office, Montgomery, AL.

⁶⁰⁷ Case Files Vol. III, No. 90, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk’s Office, Montgomery, AL.

⁶⁰⁸ Case Files Vol. IV, No. 124 and No. 125, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk’s Office, Montgomery, AL.

⁶⁰⁹ Case Files Vol. II, No. 55, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk’s Office, Montgomery, AL.

district system, but Lee County's legislators had stalled on submitting a bill to effect such a change in the Alabama Legislature. By early March a compromise agreement had come together in which the defendants agreed to comply with the federal court injunction that Lee County commissioners would be elected from single-member districts.⁶¹⁰ After complying with procedures for publication and preclearance through the Justice Department, Judge Thompson approved a final consent decree in which five single-member districts would select county commissioners. Three of the county commission seats, scheduled for election in 1986, would successfully be selected on the basis of the new single-member system less than two weeks prior to the approval of the final consent decree. Through the settlement processes of the first three counties, it became clear that the plaintiffs would prevail in their claims, and that their success in the *Dillard* litigation would have sweeping implications because the plaintiffs had proven a pattern of intentionally discriminatory actions by officials of the State of Alabama.

On May 28, 1986, Judge Thompson issued an opinion that pointed to the far-reaching significance of the *Dillard* case and what voting rights activists had achieved in the evidence they presented. Some counties had already eliminated at-large systems for county commission elections, but this had been done one county at a time through multiple law suits or local citizens' pressure to make such changes. What was significant about the *Dillard* case was that the plaintiffs provided evidence to show a statewide pattern of discrimination. If the plaintiffs' assertions prevailed, all localities in Alabama would be implicitly obligated to remedy past and institutionalized discriminatory laws

⁶¹⁰ Case Files Vol. III, No. 86, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk's Office, Montgomery, AL.

and actions that governed local politics and elections.⁶¹¹ In his opinion, Judge Thompson issued a preliminary injunction that the remaining counties that had not yet begun plans to shift to single member districts submit a plan and timeline to do so.⁶¹² In order to persuade the court to issue a preliminary injunction the plaintiffs must show four factors: “(1) there is a substantial likelihood that they will prevail on the merits at trial; (2) they will suffer irreparable harm if they are not granted injunctive relief; (3) the benefits the injunction will provide them outweigh the harm it will cause the [defendants]; and (4) the issuance of the injunction will not harm public interests.”⁶¹³

Judge Thompson asserted that the plaintiffs had provided evidence that would likely succeed in both methods for proving a Section 2 intent claim. Establishing discriminatory intent under method number one is accomplished “by showing, first, that racial discrimination was a ‘substantial’ or ‘motivating’ factor behind the maintenance of the electoral system and, second, that the system continues today to have some adverse racial impact.”⁶¹⁴ Specifically, Judge Thompson cited the evidence that the anti-single-shot laws and numbered place laws were enacted in the 1950s and 1960s “with the specific intent of making local at-large systems, including those used in county commission elections, more effective and efficient tools for keeping black voters from electing black candidates.” Judge Thompson also found that the at-large systems “are still having their intended racist impact.”⁶¹⁵ Based on the evidence, it is clear that

⁶¹¹ *Dillard v. Crenshaw County*, 640 F. Supp. 1347 (M.D. Ala. 1986).

⁶¹² Judge Thompson also threw out the plaintiffs’ Section 2 discriminatory “intent” claim against Pickens County since the county was already under judgment on the basis of discriminatory intent in an entirely separate and prior case. Hereafter, the plaintiffs’ pursued their case against Pickens County on the basis of discriminatory “results” under Section 2. *Dillard v. Crenshaw County*, 640 F. Supp. 1347 (M.D. Ala. 1986).

⁶¹³ *Dillard v. Crenshaw County*, 640 F. Supp. 1347, 1354 (M.D. Ala. 1986).

⁶¹⁴ *Dillard v. Crenshaw County*, 640 F. Supp. 1347, 1354 (M.D. Ala. 1986).

⁶¹⁵ *Dillard v. Crenshaw County*, 640 F. Supp. 1347, 1356 (M.D. Ala. 1986).

through the various laws intentionally adopted by Alabama legislators “the state reshaped at-large systems into more secure mechanisms for discrimination.”⁶¹⁶ If those examples did not provide enough evidence of discriminatory intent, Judge Thompson argued, there is an overabundance of evidence that at least since the late 1800s that the state acted “to keep its black citizens economically, socially, and politically downtrodden, from the cradle to the grave.”⁶¹⁷ Judge Thompson also quoted the late Alabamian and former U.S. District Judge Richard T. Rives who in 1966 declared, “from the Constitutional Convention of 1901 to the present, the State of Alabama has consistently devoted its official resources to maintaining white supremacy and a segregated society.”⁶¹⁸

The second method for establishing a Section 2 discriminatory intent claim is accomplished when plaintiffs show “first, that those responsible for the enactment or maintenance of the challenged electoral scheme have engaged in a pattern and practice of enacting and maintaining other, similar schemes for racially discriminatory reasons; and, second, that the challenged scheme has some present day adverse racial impact.”⁶¹⁹ Again, Judge Thompson believed the plaintiffs’ evidence proved an intent claim via the second method in that Alabama legislators have “consistently enacted at-large systems for local governments during periods when there was a substantial threat of black participation in the political process.”⁶²⁰ As recent election data from the counties sued in the case had proven the “racially inspired” at-large systems were still operating as “instrument[s] for race discrimination.”⁶²¹

⁶¹⁶ *Dillard v. Crenshaw County*, 640 F. Supp. 1347, 1357 (M.D. Ala. 1986).

⁶¹⁷ *Dillard v. Crenshaw County*, 640 F. Supp. 1347, 1357 (M.D. Ala. 1986).

⁶¹⁸ From *U.S. v. Alabama*, 252 F. Supp. 95, 101 (M.D. Ala. 1966) in *Dillard v. Crenshaw County*, 640 F. Supp. 1347, 1360 (M.D. Ala. 1986).

⁶¹⁹ *Dillard v. Crenshaw County*, 640 F. Supp. 1347, 1360 (M.D. Ala. 1986).

⁶²⁰ *Dillard v. Crenshaw County*, 640 F. Supp. 1347, 1361 (M.D. Ala. 1986).

⁶²¹ *Dillard v. Crenshaw County*, 640 F. Supp. 1347, 1361 (M.D. Ala. 1986).

Following the summary of evidence and the plaintiffs' likelihood of success in proving an intentional discrimination claim, Judge Thompson explained his rationale for ordering the injunction. He argued that the plaintiffs had met all requirements for the court to issue preliminary injunctive relief. One dilemma was that in four of the counties primary elections for county commission seats were scheduled for June 3, less than one week from the day Judge Thompson issued his opinion. Instead of enjoining the elections already scheduled, Judge Thompson required remaining defendant counties to submit timelines for restructuring their county commission elections within three weeks, while requiring that full process of developing, approving, pre-clearing through the U.S. Justice Department, and implementing the new plans must be completed by January 1, 1987.⁶²² Judge Thompson further warned the counties that delay in this process was not acceptable, and that he did not expect to grant any "extensions of the January 1 deadline."⁶²³

Judge Thompson's opinion affirmed that the cases against Coffee, Etowah, Talladega, Calhoun, and Lawrence Counties would all proceed under a claim of intentional discrimination. For Pickens County, the plaintiffs would have to make their complaint based on discriminatory results as defined under the 1982 revised Section 2 of the Voting Rights Act. This modification for Pickens County was granted because the county had already completed litigation on behalf of all black citizens of the county on the basis of discriminatory intent. Judge Thompson did note that there were some overlapping factors for proving discriminatory results and intent such as:

⁶²² *Dillard v. Crenshaw County*, 640 F. Supp. 1347, 1362 (M.D. Ala. 1986).

⁶²³ *Dillard v. Crenshaw County*, 640 F. Supp. 1347, 1363 (M.D. Ala. 1986).

the extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process; . . . the extent to which the state or political subdivision has used . . . majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group; . . . [and] whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous.⁶²⁴

In regards to Pickens County, Judge Thompson explained that much of the evidence plaintiffs had advanced to prove discriminatory intent could also be used to prove discriminatory results and that “the court is reluctant to prolong the alleged denial of the right to vote to black citizens of Pickens County any longer than necessary.”⁶²⁵ Therefore, the case against Pickens County would continue with the rest of the *Dillard* litigation, rather than starting over with a new lawsuit.

A month after Judge Thompson's first opinion, the U.S. Supreme Court delivered its ruling in the case *Thornburg v. Gingles*. The *Thornburg* decision related directly to issues that were in adjudication in the *Dillard* case. *Thornburg v. Gingles* originated in North Carolina where black citizens filed suit in federal district court challenging a redistricting plan that was enacted in 1982.⁶²⁶ This was the first U.S. Supreme Court decision made under the 1982 revised version of Section 2 of the Voting Rights Act. Essentially, the unanimous decision of the court in *Thornburg* upheld the concept that a violation of Section 2 could be established without “any necessity that discriminatory intent be proven.”⁶²⁷ Justice Brennan opined that showing racially polarized voting patterns was enough to prove a Section 2 violation, and that it could be demonstrated

⁶²⁴ Cited from S. Rep. No. 417, 97th Cong., 2d Sess. 28-29 in *Dillard v. Crenshaw County*, 640 F. Supp. 1347, 1369 (M.D. Ala. 1986).

⁶²⁵ *Dillard v. Crenshaw County*, 640 F. Supp. 1347, 1372n.13 (M.D. Ala. 1986).

⁶²⁶ *Thornburg v. Gingles*, 478 U.S. 30 (1986).

⁶²⁷ *Thornburg v. Gingles*, 478 U.S. 30 (1986).

simply by “the existence of a correlation between the race of voters and the selection of certain candidates.”⁶²⁸ Thus, proof of intentional vote dilution was not required, and a vote dilution claim could not be disproved by an attempt to show that there was no discriminatory intent in the pattern of racially polarized voting.

Just as in the *Dillard* case, plaintiffs in *Thornburg* provided evidence of a history and pattern of discrimination and disfranchisement of North Carolina’s black citizens from the early 1900s through the 1970s.⁶²⁹ Specifically, North Carolina plaintiffs presented anti-single-shot laws and designated seat laws, which were akin to Alabama’s numbered place laws, as evidence.⁶³⁰ Also with strong correlations to the evidence *Dillard* plaintiffs presented, the court found that North Carolina politics since the 1890s had been “replete with specific examples of racial appeals, ranging in style from overt and blatant to subtle and furtive” and that this pattern persisted to the present with adverse effects on black citizens’ political participation.⁶³¹ “The essence of a [Section] 2 claim,” the Supreme Court argued, “is that a certain electoral law, practice, or structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by black and white voters to elect their preferred representatives.”⁶³² It was clear that Judge Thompson’s central arguments in his recent opinion lined up with the prevailing views of the U.S. Supreme Court in *Thornburg v. Gingles*.

The remaining six counties that had not begun settlement processes prior to Judge Thompson’s May 28 opinion realized that they must now come to agreements similar to those of Crenshaw, Lee, and Escambia counties that required county commissioners to be

⁶²⁸ *Thornburg v. Gingles*, 478 U.S. 30 (1986).

⁶²⁹ *Thornburg v. Gingles*, 478 U.S. 30, 38 (1986).

⁶³⁰ *Thornburg v. Gingles*, 478 U.S. 30, 38-39 (1986).

⁶³¹ *Thornburg v. Gingles*, 478 U.S. 30, 40 (1986).

⁶³² *Thornburg v. Gingles*, 478 U.S. 30, 47 (1986).

elected in single-member districts. As we shall see, some of the remaining counties created modifications in their plans in an attempt to defy the intentions of the single-member district selection process. The defendant counties initially denied that there were any racial motivations behind acts of the Alabama Legislature that instated the at-large election systems. Defendants also rejected the notion that black citizens' rights to participate equally in the political process had been denied through any of the existing practices in county politics.⁶³³ Coffee County defendants initially stalled the process by refusing either to admit or deny much of the plaintiffs' historical and circumstantial evidence "on the grounds that the matters 'are not within the realm of the Defendants' knowledge."⁶³⁴

In some counties, politicians who were facing the reality of losing the power with which the at-large system had endowed them attempted to outwit the plaintiffs and Judge Thompson by adding special conditions and carefully crafted districts to the proposals for county commissions elected on a single-member-district basis. The plans proposed by the defendants of Pickens, Calhoun, Etowah, and Lawrence counties all included a county commission chair position that was elected at-large with the other commissioners elected in single-member districts.⁶³⁵ As the plaintiffs had demonstrated, no black Alabamian had ever won a county commission position that was voted on at-large.⁶³⁶ The plaintiffs argued that the chair position could be either rotated among the county

⁶³³ Case Files Vol. III, No. 72, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk's Office, Montgomery, AL.

⁶³⁴ Case Files Vol. IV, No. 163, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk's Office, Montgomery, AL.

⁶³⁵ Case Files Vol. VII, No. 228, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk's Office, Montgomery, AL.

⁶³⁶ Testimony of Dr. Peyton McCrary in Transcript of Testimony for Hearing on March 5, 1986 found in Supplemental Files: EXHIBITS 2-4-88, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk's Office, Montgomery, AL, 157.

commissioners who were elected from single-member districts or that a county administrator could be hired as a full-time bureaucratic employee of the county.⁶³⁷

Alabama counties that had significant black populations had, since Reconstruction, been battlegrounds where political leaders feared that white supremacy was most tenuous. Pickens County was almost 42 percent black at the time of the litigation, and initially Pickens County defendants denied that the at-large election system in any way violated the Fourteenth and Fifteenth Amendments or the Voting Rights Act.⁶³⁸ By August of 1986, however, the defendants had drawn up a new plan that included a chairperson elected at-large and only one district out of four that had a black majority.⁶³⁹ The Pickens County Commission was still elected under the “dual system” in which candidates were elected in single-member districts in primary elections, but the same candidates who had won nomination were elected by at-large vote of all registered citizens in the county. The plaintiffs had also shown that in Pickens County not only did racially polarized voting exist but there was a pattern in which some wealthier white employers of many black citizens had taken their votes “captive.”⁶⁴⁰ Affluent white landowners, landlords, and bosses enforced the “captive vote” paradigm by using economic coercion to control the votes of a group of dependent, poorer black citizens.⁶⁴¹ Pickens County defendants proposed a plan with four single-member districts, two of which were black majorities. But as revealed in hearing testimony and evidence, the two

⁶³⁷ Case Files Vol. VII, No. 228, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk’s Office, Montgomery, AL.

⁶³⁸ Case Files Vol. V, No. 196, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk’s Office, Montgomery, AL.

⁶³⁹ Case Files Vol. VII, No. 228, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk’s Office, Montgomery, AL.

⁶⁴⁰ Case Files Vol. VII, No. 228, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk’s Office, Montgomery, AL.

⁶⁴¹ Case Files Vol. VII, No. 228, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk’s Office, Montgomery, AL.

“black-majority” districts did not actually have a majority black voting age population. Apparently, this plan was carefully crafted to appear to remedy vote dilution in Pickens County Commission elections, yet the veracity of the defendants’ plan was questionable. The plaintiffs had proposed a plan with five single-member districts on the Pickens County Commission with two districts that had majority black populations, which they argued “fairly reflects the black voting strength in Pickens County” and “will allow black citizens to elect candidates of their choice.”⁶⁴²

In Lawrence County, defendants drew a plan that included a black district that included an area in the city of Courtland where a construction project for a new industrial park was soon to begin. Yet, the area where the planned industrial park would be located was drawn out of the majority black district and drawn in to a neighboring white-majority district. The industrial park site was likely annexed into the majority white district because local white politicians and business leaders either did not want to work with a new black commissioner or did not want a black-majority district to have the benefits of the new economic development that the industrial park would bring.⁶⁴³ In arguing against the defendants’ proposals as mentioned above, the plaintiffs explained that Section 2 of the Voting Rights Act, as renewed in 1982, gave the federal court power to “exercise its traditional equitable power to fashion a relief so that it completely remedies the prior dilution of minority voting strength and fully provides equal opportunity for minorit[ies] to participate and elect candidates of their choice.”⁶⁴⁴

⁶⁴² Case Files Vol. VII, No. 228, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk’s Office, Montgomery, AL.

⁶⁴³ Case Files Vol. VII, No. 228, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk’s Office, Montgomery, AL.

⁶⁴⁴ From S. Rep. No. 97-417, 97th Cong., 2d Sess., p. 31 (1982) cited in Case Files Vol. VII, No. 228, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk’s Office, Montgomery, AL.

When that strategy failed, some white politicians resorted to threats of economic reprisals and violence. The Lawrence County engineer Mac Watters, who was white, testified on behalf of the black plaintiffs. Watters was informed by some of his co-workers that he would likely lose his job with the county if he testified in favor of switching the at-large election system for single-member districts. Following his testimony, Watters received threats from Lawrence County Commissioner Pleas Hill. Commissioner Hill told Watters that he “wanted him to ‘step outside’” and Watters believed that he was now in real danger, as Commissioner Hill had a reputation for aggressive behavior.⁶⁴⁵

Watters also testified that another county commissioner, Brown Bradford, had “purposely cancel[ed] a work project on Little Sam Road [in a majority black district] because it would have helped blacks who did not support his 1984 election campaign.”⁶⁴⁶ Commissioner Bradford denied Watters’s allegations at a meeting of the county commission with Watters present.

Controversy reemerged in Crenshaw County in September when the plaintiffs alleged that county election officials did not properly follow the agreement that had been originally approved in April by Judge Thompson. Plaintiffs claimed that in the primary elections that had been held in June, the voting lists were not separated by the new districts, and this flaw allowed some voters to cast ballots for commission seats that were

⁶⁴⁵ Letter from Larry T. Menefee to Judge Myron H. Thompson, September 9, 1986, in Case Files Vol. VI, unnumbered, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk’s Office, Montgomery, AL.

⁶⁴⁶ Quote from the *Moulton Advertiser*, September 11, 1986 found in Case Files Vol. VI, No. 224, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk’s Office, Montgomery, AL.

not their districts of residence.⁶⁴⁷ After presentation of evidence about voters who cast ballots in districts other than the ones in which they reside, Judge Thompson ruled on November 3 that new primary and general elections for the district five commissioner in Crenshaw County must be held prior to January 1, 1987.⁶⁴⁸ Eventually, due to time constraints, with Judge Thompson's approval, Crenshaw County completed new elections for the district five commissioner by February of 1987.⁶⁴⁹

On October 21, Judge Thompson issued another opinion in an attempt to finally compel Calhoun, Lawrence, and Pickens counties to complete the process of restructuring their county commission election systems.⁶⁵⁰ At this point Calhoun, Lawrence, and Pickens counties had reached partial settlements. The primary issue of contention here was whether a county commission chairperson elected in each county on an at-large basis was a violation of Section 2 of the Voting Rights Act. All three counties had submitted single-member district plans with at-large commission chair positions to the court and to the U.S. Department of Justice. Calhoun County had received preclearance from the Justice Department, but Lawrence and Pickens counties still awaited notice from the Attorney General.⁶⁵¹

Judge Thompson found that "the evidence before the court establishes that the presence of the at-large chairperson violates section 2's results test."⁶⁵² He based his finding on the century-long pattern of state sanctioned discrimination. In so doing, Judge

⁶⁴⁷ Case Files Vol. VI, No. 223, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk's Office, Montgomery, AL.

⁶⁴⁸ Case Files Vol. VIII, No. 269, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk's Office, Montgomery, AL.

⁶⁴⁹ Case Files Vol. VIII, No. 283 and No. 286, *Dillard, et al., v. Crenshaw County, etc., et al.* (Civil Action No. 85-T-1332-N) in Middle District of Alabama Clerk's Office, Montgomery, AL.

⁶⁵⁰ *Dillard v. Crenshaw County II*, 649 F. Supp. 289 (1986).

⁶⁵¹ *Dillard v. Crenshaw County II*, 649 F. Supp. 289, 292 (1986).

⁶⁵² *Dillard v. Crenshaw County II*, 649 F. Supp. 289, 294 (1986).

Thompson argued that “the present depressed levels of black voter participation in Calhoun, Lawrence, and Pickens Counties may be traced to these historical devices and laws.”⁶⁵³ These “insurmountable” “political barriers” in the three counties were buttressed by white candidates who had “appeal[ed] to racial prejudice.” Furthermore, Judge Thompson declared that the existing obstacles operating within the “racially polarized climate” had “effectively wiped out any realistic opportunity for county blacks to elect their candidate to an associate or chairperson in the three counties.”⁶⁵⁴ In Lawrence County, Judge Thompson found intentional discrimination as motivation for the proposed at-large chairperson. The county engineer, Mac Watters, had testified that current Lawrence County commissioners boasted that, if elected, a new black commissioner “would not have any say so in the commission.”⁶⁵⁵ Judge Thompson ordered the review of the current single-member apportionments for all three counties and that the chair position of the commission be selected on a basis other than at-large election.⁶⁵⁶ Because of the multiple problems and unresolved issues contained in the Pickens County defendant’s proposed plan, Judge Thompson ordered the adoption of the Pickens County black citizens’ plan.⁶⁵⁷ Judge Thompson’s opinion clearly established the will of the court to remedy vestiges of institutionalized discrimination as exemplified by at-large election schemes.

Calhoun County appealed Judge Thompson’s ruling, specifically challenging the finding that a county commission chairperson elected at-large violated Section 2 of the

⁶⁵³ *Dillard v. Crenshaw County II*, 649 F. Supp. 289, 294 (1986).

⁶⁵⁴ *Dillard v. Crenshaw County II*, 649 F. Supp. 289, 295 (1986).

⁶⁵⁵ *Dillard v. Crenshaw County II*, 649 F. Supp. 289, 297 (1986).

⁶⁵⁶ *Dillard v. Crenshaw County II*, 649 F. Supp. 289, 296 (1986).

⁶⁵⁷ *Dillard v. Crenshaw County II*, 649 F. Supp. 289, 298 (1986).

Voting Rights Act.⁶⁵⁸ Eleventh Circuit Judge Frank M. Johnson delivered the opinion for the court. Judge Johnson agreed with Judge Thompson saying, “This Court cannot authorize an element of an election proposal that will not with certitude *completely* remedy the Section 2 violation.”⁶⁵⁹ Approving an at-large elected position, Judge Johnson argued, would require “a leap of faith by this Court that is simply not buoyed by the history of the Calhoun County Commission.”⁶⁶⁰ It appeared that the plaintiffs had won complete victory in their reconstruction of local politics, as Judge Thompson’s opinions had been upheld by the Eleventh Circuit as well as the U.S. Supreme Court.

The initial *Dillard* litigation between 1985 and 1987 initiated a process of making the Second Reconstruction a reality on the local level in Alabama.

The developments and rulings in *Dillard v. Crenshaw County* led to the expansion of litigation that would begin dismantling at-large election systems for many local government boards. The case would be expanded to include almost two hundred local governing boards, including additional county commissions, school boards, and municipalities, and the legal battles carried on into the 1990s and 2000s.⁶⁶¹ In the process, black Alabamians defined what political equality—as proclaimed by the Fourteenth and Fifteenth Amendments and the Voting Rights Act—meant for citizens who had lived under the most obdurate and repressive forms of inequality.

⁶⁵⁸ *Dillard v. Crenshaw County*, 831 F.2d 246 (11th Cir. 1987).

⁶⁵⁹ *Dillard v. Crenshaw County*, 831 F.2d 246, 252 (11th Cir. 1987).

⁶⁶⁰ *Dillard v. Crenshaw County*, 831 F.2d 246, 252 (11th Cir. 1987).

⁶⁶¹ For brief a discussion of further *Dillard* litigation and its results, see James Blacksher, et. al., “Voting Rights in Alabama: 1982-2006,” *Review of Law and Social Justice* 17:2 (Spring 2008): 259-267.

Conclusion

1965 has been viewed by many as the triumphant climax of the twentieth century civil rights movement. This dissertation argues that although the enactment of the Voting Rights Act marked a major achievement for civil rights activists, 1965 was only a beginning for black southerners in their quest for political and social equality. Through the work of grassroots activists, the nation had been compelled to confront the evils of Jim Crow, and most Americans by 1965 understood that racial discrimination had no place in a nation founded on the principle that all are created equal. But on the local level, black southerners had a long struggle ahead of them after 1965. This dissertation has told the story of that struggle for political equality, while demonstrating that the Voting Rights Act only became a reality when local people carried its promises forward and demanded that southern states, cities, and towns live up to the standards for which the United States claims it stands. After Martin Luther King's was assassination in 1968, civil rights activists knew that they would have to continue the fight to make equal civil rights a reality in their hometowns.

By 1990, the significant gains that ADC activists had made in furthering political equality on the local level made the progression of the Second Reconstruction look rather successful, especially compared to the status of black suffrage thirty or forty years after the beginning of the First Reconstruction. During the first decade following the passage of the Voting Rights Act, ADC activists transformed the Alabama electorate and the Alabama Democratic Party as they began to amass political power for black Alabamians for the first time since the early years of the First Reconstruction. The changes that

grassroots activists brought forth in Alabama between the time of the initiation of the *Bolden* case in 1975, challenging at-large elections, and the *Dillard* case that eventually led to the dismantling of at-large election systems in the late 1980s, had begun a process of finally ending the racially discriminatory structures that had shaped local politics in Alabama for at least one hundred years. In the 1990s, ADC members could boast that Alabama had the highest proportion of black elected officials of all states in the United States.

Upon signing the Voting Rights Act in 1965, President Lyndon B. Johnson is known to have predicted that the South would become a stronghold of the Republican Party for the generation to come. Of course, President Johnson was referring to a shift in party allegiance of the white voters in the South who had been, since the end of the First Reconstruction, allies of the Democratic Party. In the late nineteenth century, the southern Democratic Party had been founded on total adherence to white supremacy. Up until the tenure of President Harry S. Truman, Democratic candidates for president could rely on the electoral votes of the “Solid South” to give them an automatic advantage in presidential elections. President Truman’s partial embrace of the burgeoning civil rights movement after World War II angered southern Democratic politicians and sparked South Carolina white supremacist Governor Strom Thurmond to challenge Truman in the 1948 election as a States’ Rights Democrat, or Dixiecrat Party candidate. President Truman won in 1948, but southern whites had broken their pattern of automatically supporting the national Democratic Party ticket. The critical issue leading most southern whites to break their party allegiance was a perceived threat to the social and political

order of Jim Crow that mandated that, in every area of life, whites must be dominant and blacks subordinate.

Later, southern white voters again thoroughly rejected support for black civil rights in the 1964 election when the most unreconstructed states of the former Confederacy—Alabama, Georgia, Louisiana, Mississippi, and South Carolina—voted against fellow southerner Lyndon Johnson at the ballot box and, instead, voted for Republican Senator Barry Goldwater of Arizona, who had opposed the Civil Rights Act of 1964. At the time, the Civil Rights Act of 1964 was the most significant civil rights bill passed by Congress since Reconstruction. President Johnson embraced the grassroots struggle for freedom led by black Americans, and, in return, white southerners registered their disapproval at the ballot box. In so doing, the 1964 election signaled that the process of realigning most southern whites from the Democratic Party to the Republican Party was now fully underway. President Johnson’s support for the Voting Rights Act in 1965 further cemented many southern whites’ disdain for the national Democratic Party.

Since its inception, the ADC has energized citizen-activists to work at the grassroots for black enfranchisement. Alabama was to central the making of the Voting Rights Act in 1965, and Alabama activists continued to impact the meaning and effectiveness of the act in the 1970s and 1980s as well as its significance today. ADC activists worked to end election laws that were based on the assumptions of white supremacy, and they worked to elect white and black candidates who embraced the possibility of a New South in which black and white southerners would join together to address important issues facing their state in education, in economic development, and in creating opportunities for all to live in freedom. Also, ADC activists filed law suits in

federal courts and successfully worked to secure the appointments of the first black Alabamians to the federal judiciary. In the early 1980s, when the Voting Rights Act was seen by some as no longer necessary, ADC activists demonstrated that the realization of equal voting rights for all citizens was still incomplete. By 1990, on the local level ADC activists had achieved legislative districts that more fairly represented all citizens in Alabama, opened up the voter registration and election day administration processes to include black Alabamians, and proved that the discriminatory purposes behind local at-large election systems continued to deny black voters an equal voice.

ADC activists' efforts have resulted in two primary developments in recent Alabama politics. First, making political equality a reality in Alabama has, in many instances, placed black and white people at the negotiating table together on a more equitable basis than ever before in the state's history. This outcome offers hope for a New South to emerge in which all southerners work to improve the lives of all the people in their states. However, the promise of a New South has yet to come to fruition. The second development has been the emergence of a new Solid South in which most white voters have, as President Johnson predicted, become stalwarts of the Republican Party. Of course, most southern blacks today are loyal Democrats. The growth of the Republican Party in the South has reinstated the old cultural habits of whites and blacks living and moving in separate circles. If most whites in the South are Republicans and southern Republican politicians rely almost solely on whites' votes, then the communication and interchange between black and white southerners has been stymied. The point here is neither to condemn nor exalt either political party in Alabama, but to recognize that cultural memories and the ways history is understood by both white and

black southerners has a powerful bearing on the ways in which they act, vote, and conceptualize the problems facing their states.

Joe Reed remembers the Old Testament story of Moses as he envisions the hope for a New South to emerge. God chose Moses to lead the Israelites to freedom, Reed recounts, because “Moses knew the land.”⁶⁶² Just as Moses did, some southerners know the land and the travels the people of the South have taken in racism and discrimination. A truly New South will not materialize until white and black southerners begin to embrace the land together in an effort to move their states, cities, and towns forward to become places where neighbors look past their differences and focus, instead, on their shared lives and on making the promises of American citizenship a reality for all. As the Voting Rights Act nears its fiftieth year in existence, black southerners are voting and winning elections to political offices in unprecedented numbers. Yet, the southern political order is becoming increasingly re-segregated, and as a result the challenges of persistent racism in the South remain to be resolved.

⁶⁶² Dr. Joe L. Reed, interview by author, 8 February 2012.