

# EXHIBIT 4

***Pendergrass et al. v. Raffensperger, et al.*, No. 1:21-cv-05339**  
**United States District Court for the Northern District of Georgia**  
**Expert Report of Orville Vernon Burton, Ph.D.**

A handwritten signature in black ink, appearing to read "Orville Burton", written in a cursive style.

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**Dr. Orville Vernon Burton**

December 5, 2022

## **I. STATEMENT OF INQUIRY**

I have been asked by Plaintiffs' counsel to serve as an expert witness in litigation concerning Georgia redistricting. Plaintiffs' counsel asked me to analyze the history of voting-related discrimination in Georgia and to contextualize and put in historical perspective such discrimination. I have also been asked to analyze the relationship between race and partisanship in Georgia politics.

I am being compensated at \$350 per hour for my work on this case. My compensation is not contingent on or affected by the substance of my opinions or the outcome of this case.

## **II. SUMMARY OF FINDINGS**

Throughout Georgia's history, and through today, the state of Georgia has attempted, often successfully, to minimize the electoral influence of minority voters and particularly of Black Georgians. Voting rights in Georgia have followed a pattern where after periods of increased nonwhite voter registration and turnout, the state, through both legislation and extralegal means, finds methods to disfranchise and reduce the influence of minority voters.

This history has its roots in the Reconstruction era. As soon as formerly enslaved men gained the right to vote in Georgia, both violence and wholesale changes in voter registration laws ensured they could not vote. By the early 20<sup>th</sup> century, the cumulative effects of the poll tax and the white primary had nearly removed all Black Georgians from voter registration lists. Around this time, Georgia also structured its elections to the disadvantage of Black Georgians. Specifically, Georgia's county unit system, introduced in 1917 until it was outlawed by the Supreme Court in the 1960s, gave a greater share of proportion of votes to small, rural, and much whiter counties, compared to larger and more urban counties, where the majority of Black Georgia voters lived.

When the Supreme Court eventually ruled against white-only primaries in the 1940s, Georgia worked to circumvent the ability of those citizens to vote through registration schemes, voter challenges, voter purges, and more. And when the county-unit system fell, Georgia replaced them with at-large districts and majority vote requirements, systems designed to ensure that Black candidates could not be elected to office. Those systems were wildly effective: By the time of the 1964 Civil Rights Act (CRA) and the 1965 Voting Rights Act (VRA), while Black Georgians were 34 percent of the voting age population, there were only three Black elected officials in Georgia.

Even after the Voting Rights Act of 1965, Black voters and Black elected officials in Georgia continued to be systematically underrepresented. To neutralize Black voting strength, Georgia officials used an array of mechanisms to block, discourage, dilute, or otherwise prevent or limit Black voting in Georgia. Between 1965-1980, nearly 30% of all of the Department of Justice's objections to voting-related changes under Section 5 were attributable to Georgia alone.

For the next forty years, Georgia failed to go a redistricting cycle without objection from the Department of Justice (DOJ). Georgia's congressional reapportionment in 1971, for example, was the first held under Section 5 preclearance rules, and it showed, as one expert has described, "the extraordinary lengths to which the legislature was prepared to go to exclude Blacks from the congressional delegation." After DOJ refused to preclear the plan and required Georgia to implement a new congressional plan, Andrew Young became the only Black U.S. Congressman from Georgia and the first African American elected to the United States House of Representatives from the South in the twentieth century (along with Barbara Jordan of Texas, significantly both Black candidates were elected from urban districts). In the redistricting cycle after the 1980 census, the Georgia General Assembly again tried to limit Black voting strength in Atlanta. DOJ again refused to preclear the plan; John Lewis eventually won the seat that was created under the revised congressional plan. When Congress did re-authorize the VRA in 1982, it cited systemic abuses by Georgia officials to evade Black voting rights.

Notably, the tactics that have plagued Georgia's history to dilute the power of Black Georgians have persisted into the modern era. These policies around voting have also come at a time of rapid demographic shifts in Georgia's electorate: Georgia is the only state in the Deep South where the percentage of the Black population has sharply increased over the past half century. In just the past ten years, much of it in the wake of *Shelby County v. Holder* (2013), Georgia has slashed polling places by the hundreds (primarily in Black communities), increased voter purges and challenges against minority voters, launched state-sponsored investigations against minority voting groups, and more. In just the past year, Georgia enacted Senate Bill 202, a law DOJ could no longer stop under preclearance but which DOJ has alleged was passed with the intent and effect of limiting Black Georgians' voting power. While that suit remains to be litigated, the state has already begun replacing Black office holders in majority-Black counties and implementing policies to the disadvantage of Black Georgians.

The history of Georgia demonstrates a clear pattern, one that attempts (and often succeeds) in diluting and impairing Black Georgians' voting power. Georgia's recently enacted congressional plan must be viewed in this context.

This pattern, moreover, is reflected in Georgia's politics. Race is a central feature of politics in Georgia. Though race is central to any explanation of the modern party system in the South, and particularly in Georgia, racial identification is a complex phenomenon. A variety of factors, such as the racial context of an election, contribute to the importance of race in partisan politics. While the degree may vary, race is always a factor in southern campaigns.<sup>1</sup> As Valentino and Sears note, "race has been a dominant element in Southern politics from the beginning."<sup>2</sup>

As discussed at length below, as a historical matter, the alignment in Georgia of Black voters with the Democratic Party and white voters with the Republican Party that we see today stems from the Civil Rights Act of 1964 (CRA) and the Voting Rights Act of 1965 (VRA). It is worth noting that this realignment that began in the 1960s was not the result of a new issue which redefined partisan politics; instead, it was caused by new divisions based on an old issue. Southern whites, even today, continue to be antagonistic towards policies designed to promote the political, economic, and social progress of minorities.<sup>3</sup> However, it is clear that the explicitly race-based policies of the 1960s sparked the formation of the political alignment of Black and white voters that we see today in Georgia.

It is equally worth noting that my discussion here is not meant to, and does not, suggest in any way that all voters who identify with the Republican Party in Georgia are racist. Instead, it is meant to show that race unquestionably contributes to Georgia's partisan divides today, and, similarly, that those divides cannot be fully explained without discussing race.

### **III. EXPERT CREDENTIALS**

#### **A. Professional Background and Qualifications**

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<sup>1</sup> James M. Glaser, *Race, Campaign Politics, and the Realignment in the South* (New Haven: Yale University Press, 1996), 25-26, 43.

<sup>2</sup> Nicholas A. Valentino and David O. Sears. "Old Times There Are Not Forgotten: Race and Partisan Realignment in the Contemporary South," *American Journal of Political Science*. vol. 49, no. 3 (2005), 672-688.

<sup>3</sup> James M. Glaser, *Race, Campaign Politics, and the Realignment in the South* (New Haven: Yale University Press, 1996), 17, 19.

I received my undergraduate degree from Furman University in 1969 and my Ph.D. in American History from Princeton University in 1976 and have been researching and teaching American History at universities since 1971. Currently I am the Judge Matthew J. Perry Distinguished Professor of History, and Professor of Global Black Studies, Sociology and Anthropology, and Computer Science at Clemson University. From 2008 to 2010, I was the Burroughs Distinguished Professor of Southern History and Culture at Coastal Carolina University. I am emeritus University Distinguished Teacher/Scholar, Professor of History, African American Studies, and Sociology at the University of Illinois. I am a Senior Research Scientist at the National Center for Supercomputing Applications (NCSA) where I was Associate Director for Humanities and Social Sciences (2004-2010). I was also the founding Director of the Institute for Computing in Humanities, Arts, and Social Science (ICHASS) at the University of Illinois and currently chair the ICHASS Advisory Board.

I am the author or editor of more than twenty books and nearly three hundred articles, which can be found on my Curriculum Vitae attached to the end of this report. I have received a number of academic awards and honors. I was selected nationwide as the 1999 U.S. Research and Doctoral University Professor of the Year (presented by the Carnegie Foundation for the Advancement of Teaching and by the Council for Advancement and Support of Education). I have been recognized by my peers and was elected president of the Southern Historical Association and of the Agricultural History Society and elected to the Society of American Historians. In 2016, I received the College of Architecture, Art, and Humanities Dean's Award for "Excellence in Research." In 2017, I received the Governor's Award for Lifetime Achievement in the Humanities from the South Carolina Humanities Council and in 2021 I was awarded the Benjamin E. Mays Legacy Award. In 2018, I was part of the initial Clemson University Research, Scholarship and Artistic Achievement Award group of scholars. In 2022, I received the Clemson University Alumni Award for Outstanding Achievements in Research and was appointed to the South Carolina African American Heritage Commission, inducted into the Morehouse College Martin Luther King, Jr. Collegium of Scholars, and received the Southern Historical Association's most coveted award, the John Hope Franklin Lifetime Achievement Award.

My most recent book, co-authored with civil rights attorney Armand Derfner, *Justice Deferred: Race and the Supreme Court* (2021), was deemed "authoritative and highly readable" by Harvard University Law professor Randall Kennedy in his review in *The Nation*. *Justice*

*Deferred* was featured as a session at the November 2021 annual meetings of the Social Science History Association in Philadelphia, for a session at the April 2022 Midwestern Political Science Association meeting in Chicago and as a plenary session at the October 2022 Association for the Study of African American Life and History Association in Montgomery. Sessions on *Justice Deferred* are also scheduled for the annual meetings of the American Historical Association in January 2022 in Philadelphia and at the Organization of American History Association in March 2022 in Los Angeles. My book *The Age of Lincoln*, published in 2007, won the *Chicago Tribune* Heartland Literary Award for Nonfiction and was selected for Book of the Month Club, History Book Club, and Military Book Club. One reviewer proclaimed, “If the Civil War era was America's ‘Iliad,’ then historian Orville Vernon Burton is our latest Homer.” The book was featured at sessions of the annual meetings of the Association for the Study of African American Life and History, the Social Science History Association, and the Southern Intellectual History Circle. Among the articles I have published are several related to the issues discussed in this report and at least two law review articles address these issues directly. I was one of ten historians selected to contribute to the *Presidential Inaugural Portfolio* (January 21, 2013) by the Joint Congressional Committee on Inaugural Ceremonies. I edit two academic press series for the University of Virginia Press: *The American South Series* and the *A Nation Divided: Studies in the Civil War Era Series*.

As a scholar, I have had a long-time relationship with Georgia. I was born in Royston, and own the family farm in Madison County, Georgia. I am a recognized authority on the Georgia educator and theologian Dr. Benjamin E. Mays, who taught at Morehouse College from 1921 to 1923, was the longtime president of Morehouse College (1940-67), campaigned and was elected to the Atlanta schoolboard in 1969. The Atlanta school board members elected him president in 1970 and he served as president until he retired in 1981. My book, *In My Father House Are Many Mansions: Family and Community in Edgefield, South Carolina* (1985) is an intense study of a large section of South Carolina that is only separated from Georgia by the Savannah River, and the area has strong ties to Georgia and especially to the city of Augusta, which I have studied since before my Ph.D.

I have researched in the archives of the University of Georgia, Emory University, and Morehouse College. I have served on the Ph.D. committees, and am serving on one currently, at the University of Georgia. I gave one of Georgia’s annual humanities lectures in conjunction with

the Governor's Awards for the Humanities. I also keynoted one of the annual meetings of the Georgia Historical Society. I served on the Advisory Committee for the Atlanta History Museum to develop new exhibits on the modern South. I have been invited to present papers and talks and participate in seminars at Universities and colleges in the state of Georgia. I was invited and spoke at the Carter Center, and spoke at the University of Georgia, Augusta University, Payne College, Mercer University, gave the Crown lecture at Morehouse College, Georgia State University, Georgia Southern University, Fort Valley State University, Berry College, Emory University, the Georgia Institute of Technology, Young Harris College. I also led a workshop on teaching history for Georgia public school teachers in Athens, Georgia. Most recently, on October 12, 2022, I was invited back to Morehouse College for an academic conference. I was part of a panel discussing a special issue of *The Journal of Modern Slavery: A Multidisciplinary Exploration* 7:4 (2022) which was also issued as a book, *Slavery and its Consequences: Racism, Inequity & Exclusion in the USA*. On October 20, 2022, I returned to Georgia Southern University and spoke on "The Past, Present, and Future of Voting Rights" (with former Savannah Mayor Dr. Otis Johnson) as part of the Legacy of Slavery to Lecture series.

#### **B. Prior Testimony**

Over the past forty years, I have been retained to serve as an expert witness and consultant in numerous voting rights cases by the Voting Section of the Civil Rights Division of the United States Department of Justice (DOJ), the Voting Rights Project of the Southern Regional Office of the American Civil Liberties Union, the Brennan Center, the NAACP, the Legal Defense Fund (LDF) of the NAACP, the Mexican American Legal Defense and Educational Fund, the California Rural Legal Association, the League of United Latin American Citizens, the Lawyers' Committee for Civil Rights Under Law, the Legal Services Corporation, the Southern Poverty Law Center, and other individuals and groups.

I have extensive experience in analyzing social and economic status, discrimination, and historical intent in voting rights cases, as well as group voting behavior. I have been qualified as an expert in the fields of districting, reapportionment, and racial voting patterns and behavior in elections in the United States. My testimony has been accepted by federal courts on both statistical analysis of racially polarized voting and socioeconomic analysis of the population, as well as on the history of discrimination and the discriminatory intent of laws. For example, in 2021, my testimony and my report were cited in the Final Judgment and Order in Community Success



Initiative. v. Moore, 19 CVS 15941 (Superior Court, Wake County, March 28, 2022). In 2014, my testimony and my report was cited by the U.S. District Court for the Southern District of Texas in finding that the Texas in-person Voter ID Law was racially motivated and had a disparate effect on minorities. *See Veasey v. Perry*, 71 F.Supp.3d 627 (S.D. Tex. 2014). My testimony and reports have been cited by the U.S. Department of Justice. In 2012, for example, my report was cited by the Justice Department as a reason for their objection to the in-person South Carolina Voter ID law. *See* Dkt. 118-1, *South Carolina v. United States*, No. 1:12-cv-00203-CKK-BMK-JDB (D.D.C. June 29, 2012).

To the best of my knowledge and memory, in the last five or so years I have given testimony and/or depositions in the following cases: (i) *Pendergrass v. Raffensperger*, 1:21-cv-05339 (N.D. Ga.), (ii) *Grant v. Raffensperger*, 1:22-cv-00122 (N.D. Ga.), (iii) *League of Women Voters v. Lee*, No. 4:21-cv-186 (N.D. Fla.), (iv) *Community Success Initiative v. Moore*, No. 19-cv-15941 (N.C. Superior Court) (2020); (v) *Perez v. Perry* (5:11-CV-00360, W.D. Tex.); (vi) *South Carolina v. United States* (1:12-cv-00203, D.D.C.); and (vii) *Veasey v. Perry* (2:13-CV-193, S.D. Tex.). In addition, I testified on the VRA in a Congressional Briefing on December 4, 2015.

### **C. Methodology and Sources**

In this report, I have employed the standard methodology used by historians and other social scientists in investigating the adoption, operations, and maintenance of election laws. When analyzing political decision-making, historians examine the circumstantial and contextual evidence regarding the political, institutional, and social environment and context in which a decision is made, as well as direct evidence of the reasons asserted for the decision. We examine relevant scholarly studies, newspaper coverage of events, reports of local, state or federal governments, relevant court decisions, and the record in court cases, including expert reports, depositions and trial testimony, and statistical data. In writing this report, I have examined a wide range of sources. I have relied on primary and secondary sources available to me at the time of writing this report. This report makes extensive use of primary sources, especially contemporary newspapers, which record debates and speeches, and help to provide a barometer of public sentiment. Where possible, I have consulted historical and current newspaper and news magazines accounts, social media, miscellaneous online resources, from multiple perspectives, and checked for accuracy. I have also read the records of both houses of the Georgia General Assembly, the

journals and debates of the constitutional conventions, bill histories, and public statutes. I have studied census data, election returns, state and federal reports, official elections records. I have also used videos that have been recorded and preserved. I have also consulted secondary published works, as well as MA and Ph.D. theses, on politics and race relations in Georgia by other historians and social scientists, specifically, as well as in the South as a whole. This report features extensive footnotes to allow readers to assess the accuracy and credibility of my evidence and my conclusions.

#### **IV. GEORGIA'S HISTORY OF RACE DISCRIMINATION IN VOTING**

##### **A. Introduction**

Native Georgia historian, Dr. U. B. Phillips, argued in 1928 that the central theme of southern history was white racism. According to Phillips, white Southerners believed so strongly in white supremacy that they were determined the South “shall be and remain a white man’s country.”<sup>4</sup> Recently, Georgian and today’s most eminent historian of the American South, Spalding Distinguished Professor of History, emeritus at the University of Georgia, Dr. James C. Cobb, characterized Phillips’s argument as a “longstanding determination of whites to control people of color.” In Cobb’s own 2017 historical investigation of Georgia’s racial history he concluded, “the historical and contemporary pervasiveness of this impulse [of white Georgians determination to control people of color] is difficult to deny.”<sup>5</sup> My own research has found the same underlying purpose. This report demonstrates that this white determination resonates even today and especially in the area of voting rights. Over generations, people of color in Georgia have been discriminated against, disfranchised, and their vote diluted in ingenious ways by those who control the franchise in state and local governments.

The courts have taken judicial notice of this long and continuing history of racial discrimination, particularly in the area of voting rights. In 1994, in *Brooks v. State Board of Elections*, 848 F. Supp. 1548, 1560 (S.D. Ga. 1994), the court found: “Georgia has a history chocked full of racial discrimination at all levels. This discrimination was ratified into state constitutions, enacted into state statutes, and promulgated in state policy. Racism and race

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<sup>4</sup> Ulrich B. Phillips, “The Central Theme of Southern History,” *American Historical Review*, Volume 34, Issue 1 (Oct. 1928), 31; Orville Vernon Burton, “The South as ‘Other,’ The Southerner as ‘Stranger,’” *The Journal of Southern History*, Volume 79, Issue 1 (February 2013): 7-50.

<sup>5</sup> Declaration of Dr. James C. Cobb at 8, *NAACP v. Gwinnett County Board of Registrations and Elections*, Civil Action No. 1:16-cv-02852, (N.D. Ga. Aug. 9, 2017).

discrimination were apparent and conspicuous realities, the norm rather than the exception.” This discrimination continues to this day.

In *A Voting Rights Odyssey: Black Enfranchisement in Georgia* (2003), Laughlin McDonald, an expert on Georgia’s voting history, wrote:

“While Georgia was not an anomaly, no state was more systematic and thorough in its efforts to deny or limit voting and officeholding by African-Americans after the Civil War. It adopted virtually every one of the traditional ‘expedients’ to obstruct the exercise of the franchise by blacks, including literacy and understanding tests, the poll tax, felony disfranchisement laws, onerous residency requirements, cumbersome registration procedures, voter challenges and purges, the abolition of elective offices, the use of discriminatory redistricting and apportionment schemes, the expulsion of elected blacks from office, and the adoption of primary elections in which only whites were allowed to vote. And where these technically legal measure failed to work or were thought insufficient, the state was more than willing to resort to fraud and violence in order to smother black political participation and safeguard white supremacy.”<sup>6</sup>

As McDonald further explained, Georgia and other southern states “continued their opposition to equal voting rights into the twentieth century and after the passage of the Voting Rights Act in 1965.”<sup>7</sup> Since McDonald published this assessment of Georgia’s history of voter discrimination and suppression in 2003, the state of Georgia has continued attempts to minimize the electoral influence of minority voters. Throughout the history of the state of Georgia, voting rights have followed a pattern where after periods of increased nonwhite voter registration and turnout, the state has passed legislation, and often used extralegal means, to disfranchise minority voters. Georgia continues attempts to minimize the electoral influence of minority voters, most recently in the redistricting plan passed by the Georgia General Assembly and signed by the Governor, and culminating in the disfranchisement mechanisms and implementation of SB 202. The first section of this report describes this extensive history from as far back as Reconstruction through the present day.

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<sup>6</sup> Laughlin McDonald, *A Voting Rights Odyssey: Black Enfranchisement in Georgia* (Cambridge: Cambridge University Press, 2003), 2–3. The early history of voter suppression and voter intimidation of Black voters from 1867 till the 1990s in Georgia is carefully documented by Laughlin McDonald, Michael B. Binford, and Ken Johnson in “Georgia,” chapter three of *Quiet Revolution in the South: The Impact of the Voting Rights Act, 1965-1990*, edited by Chandler Davidson and Bernard Grofman (Princeton, N.J.: Princeton University Press, 1994), 67-102.

<sup>7</sup> McDonald, *A Voting Rights Odyssey*, 3.

## **B. Reconstruction Era (End of the Civil War to 1870s)**

From Georgia's beginning, Black Georgians were precluded from participating in nearly all of Georgia's political and civil life. Near the start of the Civil War, in 1860, the United States census recorded 41,080 owners of 462,000 enslaved persons. Except for Virginia, Georgia had more enslaved persons and more owners of slaves than any state. But free Blacks were denied citizenship and voting rights in antebellum Georgia too; under the 1777 Georgia Constitution, voting was limited to "male white inhabitants, of the age of twenty-one years." Before the start of the Civil War, in March 1861, Alexander H. Stephens, a Georgian and vice-president of the Confederacy, explained that the new government had as its cornerstone, "the great truth than the negro is not equal to the white man."<sup>8</sup>

Immediately following the Civil War was a period of opportunity for the newly freed population. But in opposition to any such new freedom were targeted policies against Black Georgians.<sup>9</sup> With the defeat of the Confederacy, turmoil and uncertainty roiled the countryside. In June 1865, the 9,000 U.S. Army soldiers provided some measure of order and, where they were stationed, some protection for the newly freed enslaved people. With President Andrew Johnson's appointment of a provisional governor, white adult males who took a loyalty oath to the United States voted for delegates to write a new state constitution. While the new 1865 Georgia Constitution abolished slavery (as it was required to), the 1865 Constitution continued to limit the franchise to "free white male citizens of this State." Georgia's 1865 Constitution also excluded Black Georgians from holding office.<sup>10</sup>

At the end of the Civil War, Confederate states seeking to rejoin the Union were required to ratify the 13<sup>th</sup> Amendment, which specifically outlawed slavery.<sup>11</sup> In December 1865, the

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<sup>8</sup> Keith S. Hebert, *Cornerstone of the Confederacy: Alexander Stephens and the Speech that Defined the Lost Cause* (2021); McDonald, *A Voting Rights Odyssey*, 16.

<sup>9</sup> Jeffrey Robert Young, "Slavery in Antebellum Georgia," *New Georgia Encyclopedia*, [www.georgiaencyclopedia.org/articles/history-archaeology/slavery-antebellum-georgia](http://www.georgiaencyclopedia.org/articles/history-archaeology/slavery-antebellum-georgia) (Oct. 20, 2003) (last edited Sep. 30, 2020); William Harris Bragg, "Reconstruction in Georgia," *New Georgia Encyclopedia*, <https://www.georgiaencyclopedia.org/articles/history-archaeology/reconstruction-in-georgia/> (Oct. 21, 2005) (last edited Sep. 30, 2020)

<sup>10</sup> Numan V. Bartley, *The Creation of Modern Georgia* (Athens: University of Georgia Press, 1983), 46-47; Bragg, "Reconstruction in Georgia."

<sup>11</sup> Orville Vernon Burton, *The Age of Lincoln* (New York: Hill and Wang, 2007), 269-70, 275, 298, 368; Orville Vernon Burton and Armand Derfner, *Justice Deferred: Race and the Supreme Court* (Harvard University Press, 2021), 37-38, 41, 44-45;

Georgia General Assembly ratified the 13<sup>th</sup> Amendment, and President Andrew Johnson returned governing the state to Georgia's elected officials. While the language of the prisoner exemption clause of the 13<sup>th</sup> Amendment was common to state constitutions and the Northwest Ordinance, historian Eric Foner notes that it "did not go unnoticed among white Southerners" that the 13<sup>th</sup> Amendment included a prisoner exemption clause.<sup>12</sup> In November 1865, for instance, former Confederate general John T. Morgan pointed out in a speech in Georgia that the 13<sup>th</sup> Amendment did not prevent states from enacting laws that enabled "'judicial authorities' to consign to bondage blacks convicted of crime."<sup>13</sup>

Georgia, like other states in the former Confederacy, then enacted "Black Codes," although the state did not refer to them with that name. This legislation regulated and restricted the rights of Black citizens through neutral-sounding regulations.<sup>14</sup> Although Black Georgians could not be legally subjected to penalties or punishment that did not apply to whites, it was local white officials and all white juries who decided whom would be punished and whom would not. While Black Georgians were granted some property rights, they could not serve on juries, or vote, or, significantly, testify against whites in court. Thus white Georgia officials were able to apply supposedly race neutral laws in a way that targeted the former enslaved people. Around this time, the Georgia legislature elected two prominent former Confederate officials as Georgia's two U.S. Senators, Alexander Stephens and Herschel Johnson, which the North saw as a flagrant act of white Georgian defiance and led Congress to deny them a seat in Washington.

In reaction to the re-election of former Confederate leaders, to the Black Codes, and to increasing violence against newly freed Black people, Georgia and nine other former Confederate States were placed under Federal military authority in 1867. As part of that oversight, adult Black males were given the right to vote, and the following time period was one of tremendous opportunity for Black Georgians. After the passage of the Second and Third Reconstruction Acts by Congress in 1867, Black males voted for the first time, and federally appointed registrars added 98,507 Black men to the voting lists, and required Georgia, as a requirement for readmission as a

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<sup>12</sup> Eric Foner, *The Second Founding: How the Civil War and Reconstruction Remade the Constitution* (New York: W. W. Norton, 2019), 47-48, 110.

<sup>13</sup> Sidney Andrews, *The South Since the Civil War* (Boston: Houghton Mifflin, 1971), 323-24 (first published by Ticknor and Fields, 1866); John Richard Dennett, *The South as It Is, 1865- 1866*, (Tuscaloosa: University of Alabama Press, 2010), 110.

<sup>14</sup> Bartley, 17; Bragg, "Reconstruction in Georgia."

state, to write Black suffrage into the state constitution, elect a government based on the new Constitution, and ratify the Fourteenth Amendment, which granted citizenship to the formerly enslaved and guaranteed equal protection, and provided that Congress and the federal government could enforce that protection even against the states.<sup>15</sup> In December 1867, a new constitutional convention, held in Atlanta, guaranteed Black citizenship, protection of the laws, and the right of male suffrage. In the next election, in April 1868, held under the new constitution, twenty-five Black Georgians were elected to the State House, and three were elected to the State Senate.

Shortly afterward, white Georgians plotted to eliminate their power. Robert Toombs, a Democratic Party leader from Wilkes County, Georgia, exclaimed at a meeting of Georgia Democrats in July 1868 that it was an injustice that Georgia had been forced to accept “[Republican Governor Rufus] Bullock and nigger Government.”<sup>16</sup> Toombs had served as secretary of state of the Confederacy and as a Confederate general, and he objected to Georgia’s Constitution of 1868, drafted during Reconstruction, because he believed it granted Black people too many rights of citizenship.<sup>17</sup> That same year, *The Atlanta Constitution* also insisted that “the negro [was] incapable of self-government,” and that the “interest of the white race . . . should be held as paramount to all perilous experiments upon an alien race.”<sup>18</sup>

Even white Republicans sought to eliminate Black suffrage. Samuel Bard, the editor of the *Atlanta Daily New Era*, a Republican newspaper, reassured his readers that “Reconstruction does not make negro suffrage a permanency,” and promised that “as soon as the State is once more in its place . . . they can amend their Constitution, disfranchise the negroes, and restore suffrage to the disfranchised whites.”<sup>19</sup> By that December, Democrats, though in the minority, convinced a

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<sup>15</sup> Bartley, 48.

<sup>16</sup> “Mammoth Democratic Mass Meeting,” *The Atlanta Constitution* (Atlanta, GA), July 24, 1868 (available online at <https://www.Newspapers.com/image/26848994>).

<sup>17</sup> McDonald, *A Voting Rights Odyssey* at 35-36.

<sup>18</sup> *The Atlanta Constitution* (Atlanta, GA), July 30, 1868 (available online at <https://www.Newspapers.com/image/26849014/>).

<sup>19</sup> “Reconstruction and the Southern Whites,” *The Atlanta Daily New Era* (Atlanta, GA), January 4, 1868. For a scholarly overview of these post-Civil War and post-Reconstruction disfranchising measures, see *Quiet Revolution in the South*, 67–70.



sufficient number of white Republicans to agree to expel all Black members of the Georgia legislature. By September 1868, all Black legislators were expelled from the General Assembly.<sup>20</sup>

This expulsion, along with the continuing high levels of racial violence directed at African Americans, convinced Congress to suspend Georgia's status once again as a state. Black legislators were reseated after the passage of the Congressional Reorganization Act of 1869.<sup>21</sup> In 1870 the Georgia Legislature returned the expelled Black legislators to their seats and expelled twenty-two members who had served as Confederate officers. That same year it passed the Akerman Law, prohibiting any person from challenging or hindering voters at the polls.<sup>22</sup> White Georgians reacted with vengeance; between 1867 and 1872, "at least a quarter of the state's Black legislators were jailed, threatened, bribed, beaten or killed."<sup>23</sup> At the heart of Black voter suppression was both explicit and implicit white violence. As Sidney Andrews, a journalist from Massachusetts, wrote in 1865, "any man holding and openly advocating even moderately radical views on the negro question, stands an excellent chance, in many counties of Georgia and South Carolina, of being found dead some morning."<sup>24</sup>

In October 1868, the *Atlanta Daily New Era* reported that those "despairing Democracy are resorting to the grossest acts of violence with the view of intimidating the negro away from the polls."<sup>25</sup> Historian Edmund Drago noted that starting in the April 1868 election through the 1872 presidential election, Democrats resorted to murder, violence, fraud, and intimidation, and successfully decreased Republican votes. Black politicians were threatened with violence, and some Black legislators were murdered by the Ku Klux Klan.<sup>26</sup>

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<sup>20</sup>C. Mildred Thompson, *Reconstruction in Georgia: Economic, Social, Political, 1865-1872* (New York: Columbia University Press, 1915) 214; Edmund L. Drago, *Black Politicians and Reconstruction in Georgia: A Splendid Failure* (Baton Rouge: Louisiana State University Press, 1982), 148. There remains today a bronze sculpture on the Georgia Legislature's grounds entitled "Expelled Because of Color" to the 33 Black members of the Georgia Legislature who were expelled at that time.

<sup>21</sup> Drago, 55.

<sup>22</sup> McDonald, *A Voting Rights Odyssey*, 17-25.

<sup>23</sup> McDonald, *A Voting Rights Odyssey*, 35.

<sup>24</sup> Sidney Andrews, "The South Since the War," in Brooks D. Simpson, ed., *Reconstruction: Voices From America's First Great Struggle for Racial Equality* (New York: Library of America, 2018), 140

<sup>25</sup> *The Atlanta Daily New Era* (Atlanta, GA), October 25, 1868.

<sup>26</sup> Drago, 141-159.

One such instance of political violence happened in Camilla, Georgia in the fall of 1868. Just two months after the state assembly expelled its African American members, local officials from Mitchell County and the surrounding area organized a march from Albany to Camilla that would end at a local Republican rally. Several hundred Black Georgians joined the planned march along with several white Republicans, but upon entering town, local whites hiding out in storefronts along the town square gunned them down, murdering at least a dozen and wounding another thirty. The result of such a massacre was that white Democrats took control of southwest Georgia.<sup>27</sup>

Klan violence against Black legislators was severe. On October 29, 1869, a Black state legislator named Abram Colby from Greene County, Georgia was attacked by a group of sixty-five Klansmen, who dragged him into the woods and beat him for more than three hours before leaving him for dead. The mob explained that they were attacking Colby because he “had influence with the negroes of other counties.”<sup>28</sup> Colby later recounted before the Congressional Joint Select Committee to Inquire into the Condition of Affairs in the Late Insurrectionary States that, as he was beaten with “sticks and with straps that had buckles on the ends of them,” his assailants had demanded that he promise to never “vote another damned Radical ticket.”<sup>29</sup> Colby testified that the same group of men had also attempted to bribe him to switch parties or resign from the legislature. Colby’s story, while horrific, was not unique—this kind of violence against Black Republicans was common between 1869 and 1872.<sup>30</sup> The Ku Klux was active throughout the

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<sup>27</sup> See Lee W. Formwalt, “Camilla Massacre,” New Georgia Encyclopedia, <https://www.georgiaencyclopedia.org/articles/history-archaeology/camilla-massacre/> (Sep. 5, 2002) (last edited Aug 20, 2020) See also Lee Formwalt, “The Camilla Massacre of 1868: Racial Violence as Political Propaganda,” *The Georgia Historical Quarterly*, Vol. 71, No. 3 (Fall, 1987), 399-426.

<sup>28</sup> *Ibid.*

<sup>29</sup> United States Congress, Joint Select Committee on the Condition of Affairs in the Late Insurrectionary States, Luke P. Poland, John Scott, and Woodrow Wilson Collection, *Report of the Joint select committee appointed to inquire into the condition of affairs in the late insurrectionary states, so far as regards the execution of laws, and the safety of the lives and property of the citizens of the United States and Testimony taken* (Washington: U.S. Government Printing Office, 1872). Available online from the Library of Congress, <https://lcn.loc.gov/35031867>.

<sup>30</sup> *Ibid.*; see also Kidada E. Williams, “The Wounds that Cried Out: Reckoning with African Americans’ Testimonies of Trauma and Suffrage from Night Riding” in *The World the Civil War Made*, Gregory P. Downs and Kate Masur, eds. (Chapel Hill: University of North Carolina Press, 2015) 159-62, 170-72.



state. Charles Kendricks, a politically active African American carpenter, and landowner in Gwinnett County, was appointed as an election manager by the state's Republican governor; he reported that a Klan leader had burst into his home waving a pistol and threatening to hang him. When he wrestled with the intruder and managed to run away, he was shot. The same perpetrator had previously pistol whipped Kendricks and attempted to stab him when he had seen Kendricks approaching the polls to vote.<sup>31</sup>

The example of Georgian Tunis Campbell is illustrative of Georgia's disfranchisement and intimidation tactics. Born in 1812, Tunis Campbell was a prominent African American abolitionist, who arrived in Georgia as an agent of the Freedman's Bureau. In the spring of 1865, he traveled to the Georgia coast and established a freedmen's settlement. When president Andrew Johnson began pardoning ex-Confederates and returning their land, Campbell purchased a large tract of land on St. Catherine's Island, allocated new settlements, and organized what became a self-governing community.<sup>32</sup> From there, Campbell moved into politics, becoming the head of the Republican Party in Georgia, a local registrar of voters, a delegate to Georgia's new Constitutional Convention, and eventually a state senator. He consulted with U.S. President Ulysses S. Grant and Senator Charles Sumner in 1871 on the need for voting rights for African Americans. He even headed up his own militia to protect him and his community from attacks from local bands of the Ku Klux Klan.<sup>33</sup> Local whites attempted to undermine Campbell from the start. In 1867, while serving as a state registrar, he survived a poisoning attempt, which reportedly killed one of his colleagues. Two years later, when both Tunis and his son won seats in the Georgia General Assembly, white state officials voted to deny them their seats.

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<sup>31</sup> Testimony Taken by the Joint Select Committee to Inquire into the Condition of Affairs in the Late Insurrectionary States: Georgia, Volume I (Washington, D.C.: Government Printing Office, 1872), 350-55, 515-517. Available online at: [https://ia601409.us.archive.org/32/items/reportofjointsel06unit/reportofjointsel06unit\\_bw.pdf](https://ia601409.us.archive.org/32/items/reportofjointsel06unit/reportofjointsel06unit_bw.pdf).

<sup>32</sup> Russell Duncan, "Tunis Campbell, 1812-1891," New Georgia Encyclopedia, <https://www.georgiaencyclopedia.org/articles/arts-culture/tunis-campbell-1812-1891/> (Dec. 10, 2004) (last modified Jul 15, 2020). See also Russell Duncan, *Freedom's Shore: Tunis Campbell and the Georgia Freedmen* (Athens: University of Georgia Press, 1986).

<sup>33</sup> *Ibid*; See also Richard Hogan, "Resisting Redemption: The Republican Vote in Georgia in 1876," *Social Science History*, Vol. 35, No. 2 (Summer 2011), 13-166. See also, Jess McHugh, "He fought for Black voting rights in Georgia. He was almost killed for it." *The Washington Post* (Oct. 25, 2020) available at: <https://www.washingtonpost.com/history/2020/10/25/voting-rights-tunis-campbell-civil-war/>

During this time of immense violence, intimidation, and chicanery, in 1871 white Democrats took control of the Georgia Legislature. With a majority of elected officials dedicated to white supremacy, the state of Georgia tightened its grip on would-be Black voters and especially on Black elected officials, reinstituting an annual poll tax to dissuade or outright prohibit impoverished Black Georgians from voting. The poll tax and continued violence was effective: In 1872 only four Black citizens were elected to the Georgia Legislature, and only three in 1874.

In 1871, the state of Georgia also voted to remove the Republican Governor, thus basically ending political Reconstruction in Georgia. Then Democrats re-organized county elections and took control of local elections, thereby diminishing both the electoral power of Black voters-- and negating Tunis Campbell's authority as the leading politician in McIntosh County. In 1874, for example, Campbell won a seat in Georgia's House of Representatives, but Georgia's Democratically controlled legislature threw out all of the votes from Darien, Georgia (Campbell's base of support) after learning that a local election judge was not a registered property holder.<sup>34</sup>

Finally, in 1876, after years of trying to thwart Campbell's political career, white Democrats arrested Campbell on trumped up charges alleging malfeasance in office. A Georgia court sentenced him to a yearlong term in prison, which he served while working as a convict-lease laborer at a state labor camp. He left Georgia upon his release and published a memoir entitled *The Sufferings of the Rev. T. G. Campbell and his Family in Georgia (1877)*.<sup>35</sup>

The story of Tunis Campbell illustrates the effectiveness of violence, intimidation, fraud, and the poll tax. After white Democrats seized control of the Georgia state legislature, they organized a new constitutional convention, chaired by the same Robert Toombs cited above, who had been the secretary of state of the Confederacy. The Georgia state constitution of 1877 implemented a cumulative poll tax for elections, so that potential voters had to pay all previous unpaid poll taxes before casting a ballot.<sup>36</sup> The new 1877 Georgia constitution did not disfranchise its African American citizens in explicit words. But as historian Edmund Drago noted, however,

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<sup>34</sup> See Hogan, 147.

<sup>35</sup> See Duncan, "Tunis Campbell." See also Tunis G. Campbell, *Sufferings of the Rev. T.G. Campbell and his family, in Georgia* (Washington, D.C.: Enterprise Publishing Company, 1877). Available online at: <https://archive.org/details/sufferingsofrevt00camprich/page/9/mode/2up>

<sup>36</sup> For a brief explanation of how the cumulative poll tax worked to disfranchise African Americans, see Avidit Acharya et al., *Deep Roots: How Slavery still Shapes Southern Politics* 146 (2018).

new restrictions, combined with reinstated poll taxes, were “sufficient to render black participation in politics improbable.”<sup>37</sup>

### **C. The Populist & Early Progressive Movement Era (1880s to 1910s)**

Populism emerged in the late 1880s as a challenge to the Post-Reconstruction settlement in Georgia. Populism meant different things to different people in different places, but it usually meant an emphasis on “the people” rather than on “the elite.” In Georgia “the people” meant the white people and the maintenance of white supremacy and the avoidance of any challenges to one-party rule. Almost all Georgia white elites were committed to the maintenance of white supremacy. A leading political figure in Georgia in these years was not a Populist but the Progressive Movement leader Henry Grady, who proclaimed the first of many “New Souths.” Grady wrote in 1885 that racial inequality is “instinctive—deeper than prejudice or pride—and bred in the bone and blood” and therefore it was essential that “the white race must dominate forever in the South.”<sup>38</sup>

Populism and the Farmer’s Alliance became a major factor in Georgia politics in the late 1880s. Most Georgia Populists were not racial egalitarians, but they did denounce race hatred and lynching, and promoted enlightened and mutual self-interest as an economic strategy. The Populists also called for financial reforms and regulation of corporations, particularly the railroads. The *Atlanta Constitution* warned that maintaining white supremacy was more important than “all the financial reform in the world.”<sup>39</sup> In Georgia progressivism was, in the words of historian John Dittmer, “conservative, elitist, and above all, racist.”<sup>40</sup>

The populist career of Tom Watson, a Congressman and U.S. Senator from Georgia, demonstrated the difficulties of challenging white supremacy in the state. Watson was initially a supporter of the interracial alliance of the populist movement, advocating for the rights of African Americans to vote and even standing guard all night to protect an African American’s right to vote. But after 1900, in his Georgia congressional campaign, Watson refashioned himself as virulently

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<sup>37</sup> McDonald, 35–37; Drago, 156.

<sup>38</sup> Bartley, 85–86.

<sup>39</sup> McDonald, *A Voting Rights Odyssey*, 37.

<sup>40</sup> John Dittmer, *Black Georgia in the Progressive Era, 1900–1920* (Urbana: University of Illinois, 1977), 214.

racist (and anti-Semitic), a vehement defender of lynching, running on a platform of white supremacy.<sup>41</sup>

Georgia then took additional steps to exclude Black voters from the franchise at the end of the 19<sup>th</sup> century. In 1890, the Georgia legislature passed a law ceding primary elections to party officials. The law kept political candidates from trying to appeal to Black voters or to build multiracial coalitions.<sup>42</sup> In 1898, the Georgia Democratic Party adopted the use of a statewide primary, a popular progressive reform to remove politics from “smoke-filled back rooms.” But the adoption in Georgia was not a reform to bring in more democracy. In 1900, following the lead of South Carolina, Georgia became the second state to bar Black voters from participating in the Democratic Party, under the pretense that the Democratic Party was a private “club” and only had to accept the patronage of its chosen “guests.” Because Georgia was a one-party Democratic state, this meant that Black Georgians had no effective role in the state’s politics. The white primary was one of the central ways Georgia evaded the Fifteenth Amendment.<sup>43</sup>

Georgia’s government took another a giant step towards evading the Fifteenth Amendment in 1908, when it passed the “Progressive era” Felder-Williams bill, which became known as the “Disenfranchising Act.” Because the Fifteenth Amendment barred outright elimination of Black voting, other methods were used to curb and discourage Black voting without explicitly banning it. Even so, many agreed with the Georgia Congressman Tom Watson, who said in 1910 that “the hour has struck for the south to say that the fifteenth amendment is not law and will no longer be respected.”<sup>44</sup>

The 1908 Felder-Williams bill broadly disfranchised many Georgians but included a series of exceptions that would continue to allow most white voters to vote, such as: (1) having served

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<sup>41</sup> Julia Mary Walsh, “‘Horny -Handed Sons of Toil’: Workers, Politics, and Religion in Augusta, Georgia, 1880—1910,” (Urbana: University of Illinois, 1999). Available online at: <https://www.ideals.illinois.edu/handle/2142/84756>; Donald A. Grant, *The Way it Was in the South: The Black Experience in Georgia* (1993; University of Georgia Press, 2001), 175-78; C. Vann Woodward, *Tom Watson: Agrarian Rebel* (1938; Oxford University Press, 1963); Barton Shaw, “Populist Party.” New Georgia Encyclopedia, <https://www.georgiaencyclopedia.org/articles/history-archaeology/populist-party/> (Sep. 3, 2002) (last modified Sep. 29, 2020)

<sup>42</sup> Bartley, 149; GA History, “White Primary Ends,” available online at: <http://gahistorysms.weebly.com/white-primary-ends.html>

<sup>43</sup> McDonald, *A Voting Rights Odyssey*, 38.

<sup>44</sup> *Ibid*, 39–40

in either the U.S. or Confederate armies, (2) having descended from someone who had served in either the U.S. or Confederate armies, (3) owning forty acres of land or five hundred dollars' worth of property in Georgia, (4) being able to write or to understand and explain any paragraph of the U.S. or Georgia Constitution, or (5) being "persons of good character who understand the duties and obligations of citizenship."<sup>45</sup> Overall, the Felder-Williams bill's literacy test, plus a property requirement and a cumulative poll tax, eliminated almost all existing Black voters in Georgia (along with a fair number of poor whites.)

While the bill became known as the "Disenfranchising Act," Georgia officials like Governor Hoke Smith justified the bill in the name of "honest elections in Georgia," which could begin by "keeping registration lists above suspicion."<sup>46</sup> Thus, pursuant to this new law, a new registration of voters was held after its adoption by popular vote.<sup>47</sup> The technique of disfranchisement under the name of something else, such as honest elections, became more prevalent in Georgia and elsewhere. As the *Atlanta Journal* wrote about the Felder-Williams bill, in passing it "Georgia takes her place among the enlightened and progressive states which have announced that the white man is to rule. She has declared in clear and specific terms for Anglo-Saxon supremacy and the integrity of the ballot."<sup>48</sup>

In the campaign to disfranchise Black voters, Georgia officials blamed a specter of voter fraud, echoing rhetoric from the violent overthrow of Reconstruction that Black residents did not deserve the rights of citizenship and the sanctity of the ballot. For Southern Progressives, as Governor Hoke Smith argued, "the first step toward purifying the ballot" was "the exclusion of the ignorant and purchasable negro."<sup>49</sup> White Democrats blamed "fraudulent negro voters" for Republican rule during Reconstruction, and falsely claimed that denying African Americans the right to vote would eliminate fraud.<sup>50</sup> John M. Brown, the editor of *The Bainbridge Democrat*, argued that "the negro as a voter—by a very large majority—is purchasable," and without

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<sup>45</sup> *Ibid*, 41.

<sup>46</sup> Georgia. General Assembly. House of Representatives. *Journal of the House of Representatives of the State of Georgia* (Atlanta, GA: Franklin-Turner Company, 1908), 11. Available online through the University of Georgia at: [http://dlg.galileo.usg.edu/do:dlg\\_ggpdp\\_y-ga-bl404-b1908](http://dlg.galileo.usg.edu/do:dlg_ggpdp_y-ga-bl404-b1908).

<sup>47</sup> *Journal of the House of Representatives of the State of Georgia*, 19.

<sup>48</sup> McDonald, *A Voting Rights Odyssey*, 42.

<sup>49</sup> "Hoke Smith Writes of Campaign Issues," *The Atlanta Georgian and News* (Atlanta, GA), July 29, 1910.

<sup>50</sup> *The Atlanta Constitution* (Atlanta GA), June 16, 1898.

disfranchisement a “minority of the whites” could control Black voters and take Georgia hostage.<sup>51</sup> The false claim that Black votes were fraudulent began during Reconstruction and continues as a trope today.<sup>52</sup>

This pretext of voter fraud and purifying elections was used to justify the wholesale change in voter registration laws. In conjunction with the Felder-Williams bill that stripped Black men of their voter registrations, the Georgia General Assembly also approved a measure to amend the process for registering voters. The *Cartersville News* explained that this “pure election law” provided that “the registration list shall be placed on exhibit in the office of the clerk of the court, where all may inspect and may challenge those who are thought not worthy of a place.”<sup>53</sup> The bill stipulated that “the list from the voters’ books . . . shall be open to public inspection, and any citizen of the county shall be allowed to contest the right of registration of any person whose name appears upon the voters’ list.”<sup>54</sup> This “challenge” provision was incorporated into the 1910 Code of the State of Georgia, and remains substantively unchanged to this day.<sup>55</sup>

The purpose of both the disfranchisement law and the registration law was clear: to disfranchise Black Georgians and keep it that way. Governor Smith explained that during his tenure that “we adopted a registration law” that “was intended to make complete and fully effective the disfranchisement law.”<sup>56</sup> The *Atlanta Semi-Weekly Journal* wrote that “the registration provision of the pure election law which guarantees the ballot to every real white citizen of the

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<sup>51</sup> “For Negro Disfranchisement,” *The Bainbridge Democrat* (Bainbridge, GA), September 3, 1908.

<sup>52</sup> *The Atlanta Constitution* (Atlanta GA), June 16, 1898.

<sup>53</sup> “Laws to Govern Georgia Elections,” *The Cartersville News* (Cartersville, GA), August 20, 1908.

<sup>54</sup> Part I, Title VII, *Acts and Resolutions of the General Assembly of the State of Georgia, 1908* (Atlanta, GA: Charles P. Byrd, 1908), 60. Available online through the Digital Library of Georgia at: [https://dlg.usg.edu/record/dlg\\_zlgl\\_102041291](https://dlg.usg.edu/record/dlg_zlgl_102041291)

<sup>55</sup> Originally codified as § 34-605, the 1908 voter challenge provision was preserved in substantially the same form through extensive reorganization and modernization of the Georgia Election code in 1964 and 1981, when it was re-codified at § 21-2-230. As observed in the editor’s note for the 2008 edition of *The Official Code of Georgia, Annotated* § 21-2-230, the voter challenge provision of the reorganized 1981 *Official Code of Georgia* was so similar to the 1933 *Code*’s voter challenge statute that any legal opinions decided under the older code would apply to § 21-2-230. See O.C.G.A. § 21-2-230 (2008). On intimidation and the use of the Georgia Challenge law, see *Vigilante: Georgia’s Vote Suppression Hitman* (Show&Tell Films 2022).

<sup>56</sup> “Hoke Smith Writes of Campaign Issues,” *The Atlanta Georgian and News* (Atlanta, GA), July 29, 1910



state” ensures that “his ballot’s power shall not be vitiated by a corrupt and floating element,” i.e. the Black voter whose vote was “fraudulent.”<sup>57</sup>

Together, these laws were devastatingly effective at eliminating both Black elected officials from seats of power and Black voters from the franchise. At this time of the Felder-Williams bill, the last remaining African American in the legislature was William H. Rogers, and he resigned after the passage of the bill. There would not be another Black Georgian in the legislature for half a century. In terms of voters, in 1908, 33,816 Black Georgians were registered to vote. Two years later, only 7,847 African Americans were registered, a decrease of more than 75 percent. In comparison, fewer than six percent of white voters were disfranchised by Georgia’s new election laws.<sup>58</sup> From 1920 to 1930 the combined Black vote total never exceeded 2,700.<sup>59</sup> In 1940 the total Black registration in Georgia was an estimated 20,000, around two or three percent of eligible Black voters. If anything, this figure exaggerates Black voting strength, since until 1944 Black voters were barred from the only election that mattered, the Democratic Party primary.<sup>60</sup>

#### **D. Early 20th Century (1910s to 1940s)**

During the early 20<sup>th</sup> century, beyond the poll tax and the white primary which had functionally removed nearly all Black Georgians from voter registration lists, Black Georgians also faced an array of state-sponsored discrimination across all aspects of life which led back to voting.<sup>61</sup> One was education. In *Cumming v. Richmond County School Board*, 175 U.S. 528 (1899), the U.S. Supreme Court sanctioned Georgia’s de jure segregation of white from Black students. The case arose after the school board in Augusta, Georgia, closed the only Black public high school in the county, while still operating its white high school. The Georgia Supreme Court

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<sup>57</sup> “A Puerile Attack on a Great Law,” *The Atlanta Semi-Weekly Journal* (Atlanta, GA), June 24, 1910.

<sup>58</sup> *Ibid.*; see also *Quiet Revolution in the South*, 67.

<sup>59</sup> McDonald, *A Voting Rights Odyssey*, 46.

<sup>60</sup> *Ibid.*, 49; see also J. Morgan Kousser, *Colorblind Injustice: Minority Voting Rights and the Undoing of the Second Reconstruction* (Chapel Hill: University of North Carolina, 1999), 201.

<sup>61</sup> The continuing effects of discrimination in Georgia hinder the ability of minority group members to participate effectively in the political process. Disparities in education, income, and health outcomes persist in Georgia, effectively disadvantaging many minority voters. Although another expert is providing census data and other statistics on racial disparities in socio-economic characteristics usually cited in connection with Senate Factor 5, I am providing a historical background here.

approved of the closure and segregation, and so did the U.S. Supreme Court. And without support for schools for Black Georgians, not only could literacy tests be used to keep Black people from voting, but under-resourced education and segregated schools severely stalled economic and social mobility for Georgia's Black residents.<sup>62</sup>

Like many southern states in the early years of the twentieth century, Georgia, on both a state and local level, instituted a vast array of Jim Crow legislation concerning restaurants, parks, zoos, chain gangs, and even prohibiting whites and African Americans from swearing on the same Bible in Atlanta courtrooms.<sup>63</sup> Georgia was also dead last among states in the percentage of Black farmers who owned their own land, at only 12.8%.<sup>64</sup> Of course, under the Felder-Williams Disenfranchisement Act, ownership of land was one of the exceptions of access to the franchise.

In 1916, Georgia elected Hugh M. Dorsey as governor. By no means a racial liberal, Dorsey did oppose the worst of Jim Crow. In his pamphlet entitled, *A Statement from Governor Hugh M. Dorsey as to the Negro in Georgia*, published before he left office in 1921, he highlighted the condition of Black Georgians at the time. He wrote, "in some counties the Negro is being driven out as though he were a wild beast. In others he is held a slave." Governor Dorsey also wrote, in response to white mob violence against Black Georgians, that Georgia "stand[s] indicted before the world. If the conditions. . . should continue, both God and man would justly condemn Georgia more severely than man and God have condemned Belgium and Leopold for the Congo atrocities."<sup>65</sup> Governor Dorsey wrote the truth; violence and threat of violence was constant for many Black Georgians after white Democrats controlled the state in the late 19<sup>th</sup> and first part of the 20<sup>th</sup> century.

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<sup>62</sup> Edward A. Hatfield, "Segregation," New Georgia Encyclopedia, <http://www.georgiaencyclopedia.org/articles/history-archaeology/segregation> (Jun 1, 2007) (last edited Jul 20, 2020); Grant, 220. The Booker T. Washington High School in Atlanta opened in 1924; there were several denominational high schools for African Americans in Georgia.

<sup>63</sup> Bartley, 148.

<sup>64</sup> Adrienne Petty and Mark Schulz, "American Landowners and the Pursuit of the American Dream," in *Lincoln's Unfinished Work: The New Birth of Freedom from Generation to Generation*, Orville Vernon Burton and Peter Eisenstadt eds. (Baton Rouge: Louisiana State University, 2022), 133–171.

<sup>65</sup> "A statement from Governor Hugh M. Dorsey as to The Negro in Georgia," (<https://archive.org/details/statementfromgov00georrich>) (also available through the Library of Congress at <https://lcn.loc.gov/21027163>; cited in Cobb, 22-23.



At the time, a common form of state-sanctioned violence was debt peonage and the convict lease system, which some have described as slavery by another name. In theory, the federal Debt Peonage Act of 1867 had outlawed the peonage system—the system of debt slavery—throughout the United States. But even up through the 1920s, the federal government investigated and prosecuted hundreds of employers across the South, including particularly in Georgia, for practicing peonage. But the federal government’s prosecutions rarely succeeded in punishing offending landowners. In the end, peonage was ended by outside social and economic forces. In 1915, the boll weevil was found on Georgia cotton plants and thereafter the insect devastated cotton agriculture. In addition to the boll weevil, the Great Depression and the mechanization of agriculture spelled the end of the cotton plantations of Georgia. Only the decline of the cotton plantations ended the practice of peonage.<sup>66</sup>

Throughout World War I, Black Georgians also faced state-sanctioned racial discrimination. While the Selective Service Act of 1917 required all able-bodied men of a certain age to register for a national draft, regardless of race, it was local draft boards that were responsible for processing men registering for the draft and selecting which registrants would be inducted into military service.<sup>67</sup> In Fulton County, for example, the draft board “granted exemptions to 526 of the first 815 white registrants examined but turned down only six out of 202 black men.”<sup>68</sup> Statistically, across Fulton County, 65 percent of the whites but only three percent of the Black Georgians were granted exemptions from military service. Fulton County’s racially discriminatory decisions were so flagrant that President Woodrow Wilson, who had lived in Augusta, Georgia as

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<sup>66</sup> Miller Handley Karnes, “Law, Labor, and Land in the Postbellum Cotton South: The Peonage Cases in Oglethorpe County, Georgia, 1865-1940,” (Urbana: University of Illinois, 2000), available online at: <https://www.ideals.illinois.edu/handle/2142/84756>; Cobb, 19-22; Pete Daniel, *The Shadow of Slavery: Peonage in the South, 1901-1969* (New York: Oxford University Press, 1972), 110-131; Talitha L. Laflouria, *Chained in Silence: Black Women and Convict Labor in the New South* (Chapel Hill: UNC Press, 2016); Sarah Haley, *No Mercy Here: Gender, Punishment, and the Making of Jim Crow Modernity* (Chapel Hill: UNC Press, 2016).

<sup>67</sup> U.S. Congress, “An Act To authorize the President to increase temporarily the Military Establishment of the United States,” United States Statutes at Large, Vol. 40 (1917-1919), 65<sup>th</sup> Congress (available online through the Law Library of Congress at <https://www.loc.gov/law/help/statutes-at-large/65th-congress/session-1/c65sch.pdf?loclr=blogloc-ww1>).

<sup>68</sup> Arthur E Barbeau and Florette Henri, *The Unknown Soldiers: Black American Troops in World War I* (Philadelphia: Temple University Press, 1974), 35.

a boy, and who is today remembered as the president who segregated the federal government and endorsed the racist movie, “Birth of a Nation,” was forced to remove officials of the Fulton County Georgia Draft Board.

As Black Georgians were drafted into the war at a higher proportion than were whites, the NAACP established a chapter in Georgia in 1917, which was the same year that Georgia adopted the county unit form of government. The county-unit system became the method for determining the winner of the Democratic primary, the only elections in the state that mattered.<sup>69</sup>

Under the county-unit system, every county was given twice the number of unit votes as they had representatives in the state house. Each of Georgia’s 159 counties had at least one seat in the legislature, no county had more than three. The winner in each county’s primary election received all that county’s unit votes. This system gave a greater share of proportion of votes to small, rural, and much whiter counties, compared to larger and more urban counties, where the majority of still active Black voters lived.<sup>70</sup> As in many states prior to the *Baker v. Carr* (1962) decision, Georgia’s election system had a strongly rural bias, but perhaps in no state was the rural tilt as pronounced as in Georgia, diluting the strength of Black voters across Georgia.

Against this backdrop, in 1919, the Atlanta chapter of the NAACP was wildly successful in its voter registration drive: in one month, they registered more than one thousand new Black voters, more than doubling the number of Black voters who participated in past elections. The success of the NAACP caused panic among leading whites, and the following year, the Georgia General Assembly proposed legislation to prohibit Blacks from voting or from holding office.<sup>71</sup>

As Black Georgians returned from the war, many white Georgians held a deep antipathy regarding Black WWI veterans, which led in part to the rise of the Ku Klux Klan in Georgia following the war. Historian Nancy MacLean wrote about this time, in which seeing Black men in military uniforms, “a symbol commanding respect,” led white Georgians to racial violence as backlash.

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<sup>69</sup> Between 1872 and 1950, the Democratic candidate won every state-wide race. See McDonald, *A Voting Rights Odyssey* at 81.

<sup>70</sup> Scott E. Buchanan, “County Unit System,” *New Georgia Encyclopedia*, <http://www.georgiaencyclopedia.org/articles/counties-cities-neighborhoods/county-unit-system> (Apr 15, 2005) (last edited Aug 21, 2020).

<sup>71</sup> Nancy MacLean, *Behind the Mask of Chivalry: The Making of the Second Ku Klux Klan* (Athens: University of Georgia, 1994), 28.

After World War I, in Georgia and elsewhere, African Americans again continued to try to vote despite the *legal* means of disfranchisement which state officials (white Democrats) had enacted, and whites again resorted to violence and intimidation to keep African Americans from the polls. For example, in Harris County, Georgia, African Americans planned to vote because President Franklin Roosevelt had a vacation home nearby, giving Black voters there a sense of federal protection. Trying to eliminate that sense of protection, however, white Georgians in the area “dug some graves there by the courthouse... and burned some crosses at the crossroads.”<sup>72</sup>

Of course, lynchings throughout the state served as a reminder for Black Georgians who challenged the status quo, and in practice lynchings did not need to be directly connected to the right to vote to act as a threat against all Black Georgians who dared participate in the franchise. From 1875 to 1930, there were 462 lynchings in Georgia. Only the state of Mississippi had more reported lynchings. Graphic descriptions of the lynchings sent messages to Black Georgians to stay in line (and to whites that racial violence would go unprosecuted).<sup>73</sup>

#### **E. World War II Era (1940s to 1950s)**

Up until the 1940s, Black Georgians had been successfully excluded from the franchise by many means, including the white primary. In 1944, however, in *Smith v. Allwright* the United States Supreme Court issued a landmark decision holding that political parties could not exclude Black Americans from participating in the party’s primary elections, thereby prohibiting the widely utilized white primary system.<sup>74</sup>

One year later, in 1945, the United States District Court for the Middle District of Georgia ruled in *King v. Chapman* that the Muscogee County Democratic Executive Committee and the state of Georgia had violated the Fourteenth, Fifteenth, and Seventeenth Amendment rights of Primus E. King, a Black voter who had been turned away when he had attempted to vote in the Democratic Party’s primary in Columbus, Georgia that prior summer. The judge, in part relying

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<sup>72</sup>Testimony of William Simpson, Trial Transcript at 115, 118, *Brown v. Reames*, Civ. No. 75-80-COL (M. D. Ga.)

<sup>73</sup> W. Fitzhugh Brundage, *Lynching in the New South: Georgia and Virginia, 1880-1930* (Urbana-Champaign: University of Illinois Press, 1993); McDonald, 47; Georgia Lynching Project, circa 1875-1930,” (<https://scholarblogs.emory.edu/galynchings/counties/>).

<sup>74</sup> *Smith v. Allwright*, 321 U.S. 649 (1944).

on *Smith v. Allwright*, found that despite Georgia's attempts to make party primaries "purely private affairs," primary elections were "by a law an integral part of the election machinery."<sup>75</sup>

These cases, along with Governor Ellis Arnall's decision not to attempt to "circumvent the [*Allwright*] decision," and organizing efforts by groups like the NAACP-backed All Citizens Registration Committee, led to a massive surge in voter registration in 1946, especially among Black voters.<sup>76</sup> By the time of the 1946 primary, 118,387 Black Georgians had registered to vote. According to the *Jackson Progress-Argus* of Jackson, Georgia, this was "by all odds the largest registration in Georgia's primary."<sup>77</sup>

This important progression in Black voter registration, however, was met by outright hostility from candidates in the 1946 Gubernatorial election. For example, the race-baiting Democratic gubernatorial candidate in that election, Eugene Talmadge, campaigned on a platform of white supremacy and disfranchisement, threatening that if the "Democratic White Primary is not restored and preserved," Black voters, "directed by influences outside of Georgia," would control the Democratic Party.<sup>78</sup> This language echoed earlier comments from Georgia Governor Hoke-Smith which questioned the legitimacy of Black voters.<sup>79</sup> As Talmadge menacingly warned, "wise Negroes will stay away from white folks ballot boxes." Similarly, Marvin Griffin, a candidate for Lieutenant Governor, made white supremacy a cornerstone of his campaign and announced that he believed "the White Democratic Party should be kept white in Georgia, and that

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<sup>75</sup> *King v. Chapman*, 62 F. Supp. 639 (M.D. Ga. 1945); *Chapman v. King*, 154 F.2d 460 (5th Cir. 1946); *Chapman v. King*, 327 U.S. 800 (1946); "Judge Rules Negroes May Vote," *The Atlanta Constitution* (Atlanta, GA), October 13, 1945; "Georgia Reform Faces Test in Hot Primary," *The Sunday News* (Lancaster, PA), July 14, 1946; Ronald H. Bayor, *Race and the Shaping of Twentieth-Century Atlanta* (Chapel Hill, NC: University of North Carolina Press, 1996), 34.

<sup>76</sup> McDonald, *A Voting Rights Odyssey*, 49.

<sup>77</sup> "Total Registration in Georgia May Reach Million When Deadline Falls," *The Jackson Progress-Argus* (Jackson, GA), June 20, 1946; "118, 387 Qualified to Vote in Georgia Primary Election," *The Plaindealer* (Kansas City, KS), July 19, 1946.

<sup>78</sup> "Georgia CAN Restore the Democratic White Primary and Retain County Unit System," *The Forsyth County News* (Cummings, GA), July 4, 1946.

<sup>79</sup> "Our Last Chance for WHITE SUPREMACY," *The Jackson Herald* (Jefferson, GA), July 11, 1946; "Georgia's State Campaign To Be Red Hot Affair," *The Gaffney Ledger* (Gaffney, SC), April 25, 1946.

carpet baggers and scalawags should not be permitted to take over this state and destroy southern racial traditions.”<sup>80</sup>

As the 1946 gubernatorial race progressed, both Griffin’s and Talmadge’s campaigns relied on voter challenges to disfranchise Black voters and repudiate the recent court rulings.<sup>81</sup> In particular, Talmadge responded to *Smith v. Allwright* by mounting challenges to Black voter registration forms, claiming they were filled out incorrectly. Although the state law required specific reasons for voiding registrations, Talmadge’s crew cited spurious reasons. They created pre-filled forms with spaces to fill in the voter’s name and county, with reasons such as “the voter was not a resident, was not eighteen, was not a person of good character, could not read the English language,” and so forth.<sup>82</sup> These forms demonstrated that Talmadge’s campaign did not know the specific circumstances or qualifications of the voters they challenged; all they knew were that these voters “were black, and that was enough.”<sup>83</sup> Ultimately, the Talmadge machine challenged so many voters that when those voters arrived in person to prove their qualifications, “it proved impossible to process all of them on election day, and as a result the Black voters were allowed to cast their ballots.”<sup>84</sup> All in all, during this election, more than thirty counties challenged Black registrations, denying an estimated 15,000 to 25,000 Black registrants the right to vote.<sup>85</sup>

The state of Georgia also continued to attempt to circumvent the rule against white primaries. In 1947, the Georgia General Assembly introduced a bill that would allow the continuation of a white-only primary by divorcing primaries from state action entirely. Willis Smith, a representative from Carroll County, said “Georgia is in trouble with the Negroes unless this bill is passed.” Echoing historian U. B. Phillips’ Central theme of Southern history, Smith continued “This is white man’s country, and we must keep it that way.”<sup>86</sup>

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<sup>80</sup> *The Houston Home Journal* (Perry, GA), May 30, 1946; Kathy Lohr, “FBI Re-Examines 1946 Lynching Case,” July 25, 2006 (available online at: <http://www.npr.org/templates/story/story.php?storyId=5579862>); Cobb Declaration, 26.

<sup>81</sup> “Talmadge ‘Purge’ of Negro Voters Bogging Down in Georgia Counties,” *The Atlanta Constitution* (Atlanta, GA), July 12, 1946.

<sup>82</sup> McDonald, *A Voting Rights Odyssey*, 52-53.

<sup>83</sup> *Ibid.*, 52–54.

<sup>84</sup> *Ibid.*, 53.

<sup>85</sup> *Ibid.*, 52–54.

<sup>86</sup> *Ibid.*, 55. The bill was vetoed by Gov. Thompson who questioned its legality and believed it would invite fraud.

But perhaps the most successful way Georgia continued to circumvent the rule against white primaries was the continuation of the county-unit system, which had both the purpose and the effect of containing the Black vote in the urban areas of the state. By the early 1940s, 43.5% of the state's population (and 39.9% of the state's white population) controlled 59% of the unit votes. The unit vote system was inherently non-majoritarian, and situations in which candidates won the popular vote but lost the unit vote were not uncommon. And it had the consequence that not only legislative districts, but state-wide races for governor and other executive branch positions had a rural and white bias. The main target of the county-unit system was Atlanta and Fulton County, where many Black Georgians lived. In 1946, each unit vote in Fulton County represented 14,092 popular votes, while each unit vote in Chattahooche County (a much whiter county) represented 132 popular votes. In other words, each voter in Chattahooche County had 120 times the weight of a Fulton County voter.

The county-unit system was a bulwark for the racist and die-hard white supremacist machine of long-time governor Eugene Talmadge. Talmadge claimed the enemies of the county unit system were a group of "liberals, white primary antagonists, and integrationists." While five constitutional challenges were brought against the county-unit system in the 1940s and 1950s, none succeeded.<sup>87</sup>

Following Governor Talmadge's death, voter challenges to Black voters were used again during the 1948 Georgia gubernatorial special election. In Laurens County, Georgia, nearly three-quarters of the 2,477 of the Black Georgians who were registered to vote were purged after they were unable to appear before the board of registrars, which a grand jury later found illegal.<sup>88</sup> Marion County also engaged in a similar, and unsuccessful purge that targeted Black voters, who were challenged because of their supposed "lack of education."<sup>89</sup> While the efforts to purge Black voters in Laurens and Marion Counties failed, other counties pushed forward. The day before the Democratic primary election, 558 Black voters were purged from Spalding County's registration

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<sup>87</sup> Ibid., 83.

<sup>88</sup> "Tax Collector of Laurens County Puts Negroes Back on List," *The Butler Herald* (Butler, GA), June 17, 1948; "'Vote Purge' Evidence Said Insufficient," *The Atlanta Constitution* (Atlanta, GA), August 29, 1948; "Twiggs Board Directed to Enroll Negroes," *The Atlanta Constitution* (Atlanta, GA), August 14, 1948.

<sup>89</sup> "Marion County Striking 400 From Voting List," *The Butler Herald* (Butler, GA), August 26, 1948; "Attempts to Intimidate Voters Told," *The Alabama Tribune* (Montgomery, AL), September 17, 1948;



list. Attempts to challenge and purge Black voters from voter registration lists also occurred in Lowndes, Schley, and Twiggs counties, and may have also taken place in Dougherty County as well.

When attempts to challenge African American voters' qualifications failed, other methods of voter intimidation were employed. For example, Augusta employed "slowdown" tactics in the 1948 elections that mirrored what Savannah did in 1946, whereby "several thousand blacks were unable to vote before the polls closed because of the delaying tactics of poll officials and were simply turned away."<sup>90</sup> Election officials only allowed three Black voters to vote per hour, in the hopes that there would "be plenty of Negroes standing in line when the polls close."<sup>91</sup> Furthermore, in 1949 the state government (unsuccessfully) attempted to force a general re-registration, "with the obvious aim of ridding the rolls of Negro voters."<sup>92</sup>

Along with strategic election-related tactics, there was also an upsurge of Klan activity and violence directed at Black voters.<sup>93</sup> In the days before the 1948 Democratic primary election, the Ku Klux Klan successfully suppressed Black voting in Lowndes County by burning crosses and threatening African American voters.<sup>94</sup> Acting Governor M.E. Thompson alleged that "during 1948 intimidation of voters by the Ku Klux Klan is being employed as a substitute for the purge campaign of 1946."<sup>95</sup> Threats of the Ku Klux Klan, extralegal violence, and all white juries within the legal system made these tactics effective. For example, a Black minister and teacher in Bleckley County went to the courthouse to register to vote in the 1955 election, but the chief of

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<sup>90</sup> "'Vote Purge' Evidence Said Insufficient," *The Atlanta Constitution* (Atlanta, GA), August 29, 1948; "Twiggs Board Directed to Enroll Negroes," *The Atlanta Constitution* (Atlanta, GA), August 14, 1948. "Attempts to Intimidate Voters Told," *The Alabama Tribune* (Montgomery, AL), September 17, 1948; "Pre-Vote Klan Threats Substitute for Poll Purge of '46 – Thompson," *The Atlanta Constitution* (Atlanta, GA), March 25, 1948.

<sup>91</sup> "Attempts to Intimidate Voters Told," *The Alabama Tribune* (Montgomery, AL), September 17, 1948; "Pre-Vote Klan Threats Substitute for Poll Purge of '46 – Thompson," *The Atlanta Constitution* (Atlanta, GA), March 25, 1948.

<sup>92</sup> William M. Bates, "Require High School For Voters, Cook Asks," *The Atlanta Constitution* (Atlanta, GA), November 20, 1957.

<sup>93</sup> McDonald, *A Voting Rights Odyssey*, 52–54.

<sup>94</sup> Patrick Novotny, *This Georgia Rising: Education, Civil Rights, and the Politics of Change in Georgia in the 1940s* (Macon: Mercer University Press, 2008), 270; "Attempts to Intimidate Voters Told"; "Pre-Vote Klan Threats Substitute for Poll Purge of '46 – Thompson."

<sup>95</sup> *Id.*

police told him “[n]o niggers register in this courthouse.” The next year, someone burned a cross in his yard. He did not attempt to register again until 1964.<sup>96</sup>

After the passage of the 1957 Civil Rights Act, Georgia Governor Marvin Griffin—the candidate whose campaign had filed thousands of challenges against Black voters in 1946—formed a state election law revision committee, which introduced new voter requirements that were “aimed primarily . . . at curbing potential Negro voting strength in Georgia.”<sup>97</sup> Voters could be disqualified for offenses like “moonshine liquor law violations, adultery and child abandonment,” and the law would also impose a new, more stringent voter qualification test.<sup>98</sup> Rather than forcing a re-registration to ensure that all 1.2 million registered voters in the state could meet the new requirements, the new requirements “could be invoked against a registered voter upon challenge by another voter.”<sup>99</sup> Griffin’s insistence that the legislation include a \$1.00 poll tax (which had been previously eliminated in Georgia in 1945) and bi-annual re-registration ultimately led to the bill’s demise in the General Assembly.<sup>100</sup> From poll tax to registration schemes, the purpose in tweaking voting requirements was difficult to miss; the intent was to keep the numbers of eligible Black voters as low as possible, and to keep the requirements for voting accessible to the more marginal white voters.

#### **F. Pre-Voting Rights Act (Early 1960s)**

By the end of the 1950s and the start of the 1960s, Georgia’s malapportioned districts, which had the obvious effect of favoring rural white voters over urban Black voters, continued to grow. In 1960, even though the eight counties with the largest population had 41 percent of the

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<sup>96</sup> Even with the VRA, Bleckley County did not see significant increase in Black registration because of the legacy of terror associated with attempting to register at the courthouse. In 1984, Bleckley County allowed satellite registration, and Black registration did increase. See McDonald, *A Voting Rights Odyssey*, 56.

<sup>97</sup> William M. Bates, “Crime Barriers and Stiffer Tests Proposed to Curb Negro Voting,” *The Atlanta Constitution* (Atlanta, GA), November 22, 1957; “Griffins Poll Tax, Voter Registration Bids Face Scuttling Move in House,” *The Atlanta Constitution* (Atlanta, GA), February 13, 1958.

<sup>98</sup> Bates, “Crime Barriers and Stiffer Tests Proposed to Curb Negro Voting”; Bates, “Griffins Poll Tax, Voter Registration Bids Face Scuttling Move in House.”

<sup>99</sup> Bates, “Crime Barriers and Stiffer Tests Proposed to Curb Negro Voting.”

<sup>100</sup> Bates, “Griffins Poll Tax, Voter Registration Bids Face Scuttling Move in House.”



state's population, they had only 12 percent of the members in the Georgia House of Representatives.<sup>101</sup>

Georgia's congressional districts were also grossly malapportioned around this time. In 1957, Georgia's Fifth District, consisting of Fulton, DeKalb, and Rockdale Counties, was the second most populous congressional district in the United States, with an estimated population of 782,800—about twice the size of the average congressional district. At the same time, Georgia's Ninth District, a much whiter district in the northeast part of the state, had an estimated population of 238,790, less than a third of the population of the fifth District. By 1960, Fulton County was the most underrepresented county in its state legislature of any county in the United States. DeKalb County was in third place.<sup>102</sup> Over time, the explosive growth of Atlanta, and the consequent increase in Black voters, put increased pressure on the county-unit system. Although still badly disproportionate in comparison to registration for whites, growing Black voting strength in Georgia was increasingly able to make a difference in close elections, something the state's segregationists were acutely aware of.

Defending the county-unit system became an issue on which die-hard segregationists would take their stand. For Peter Zack Greer, elected lieutenant-governor of Georgia in 1962, “left-wing radicals and Pinks,” were intent on unleashing the “bloc Negro vote in Atlanta.”<sup>103</sup> Even more moderate segregationists expressed similar sentiments. Carl Sanders, elected Georgia's governor in 1962, stated that eliminating the county-unit system would leave state government in the hands of “pressure groups or bloc votes”—the leading white Georgia euphemism for Black voters—and would keep “liberals and radicals from taking over.”<sup>104</sup>

Attempting to prevent the overturning of the county-unit system, in 1962 the Georgia General Assembly made some modifications to increase the representation of Fulton County in the state senate from three to seven. At the same time, however, they allowed the creation of multi-member, at-large districts so that the Black voters in a given county would always be outvoted,

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<sup>101</sup> McDonald, *A Voting Rights Odyssey*, 80–84; Key, 117–124; Kousser, *Southern Politics in State and Nation*, 203–204.

<sup>102</sup> “What About Justice For the Fifth District?,” *Atlanta Constitution*, 23 October 1952; Bruce Galphin, “Only State Legislature Can Effectuate Reapportionment,” 28 November 1957; “We Challenge Congressman Jim Davis to Follow Seventh District's Example,” *Atlanta Constitution*, 30 March, 1962

<sup>103</sup> McDonald, *A Voting Rights Odyssey*, 82.

<sup>104</sup> *Ibid.*, 82–83.

and Fulton County’s state senators would be elected on an at-large basis. After this system was ruled unlawful, there were two majority-minority districts in Fulton County, one of which elected Leroy Johnson, the first African American to serve in a southern state legislature in many decades.<sup>105</sup>

Beginning in 1963, the United States Supreme Court fully outlawed Georgia’s county-unit system in *Gray v. Sanders*, 372 U.S. 368 (1963), culminating in *Wesberry v. Sanders*, 374 U.S. 802 (1963), another case arising from Georgia in which the United States Supreme Court mandated equal apportionment for the upper houses of state legislatures and for congressional districts. As one Georgia scholar wrote, “[these cases were] not a racial discrimination case[s], but its concept that voting districts must be composed of substantially equal populations was to prove one of the keys that opened the door to minority officeholding in Georgia.”<sup>106</sup>

In an attempt to subvert the Court’s decisions and to curb Black voting strength and electoral victories, in 1963, the all-white Election Laws Study Committee (ELSC) of the Georgia General Assembly proposed new voting rules for the state of Georgia. The goal of the Committee was to “replace[] the invalid county unit law” with rules that could operate to the same effect.<sup>107</sup> These rules included, most notably, a majority-vote rule to elect any candidate to local, state, and federal office in both primary and general elections, thus requiring a runoff if any candidate received only a plurality of the vote. The bill’s sponsor, Representative Denmark Groover (a self-described “segregationist”), explained such a requirement would reduce the influence of the “Negro bloc vote.”<sup>108</sup> And indeed, in practice, a majority-vote rule ensures that a Black candidate cannot be elected where Black voters are a minority of the population and voting is racially polarized, even when the white vote is split. *See, e.g., City of Port Arthur v. United States*, 459 U.S. 159, 167 (1982) (requiring removal of a majority vote rule for preclearance under Section 5, recognizing that “[i]n the context of racial bloc voting prevalent in [a city in which African Americans constituted a minority of the population], the [majority-vote] rule would permanently foreclose a black candidate from being elected”). Groover’s majority-vote law was ultimately

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<sup>105</sup> *Ibid.*, 86-89.

<sup>106</sup> *Ibid.*, 80, 89-90.

<sup>107</sup> McDonald, *A Voting Rights Odyssey*, 91.

<sup>108</sup> Kousser, *Colorblind Injustice*, 198; McDonald, *A Voting Rights Odyssey*, 92.

enacted by the Georgia General Assembly in 1964, and to this day Georgia requires a majority vote for office.<sup>109</sup>

In addition to this majority vote requirement, in 1964 the Georgia legislature passed a new voting law with a literacy requirement, a strengthened voter understanding test, a prohibition on voter assistance except in cases of physical disability, a numbered-post provision (a specific method of at-large voting), and an anti-facsimile ballot provision, prohibiting voters from taking sample ballots or lists of candidates into the voting booth, to prevent, or as one of the leaders in the Senate said, “bloc voting” by Black Georgians.<sup>110</sup>

That same year Georgia’s election laws underwent a substantial revision as the General Assembly passed “a simplified and comprehensive code of election laws” in response to criticism that the state’s election law was disorganized and disjointed.<sup>111</sup> The reorganization of Georgia’s election laws introduced some important changes, such as the creation of the State Election Board and the standardization of calendars for county and state primaries. But Georgia maintained many other discriminatory laws in the 1964 revisions. For example, the state kept its voter challenge provision. The new election law code stipulated that “any elector of the county shall be allowed to challenge the right of registration of any person whose name appears on the electors list,” and outlined the process for contesting another citizen’s right to vote.<sup>112</sup> This voter challenge statute would end up surviving the modernization, recodification, and reorganization of the Georgia Code of Laws in 1981 and a subsequent update to provide for Georgia’s participation in the national “motor voter” program in 1994.<sup>113</sup> In fact, as the editor’s note for the 2008 edition of *The Official Code of Georgia, Annotated* § 21-2-230 observed, the voter challenge provision of the reorganized

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<sup>109</sup> See Ga. Code Ann. § 21-2-501.

<sup>110</sup> McDonald, *A Voting Rights Odyssey*, 91–103; Kousser, *Colorblind Injustice*, 105, 232–236.

<sup>111</sup> As Assistant Attorney General Paul Rodgers, a member of the Election Laws Study Committee, argued, “it’s the biggest mess you’ve ever seen.” “New Election Code an Attempt to Simplify ‘Hodgepodge’ Laws,” *The Atlanta Constitution* (Atlanta, GA), May 4, 1964. Lieutenant Governor Peter Zack Geer complained that the state’s election laws were “strewn helter-skelter through the Code of Georgia,” and expressed his belief that the new code would be “surrounded with and imbedded in due process of law and judicial standards.” “Lieutenant Governor Geer Favors New Election Law Code,” *The Forsyth County News* (Cumming, GA), May 27, 1964.

<sup>112</sup> *Journal of the Senate of the State of Georgia at the Extraordinary Session*, 1964 (Hapeville, GA: Longino and Porter, Inc., 1964), 83.

<sup>113</sup> “Revising Outdated State Laws a Painstaking Job,” *The Atlanta Constitution* (Atlanta, GA), July 12, 1981; “Legislators Give Update of ’94 General Assembly Session,” *Forsyth County News* (Cumming, GA), April 6, 1994;

1981 *Official Code of Georgia* is so similar to the 1933 *Code*'s voter challenge statute that any legal opinions decided under the older code would also apply to § 21-2-230.<sup>114</sup>

### **G. Voting Rights Act Era (1960s and 1970s)**

On the eve of the enactment of the Voting Rights Act (VRA) in 1965, most Black Georgians' voting power had been made ineffective by voting rules which were neutral in their language, but functionally discriminatory in effect. By the time of the VRA, while Black Georgians were 34 percent of the voting age population, there were only three elected Black officials, and those officials had been elected in just the previous three years before the enactment of the Voting Rights Act. Overall, less than a third of the eligible Black population was registered in the state, and in Georgia's twenty-three counties with a Black voting age majority, only 16 percent of African Americans were registered compared to 89 percent of whites.<sup>115</sup> "This exclusion from the normal political process was not fortuitous; it was the result of two centuries of deliberate and systematic discrimination by the state against its minority population."<sup>116</sup>

The Voting Rights Act of 1965 would ultimately change the trajectory of voting rights for Black Georgians. In the award-winning book, *Quiet Revolution in the South: The Impact of the Voting Rights Act, 1965–1990*, Laughlin McDonald, Michael B. Binford, and Ken Johnson documented carefully the impact and opening of the franchise to African Americans in Georgia from 1965 through 1990.<sup>117</sup> Beyond statistical improvements in Black registration and elected officials, the VRA affected the tone of the political system itself. In 1974, Andrew Young, a civil rights activist with SCLC who would later be elected mayor of Atlanta in 1982, addressed the Association of Southern Black Mayors: "It used to be that Southern politics was just 'nigger' politics: who could 'outnigger' the other. Then you registered 10 to 15 percent in the community and folk would start saying 'Nigra.'" After registration numbers went to 35 to 40 percent, "it's amazing how quick they learned how to say 'Nee-grow.'" And when registration increased to 70

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<sup>114</sup> O.C.G.A § 21-2-230 (2008)

<sup>115</sup> U.S. Commission on Civil Rights, *Political Participation: A Study of the Participation by Negroes in the Electoral and Political Processes in Ten Southern States since the Passage of the Voting Rights Act of 1965* (Washington, D.C.: U.S. Government Printing Office, 1968), 216-17, 232-39.

<sup>116</sup> McDonald, et. al., "Georgia," in *Quiet Revolution in the South*, 67-102, 409-413, quotation on p. 67.

<sup>117</sup> *Id.*

percent of the Black votes registered in the South, “everybody’s proud to be associated with their black brothers and sisters.”<sup>118</sup>

But the 1965 VRA did not translate to instant success in Black voter registration numbers. Even eleven years after the VRA, Black voters in Georgia were systematically underrepresented as a percentage of registered voters even after the passage of the VRA.<sup>119</sup> As the table below demonstrates, Black registration trailed white registration significantly even in 1976, particularly in the state of Georgia.<sup>120</sup>

State	% whites registered to vote, 1976	% Blacks registered to vote, 1976	% Difference
Alabama	75.4	58.1	17.3
Georgia	73.2	56.3	16.9
Louisiana	78.8	63.9	14.9
Mississippi	77.7	67.4	10.3
South Carolina	64.1	60.6	3.5
Texas	69.4	64.0	5.5
Virginia	67.0	60.7	6.3

The historical record also shows that most Georgia officials continued their hostility to Black voters and the VRA itself, especially the § 5 preclearance provisions to which they were now subject. As the VRA and other civil rights legislation gathered strength after the mid-1960s, white Georgia officials went to greater lengths to invent conditions and pretexts for challenging and neutralizing Black voting strength, both in the substance in their changes, and by refusing to seek preclearance at all.<sup>121</sup>

<sup>118</sup> Jack Bass and Walter DeVries, *The Transformation of Southern Politics: Social Change and Political Consequence since 1945* (Basic Books, 1976), 47; David S. Broder, *Changing of the Guard: Power and Leadership in America* (Simon and Schuster, 1980), 367.

<sup>119</sup> Campbell Gibson and Kay Jung, *Historical Census Statistics on Population Totals by Race* (Washington, DC: US Bureau of Census, 2002); McDonald, et al., “Georgia,” in *Quiet Revolution in the South*, 102.

<sup>120</sup> Laughlin McDonald, *Voting Rights in the South: Ten Years of Challenging Continuing Discrimination Against Minorities* (Atlanta: ACLU, Southern Regional Office, 1982).

<sup>121</sup> For examples of white Georgians hostility to the Voting Rights Act and to African American attempts at voting, see especially the testimonies of Julian Bond and Laughlin McDonald in

One of the most common tactics of preventing Black voters from electing candidates of choice was the change from voting by district to at-large voting. The effect of at-large voting, particularly in a jurisdiction with less than a majority of Black voters, is to ensure the white population can elect all the representatives to that district. In 1964, before the VRA, Calhoun County (63% Black), Clay (61% Black), Dooly (50% Black), Early (45% Black), Morgan (45% Black), Newton (31% Black), and Miller (28% Black) had district elections for county government. But after the VRA, all adopted at-large voting, directly violating § 5 preclearance rules. Between 1976 and 1980, all of these counties were sued, and now have district voting for county elections.<sup>122</sup>

In 1964, as previously discussed, in response to growing African American electoral strength, the Georgia General Assembly had adopted a law that required many offices to be won by a majority vote and not a mere plurality. At the time, the majority of Georgia's 159 counties had operated under a plurality system. The majority vote system was adopted to prevent a Black candidate being "first past the post" against a divided white vote.<sup>123</sup> Local jurisdictions also made the change to majority voting after the VRA. The city of Moultrie, Georgia, for example, adopted a majority voting procedure for city offices in 1965. All Black candidates were defeated until a § 5 suit forced the city to adopt districts in 1977. The city of Americus adopted a majority vote in 1968. Until a successful § 5 suit in 1977, two Black candidates who won by plurality in their Americus election races were defeated in the run-off election with a majority requirement. Around this time, Covington and St. Mary's, both cities with substantial Black populations, adopted a majority vote without seeking preclearance for doing so.<sup>124</sup> Overall, between 1975 and 1982, the U.S. Attorney-General brought 66 suits against majority voting requirements, many of them in Georgia. Many of these Georgia-specific instances can be found in Appendix A, located at the end of this report.

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Extension of the Voting Rights Act: hearings before the Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary, House of Representatives, Ninety-seventh Congress, first session, May 6, 7, 13, 19, 20, 27, 28, June 3, 5, 10, 12, 16, 17, 18, 23, 24, 25, and July 13, 1981. (on Bond see pp. 224ff)(McDonald, 596 ff)

<sup>122</sup> McDonald, *Voting Rights in the South*, 40–43

<sup>123</sup> McDonald, *A Voting Rights Odyssey*, 92–102; Kousser, *Colorblind Injustice*, 197–242.

<sup>124</sup> McDonald, *Voting Rights in the South*, 43–46

Numbered posts (another method of at-large voting) were another way to discriminate against Black voters and Black candidates. When, for instance, there were three open positions for county commissioner, rather than electing the three candidates with the highest vote totals, candidates had to run specifically for seats No. 1, No. 2, and No. 3, diminishing the chances of electing Black candidates. From 1975 to 1982, the Attorney-General objected to 60 submissions involving numbered posts, many from Georgia. Dawson, Kingsland, and St. Mary's all adopted numbered posts elections for the city council in the 1960s and 1970s, none of them applying for preclearance in doing so.<sup>125</sup>

Staggered voting was another technique used to limit Black voting strength, by limiting the numbers of open seats at any one time and making it more difficult to Black candidates to get elected, particularly if combined with at-large voting schemes. Peach County, for example, staggered the election of its county commissioners starting in 1968, and the city of Kingsland did the same in 1976 without seeking preclearance.<sup>126</sup>

Annexations of territory by cities to decrease the percentage of the Black population were, through 1982, the most common type of suit brought by the DOJ. The city of Jackson, for example, used annexation to limit Black voting strength until enjoined in 1981.<sup>127</sup>

There were many other forms of Section 5 noncompliance in Georgia. In 1981, Julian Bond, a Georgia State Senator, testified before the House of Representatives that there were over four hundred non-submissions of Section 5 notifications by Georgia jurisdictions.<sup>128</sup> Many jurisdictions in Georgia simply refused to comply with Section 5 objections, such as Sumter County, Pike County, and Waynesboro. Other jurisdictions, such as Thomson, when faced with a Section 5 objection to majority voting, city officials encouraged the two white candidates to have an informal "run-off" to avoid splitting the white vote and allowing the Black candidate to win. This practice, known as "cuing," the endorsement by white community leaders of a specific

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<sup>125</sup> Ibid. at 50–51.

<sup>126</sup> Ibid. at 51–52

<sup>127</sup> Ibid. at 52–53

<sup>128</sup> "Testimony of Julian Bond, State Senator from Georgia, Extension of the Voting Rights Act: Hearings Before the Subcommittee on Civil and Constitutional Rights of the Committee of the Judiciary," May–July 1981.



candidate prior to the actual election, is in the words of Laughlin McDonald, “doing by indirection that which Section 5 expressly forbids.”<sup>129</sup>

Overall, the number of VRA Section 5 preclearance challenges raised by private or federal suit show that Georgia was one of the most active and ingenious in trying to prevent Black voting strength. From 1965 to 1981, the DOJ received a total of 34,798 voting changes submitted for preclearance under Section 5. DOJ ultimately objected to 815 of these proposed changes, and of those, 226, or almost 30 percent, were from the state of Georgia.<sup>130</sup> This figure far exceeds that of other states. Louisiana, for example, the state that was subject to the second-most number of objections, was only the subject of 136 objections, which is just a little over half of Georgia’s objections.<sup>131</sup>

This number likely significantly undercounts the number of actual and potential § 5 violations in Georgia prior to the 1982 reauthorization of the VRA. In a 1984 article, Drew Days and Lani Guinier estimated that “covered jurisdictions have made literally hundreds of changes that have never met the preclearance requirement of Section 5,” and that the DOJ “has not been able to ensure that every electoral change by covered jurisdictions, or indeed most of them, was subjected to the Section 5 process.”<sup>132</sup> In another study, based on interviews with local attorneys in Georgia and Mississippi involved in voting issues found that 36.4% of attorneys that responded to the survey reported that local jurisdictions went ahead with election changes despite a pending preclearance request. The survey revealed other ways of gaming the VRA system—waiting until shortly before the election to file the Section 5 request, not giving the DOJ adequate time to respond, or alternatively, exhaustively arguing every nuance of a Section 5 request, hoping to win outright, or at least gain an advantage by exhaustion and attrition.<sup>133</sup> Even still, as noted, between 1965 and 1980, DOJ objected to more than 200 changes submitted by Georgia under Section 5.<sup>134</sup>

In 1969, the United States Supreme Court in *Allen v. State Board of Elections*, 393 U.S. 544 (1968), made clear that changes made under preclearance under Section 5 of the VRA were to be construed broadly because to limit its scope to a specific set of voting restrictions would be

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<sup>129</sup> McDonald, *Voting Rights in the South*, 60.

<sup>130</sup> *Ibid.*, 20-25.

<sup>131</sup> *Id.*

<sup>132</sup> Drew Days III and Lani Guinier, “Enforcement of Section 5 of the Voting Rights Act,” in Chandler, *Minority Vote Dilution*, 168.

<sup>133</sup> Ball et al., “The View from Georgia and Mississippi.”

<sup>134</sup> McDonald, *Voting Rights in the South*, 20–23.



“underestimating the ingenuity of those bent on keeping Negroes from voting.” The *Allen* Court also made clear that preclearance extended to reapportionment plans.<sup>135</sup>

Georgia’s congressional reapportionment in 1971 was the first held under Section 5 preclearance rules, and it showed, in the words of Laughlin McDonald, “the extraordinary lengths to which the legislature was prepared to go to exclude Blacks from the congressional delegation.”<sup>136</sup> A plan proposed by two Black state senators to increase the Black percentage of Georgia’s Fifth congressional district from 34 to 45% was defeated 45 to 9. The plan which was approved by the Georgia General Assembly carved the Black population in the Fourth, Fifth, and Sixth Districts to give the Fifth district a substantial white majority, with the Fifth district as 38% Black, and specifically excluded from the district the homes of Andrew Young—who had unsuccessfully run for Congress in the district in 1970—and Maynard Jackson, another budding Black politician.

The Georgia General Assembly’s 1971 reapportionment plan was rejected by the Department of Justice under Section 5. Under a revised reapportionment plan, the Fifth District was 44.2% Black, in 1972, Georgian Andrew Young (along with Barbara Jordan in Texas), significantly both were elected from urban districts, became the first African Americans elected to the United States House of Representatives from the South in the twentieth century. Young was elected three times, resigning his seat in 1977 to become President Carter’s ambassador to the United Nations. It would take over a decade for another Black Georgian to be elected to the United States Congress from the state of Georgia.<sup>137</sup>

#### **H. End of the Twentieth Century (1980s–2002)**

In the redistricting cycle after the 1980 census, the Georgia General Assembly again tried to limit Black voting strength in Atlanta. The Georgia General Assembly’s reapportionment plan contained white majorities in nine of the ten congressional districts, even though Georgia’s population at the time was nearly 30% Black. Julian Bond, by then a Georgia state senator, introduced a bill that would have made the Fifth congressional district 69% Black. In response, the Chair of the Senate Reapportionment Committee criticized the proposal as one that would

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<sup>135</sup> Cited in Orville Vernon Burton and Armand Derfner, *Justice Deferred: Race and the Supreme Court* (Cambridge, MA: Harvard University, 2021), 228.

<sup>136</sup> McDonald, *A Voting Rights Odyssey*, 149.

<sup>137</sup> Bullock, “History of Redistricting,” 1065–66; McDonald, *A Voting Rights Odyssey*, 149–150.

cause “white flight.” The Chair of the House Reapportionment Committee similarly criticized the proposal on the grounds that he was disinclined to draw “nigger districts” or support “nigger legislation.”<sup>138</sup> Some members of the Georgia General Assembly stated they did not want to go back to their districts and “explain[] why I was a leader in getting a black elected to the United States Congress.” Bond’s proposal was predictably rejected, and the reapportionment plan drawn by the Georgia General Assembly was, as in the previous decade, rejected under Section 5 of the Voting Rights Act. The Court then approved a new plan with a district that was 65% Black. Julian Bond and John Lewis, two old friends and comrades from the Student Nonviolent Coordinating Committee (SNCC), vied for the seat; Lewis ultimately won.<sup>139</sup>

In 1980, Laughlin McDonald noted that of the 18 Black Georgians elected to county governments—about only 3% of all office holders—16 of them were elected in majority Black districts or counties. As McDonald wrote in 1982, “blacks in Georgia’s majority white counties or districts, for all practical purposes, cannot get elected.”<sup>140</sup>

On the eve of the possible expiration of the VRA in the early 1980s, Georgia continued to show that such an extension was necessary. In 1980, DeKalb County adopted a policy that it would no longer approve community groups to conduct voter registration drives.<sup>141</sup> In 1981, Georgia was blocked from changing the rules about who could help voters at the polls under Section 5.<sup>142</sup> The early 1980s also saw continued use of voter challenges against Black voters. In 1981, white Georgians on the northside of Atlanta formed the Voter Information Project (VIP), which used Georgia’s voter challenge law to dispute the right to vote of more than 50,000 registered voters in Fulton County, including 37,000 urban voters. Of these challenged voters, 58 percent were African

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<sup>138</sup> McDonald, *A Voting Rights Odyssey*, 168-173.

<sup>139</sup> *Id.*

<sup>140</sup> McDonald, *Voting Rights in the South*, 40-43.

<sup>141</sup> “Testimony of Julian Bond, State Senator from Georgia, Extension of the Voting Rights Act: Hearings Before the Subcommittee on Civil and Constitutional Rights of the Committee of the Judiciary,” May-July 1981, 54-55.

<sup>142</sup> Sept. 18 Letter from William Bradford Reynolds to Michael Bowers at 2-3 (1981), quoted in Expert Witness Report of Dr. Peyton McCrary at 8, 18 (“McCrary Report”), *Fair Fight v. Raffensperger*, No. 1:18-cv-05391-SCJ (N.D. Ga. 2020), ECF No. 339. According to the 1970 census data (the latest available at the time of the DOJ objection), in Georgia, only 8 percent of whites over the age of 25 had completed less than five years of school while 32 percent of Blacks over the age of 25 had completed less than five years of school (also cited in McCrary).

Americans. As a result, in 1981, one in five registered voters was purged from Fulton County's voters' rolls.<sup>143</sup>

That same year, the *New York Times* summarized the status of Black voters in Georgia as the country debated the 1982 re-authorization of the VRA:

“26.2 percent of the population is black, only 3.7 percent of the elected officials are black. The glitter of power in Atlanta, where two blacks are among the three frontrunners to succeed the city's two-term black mayor, Maynard Jackson. In fifteen of the state's twenty-two counties where blacks comprise a majority or close to it, no blacks serve on county commissions. It is not for want of trying; 34-year-old Edward Brown Jr. has twice run unsuccessfully for office in Mitchell Co. In Mr. Brown's instance, all-white poll officials and paper ballots greatly reduced his chances for winning. Testifying in a court case, Mr. Brown stated that it is difficult to win when whites as a matter of policy vote against blacks. Citing his defeats, he said that whites were transported to and from polling places by county sheriffs who urged them not to vote for Mr. Brown “because he's a nigger.”<sup>144</sup>

When Congress did re-authorize the VRA in 1982, it cited systemic abuses by Georgia officials to evade Black voting rights.<sup>145</sup>

At the end of the decade, Georgia again began another reapportionment cycle. Over the course of the 1990 redistricting cycle, the Department of Justice twice rejected the Georgia General Assembly's state's reapportionment plan, before finally approving the third submission.<sup>146</sup> After the 1992 election, a total of thirty-four African Americans were in the Georgia General Assembly, almost all of them from Black majority districts, almost all of whom owed their seats to litigation and to Section 5 of the Voting Rights Act.

### **I. Modern Era (2000s to Present Day)**

Voter suppression tactics that have plagued Georgia's history have persisted into the modern era. These policies around voting have also come at a time of rapid demographic shifts in Georgia's electorate: Georgia is the only state in the Deep South where the percentage of the Black population has sharply increased over the past half century. Because of the remarkable growth of

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<sup>143</sup> Barry King, “Notices Sent on Fulton Voter Purge,” *The Atlanta Constitution* (Atlanta, GA), March 3, 1981; Jim Walls, “One in Five Voters Dropped From Rolls,” *The Atlanta Constitution* (Atlanta, GA), April 16, 1981; Frederick Allen, “Voter Challenges Seen Through a Glass Darkly,” *The Atlanta Constitution* (Atlanta, GA), September 15, 1981.

<sup>144</sup> Stuart, “Once Again a Clash Over Voting Rights,” *N.Y. Times* (Sept. 27, 1981).

<sup>145</sup> S. Rep. No. 97-417, 97th Cong. 2d Sess. 10, 13 (1982).

<sup>146</sup> McDonald, *A Voting Rights Odyssey* 211–224.

metro Atlanta and its four core counties, Fulton, DeKalb, Gwinnett, and Cobb, these changing demographics in Georgia—especially its Black, Latino/a, and Asian populations, who tend to support Democratic candidates—combined with minority voter mobilization efforts are the “likeliest threat to Republican domination of Georgia elections.”<sup>147</sup>

#### **i. 2000s through 2010 Redistricting**

For the fourth decade in a row, in the 2000 redistricting cycle the Georgia General Assembly passed redistricting plans that would not survive preclearance. Specifically, the district court in the District of Columbia refused to preclear the General Assembly’s Senate plan which decreased the Black voting age percentage in the districts surrounding Chatham, Albany, Dougherty, Calhoun, Macon, and Bibb Counties. Overall, the court found “the presence of racially polarized voting” and that “the State ha[d] failed to demonstrate by a preponderance of the evidence that the reapportionment plan for the State will not have a retrogressive effect.” *Georgia v. Ashcroft*, 195 F.Supp. 2d 25, 94 (D. D.C. 2002), *affirmed*, *King v. Georgia*, 537 U.S. 1100 (2003).

The 2002 election proved to be a watershed moment for the state of Georgia. For nearly half a decade, white voters in Georgia had been abandoning the Democratic Party for the Republican Party. When Republican Sonny Perdue defeated Democrat incumbent Roy Barnes as governor in 2002, the election “broke a Democratic stronghold on the Georgia governorship that had kept the GOP out since Reconstruction.”<sup>148</sup> In the 2004 election, Republicans also won the majority of House seats, shifting control of the legislature.

Georgia was the first state covered by Section 5 of the VRA to pass an in-person voter identification law. In 2005, the Georgia General Assembly promptly passed a photo ID law, limiting Georgians to only six acceptable forms of identification. Voters who lacked acceptable identification could purchase one from the state for \$20 to \$35. Sue Burmeister, the Georgia State Senator who had introduced the photo ID legislation, said in testimony before the Department of

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<sup>147</sup> McCrary Report at 37; on the increasing influence of Latina/Latino peoples, see Victor Zuniga and Reuben Hernandez Leon, “The Dalton Story: Mexican Immigration and Social Transformation in the Carpet Capital of the World,” 34-50 and Mary E. Odem, “Latino Immigrants and the Politics of Space in Atlanta,” 112-125 in Mary E. Odem and Elaine Lacy, eds., *Latino Immigrants and the Transformation of the U.S. South* (University of Georgia Press, 2009).

<sup>148</sup> Danny Hayes and Seth C. McKee, “Booting Barnes: Explaining the Historic Upset in the 2002 Georgia Gubernatorial Election,” *Politics and Policy* 32 (December 2004), 1, quoted in McCrary Report at 29.

Justice that “if there are fewer black voters because of the bill, it will only be because there is less opportunity for fraud,” and that “when Black voters in her Black precincts are not paid to vote, they do not go to the polls.”<sup>149</sup> Shortly after the law’s enactment, the U.S. District Court for the Northern District of Georgia preliminary enjoined the law, finding the photo ID law was “most likely to prevent Georgia’s elderly, poor, and African–American voters from voting.” *Common Cause/Georgia v. Billups*, 406 F. Supp. 2d 1326, 1365–66 (N.D. Ga. 2005). In reaction to the injunction, the Georgia General Assembly was forced to make the voter ID cards free.

Several years later, following the 2010 U.S. Census, white Republican Georgia lawmakers worked not only to maintain power but to create a super-majority through redistricting. The Georgia General Assembly’s reapportionment plan created a record number of majority-Black districts, which by packing Black votes together, solidified Republican holds in the surrounding districts. Ultimately, the Georgia Republican Party was successful in achieving a super-majority in the Senate; it fell one seat short of a super-majority in the House.<sup>150</sup>

In 2015, the Georgia General Assembly engaged in mid-cycle redistricting after the Supreme Court invalidated Section 5’s preclearance formula in *Shelby County, Alabama v. Holder*, 570 U.S. 529 (2013).<sup>151</sup> No longer subject to preclearance, the Georgia General Assembly reduced the Black and Latina/o voting age percentage in House districts 105 and 111, both of which had become increasingly diverse over the prior half-decade (and unlikely to elect Republicans).<sup>152</sup> Plaintiffs initially brought suit over the changes under Section 2 of the Voting Rights Act, but the continued migration of voters of color into those districts rendered the General Assembly’s changes obsolete. After minority candidates prevailed in those districts in 2018, the plaintiffs withdrew their complaint.<sup>153</sup>

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<sup>149</sup> Carol Anderson, *One Person, No Vote: How Voter Suppression is Destroying Our Economy* (New York: Bloomsbury, 2018), 60–62; Ari Berman, *Give Us the Ballot: The Modern Struggle for Voting Rights in America* (New York: Picador, 2015) 222–224, 226–229; Stacey Abrams, *Our Time is Now: Power, Purpose, and the Fight for a Fair America* (New York: Henry Holt, 2020), 75–76

<sup>150</sup> Charles S. Bullock III, “The History of Redistricting in Georgia,” *Georgia Law Review* 52, no. 4 (2018): 1095–1098; Expert Report of Laughlin McDonald at 17, *Dwight et al. v. Kemp*, ECF No. 178 (Aug. 6, 2018).

<sup>151</sup> Expert Report of Jowei Chen, *Georgia State Conference of NAACP v. State of Georgia*, No. 1:17-cv-1427, ECF No. 63 (N.D. Ga. Dec. 22, 2017).

<sup>152</sup> *Id.*

<sup>153</sup> *Georgia State Conference of NAACP*, No. 1:17-cv-1427, ECF No. 221.

## ii. State-Sponsored Voter Investigations

As in Georgia's past, modern-day elected officials, law enforcement officers, and political activists have continued to harass and intimidate Black voters and candidates in order to maintain political power. Nowhere is this more obvious than in Quitman, Georgia—a predominantly Black city in otherwise predominantly white Brooks County. In the early 2000s, Nancy Dennard, a Black educator, won a 2009 special election to the Brooks County School Board through a campaign that targeted citizens “who had never voted before” and who had problems getting to the polls on election day. At the time, Dennard's opponent complained about the large number of absentee ballots cast for Dennard. The Georgia secretary of state's office conducted a brief investigation but found no evidence of fraud.<sup>154</sup>

The next year, two more Black women and allies of Dennard—Diane Thomas and Linda Troutman—ran for seats on the school board and again worked to increase voter turnout through absentee voting. This time, the Brooks County School Board hired a private investigator to track Dennard and her allies. More than 1,400 Black voters participated in the Democratic primary election for school board that year—three times the turnout in previous midterm elections—and Thomas and Troutman were elected as the Democratic Party's nominees. In response, then-Secretary of State Brian Kemp (in cooperation with the Georgia Bureau of Investigation) opened a formal investigation into the 2010 election in Quitman.<sup>155</sup>

Six weeks after Thomas and Troutman won seats on the school board, state and local police arrested Dennard, Thomas, Troutman, and seven other people. Two more women were arrested a year later. The “Quitman 10+2,” as they came to be known, were collectively charged with 102 felony counts. Prosecutors alleged that organizers had provided unlawful assistance to voters and had unlawfully possessed ballots when they delivered sealed ballots to the post office. Despite a paucity of evidence, Kemp doggedly pursued a case against the Quitman 10+2, only backing down in 2016 when Georgia's attorney general issued an opinion clarifying that it was not a violation of the law for organizers to mail absentee ballots.

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<sup>154</sup> John Ward, “How a Criminal Investigation in Georgia Set an Ominous Tone for African-American Voters,” Yahoo! News, August 6, 2019. <https://news.yahoo.com/how-a-criminal-investigation-in-georgia-set-a-dark-tone-for-african-american-voters-090000532.html> (accessed April 27, 2021).

<sup>155</sup> Ward, “How a Criminal Investigation in Georgia Set an Ominous Tone for African-American Voters.”



Afterward, Dennard argued the investigation and prosecution were an attempt to disqualify Black officeholders and stifle Black political activism. She insisted, “[T]hey thought they could make an example out of me, and that would kill the spirit of this movement.”<sup>156</sup> Thomas interpreted the Quitman 10+2’s arrest and investigation by explaining that “the message sent to our citizens was, if you don’t want the GBI to come visiting and put you in jail, you better not vote.”<sup>157</sup>

In 2014, in comments to a group of Republican voters in Gwinnet County, then-Secretary of State Brian Kemp made clear the connection between minority voting rights and election victories when he remarked that “the Democrats are working hard . . . registering all these minority voters that are out there and . . . if they can do that, they can win these elections in November.”<sup>158</sup> Around the same time, Kemp’s office launched a criminal investigation into the New Georgia Project, an organization with the explicit goal of registering Georgia’s unregistered minority voters. The New Georgia Project was later cleared of any wrongdoing.<sup>159</sup>

In 2015, Kemp’s office similarly launched an investigation into the Asian American Legal Advocacy Center (“AALAC”), an organization which had previously criticized Secretary Kemp for not registering all voters who had submitted voter registrations to Georgia. Secretary Kemp pursued the investigation for over two years before finding no evidence of wrongdoing. One journalist tracking these investigations described them as “legal terrorism, exploiting the law to intimidate and discourage citizens from accessing their constitutional right to vote.”<sup>160</sup>

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<sup>156</sup> Ward, “How a Criminal Investigation in Georgia Set an Ominous Tone for African-American Voters.”

<sup>157</sup> Ariel Hart, “Voting Case Mirrors National Struggle,” *The Atlanta Journal-Constitution*, December 13, 2014; Gloria Tatum, “Voter Fraud Charges from 2020 Fizzle in Quitman, South Georgia,” *The Atlanta Progressive News*, September 18, 2014, <http://atlantaprogressivenews.com/2014/09/18/voter-fraud-charges-from-2010-fizzle-in-quitman-south-georgia/> (accessed April 27, 2021).

<sup>158</sup> Steve Benen, “Georgia GOP Official Express Concerns About ‘Minority Voters,’” MSNBC, September 11, 2014. <https://www.msnbc.com/rachel-maddow-show/georgia-gop-official-express-concerns-about-minority-voters-msna410401> (accessed April 27, 2021).

<sup>159</sup> Spencer Woodman, “Register Minority Voters in Georgia, Go to Jail,” *The New Republic*, May 5, 2015, <https://newrepublic.com/article/121715/georgia-secretary-state-hammers-minority-voter-registration-efforts> (accessed May 10, 2021); “State launches fraud investigation into voter registration group,” *WSB-TV 2* (Atlanta, Georgia), September 9, 2014;

<sup>160</sup> Austin Adkins, “Opinion: Voter Fraud Investigations Weaponized to Suppress Voters,” *The Mainline*, November 3, 2019, <https://www.mainlinezine.com/voter-fraud-investigations-weaponized-to-suppress-voters/>; Michael Wines, “Critics See Efforts by Counties and Towns to



### iii. Voting Restrictions in Georgia Post-*Shelby County*

After the Supreme Court invalidated the existing coverage formula in *Shelby County, Alabama v. Holder*, 570 U.S. 529 (2013), Georgia was no longer bound to submit any changes it made to its voting system through a preclearance regime. In her dissent in that case, Justice Ginsburg famously commented that “throwing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet.” *Id.* at 590 (J. Ginsburg, dissenting). A few days after the decision, Daniel O. Franklin, a professor of political science at Georgia State University, predicted that “the court’s decision will likely change very little” in Georgia and the other preclearance states.<sup>161</sup> Franklin was wrong: Georgia took advantage of this change almost immediately.

Within four days of *Shelby County*, for example, the local Georgia press reported that the Augusta-Richmond County government (a consolidated city-county government) re-opened discussions of moving its elections from November to July. This change matters: Moving elections away from the usual election day, invariably reduces voter turnout and usually has an adverse impact on minority voter turnout, and DOJ had previously rejected the proposed change under Section 5. After a series of closed-door meetings, Augusta-Richmond County government changed the date of their elections in early 2014, just months after *Shelby County*.<sup>162</sup> Similarly, Greene County, Georgia approved a redistricting plan that would have eliminated one or two of the only Black districts on the county commission—a change that DOJ had previously refused to preclear. By the end of 2013, the Georgia General Assembly approved another plan for Greene County that reduced the Black voting age population in one district by 50% and placed the home of the other

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Purge Minority Voters From Rolls,” *New York Times* (New York, NY), July 31, 2016, <https://www.nytimes.com/2016/08/01/us/critics-see-efforts-to-purge-minorities-from-voter-rolls-in-new-elections-rules.html>; Kristina Torres, “Georgia suit settled alleging black voters wrongfully disqualified,” *Atlanta Journal-Constitution* (Atlanta, GA), March 16, 2017, <https://www.ajc.com/news/state--regional-govt--politics/georgia-suit-settled-alleging-black-voters-wrongfully-disqualified/djDIYjpvYJcZW8CJzgKL/>.

<sup>161</sup> Daniel P. Franklin, “Court’s Decision is Likely to Change Little,” *Atlanta Journal Constitution* (June 30, 2013).

<sup>162</sup> Harry Baumgarten, “*Shelby County v. Holder*’s Biggest and Most Harmful Impact May Be On Our Nation’s Smallest Towns,” Harry Baumgarten, Campaign Legal Center, 20 June 2016, <https://campaignlegal.org/update/shelby-county-v-holders-biggest-and-most-harmful-impact-may-be-our-nations-smallest-towns>

Black commissioner outside of the boundaries of the newly redrawn district. Without preclearance, the new redistricting plan went into effect.<sup>163</sup>

But preclearance itself was never a panacea even before *Shelby County*. With Georgia's 159 counties and hundreds of local jurisdictions (part of the over 30,000 jurisdictions in the preclearance states), it was impossible to keep track of every local jurisdiction, many of which refused to file voting-related changes with DOJ. At-large, county-wide, or city-wide voting has been historically one of the main tactics used to curb voting rights strength. Preclearance had hardly ended the practice. In December 2013, of Georgia's 159 counties, thirty-four elected all county commissioners at-large. One of those was Baker County, where almost half of the population was Black, but all of the county commissioners were white. A former Baker County Commissioner, Robert Hall, was quoted in the *Atlanta Journal Constitution* as saying, "we don't have many Blacks in Baker County that are landowners and taxpayers and responsible."<sup>164</sup> This trend is not unique to Baker County. In December 2013, the *Atlanta-Journal Constitution* reported that across Georgia, while "more than half of majority-black counties have majority-white commissions," "no majority-white county has a majority-black commission."<sup>165</sup> These type of election arrangements continue to disadvantage Black Georgians: As of 2013, in Georgia, white Georgians were 59% of registered voters, but accounted for 77% of the commissioners, while for Black Georgians who were 30% of registered voters, but accounted for only 22% of county commissioners.<sup>166</sup>

Overall, the end of preclearance has opened the doors to all manner of voter suppression and disenfranchisement, largely directed against minorities. The U.S. Commission on Civil Rights, found that among the former preclearance states as of 2018, only Georgia had adopted all five of the most common restrictions that impose roadblocks to the franchise for minority voters, including (1) voter ID laws, (2) proof of citizenship requirements, (3) voter purges, (4) cuts in

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<sup>163</sup> Ariel Hart, Jeff Ernsthausen, and David Wickett, "Disputed Voting Systems, Racial Power Gap Persists," *Atlanta Journal Constitution*, (Dec. 7, 2013).

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*; Ariel Hart, Jeff Ernsthausen, and David Wickett, "Racial Politics Not So Clear Cut," *Atlanta Journal Constitution*, (Dec. 9, 2013)

early voting, and (5) widespread polling place closures.<sup>167</sup> This report discusses a few of these changes below, concluding with a brief overview of Senate Bill 202, passed by the Georgia General Assembly in 2021, which the U.S. Department of Justice has challenged under Section 2 of the Voting Rights Act as a law with the effect and intent of making it more difficult for Black Georgians to vote.

#### **a. Polling Place Closures**

In a 2015 memo to local election officials, then-Secretary of State Kemp encouraged counties to reduce voting locations, noting that “as a result of the *Shelby vs. Holder* [sic] Supreme Court decision, [counties are] no longer required to submit polling place changes to the Department of Justice for preclearance.”<sup>168</sup> And to be sure, in the first presidential election after *Shelby County*, throughout Georgia “dozens of polling places” were “closed, consolidated, or moved.”<sup>169</sup> In Macon-Bibb County, a majority-Black county, the number of polling places dropped from forty to thirty-two; those closures took place in primarily Black neighborhoods. When the Memorial Gym precinct in Macon, in a Black neighborhood, was closed for renovations, local officials suggested the sheriff’s office as an alternative. Lowndes County, which has a substantial Black population, reduced the number of polling places from thirty-seven to nine, and Tift County was considering, until heated local protests, consolidating all twelve county polling places into a single location. Hancock County proposed closing several polling places, including one in a Black neighborhood that was seventeen miles from its nearest alternative, in downtown Sparta. Hancock County relented only after an outcry from the Georgia NAACP and the Georgia Lawyers’ Committee for Civil Rights Under the Law, who claimed that “the planned closures would have

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<sup>167</sup> U.S. Commission on Civil Rights, *An Assessment of Minority Voting Rights Access in the United States: 2018 Statutory Enforcement Report* (Washington, 2018), 369. The restrictions on naturalized citizens were later curtailed; see “Georgia Must Ease Rules Proving Citizenship, Judge Says” PBS News Hour, <https://www.pbs.org/newshour/politics/georgia-must-ease-rule-for-voters-proving-citizenship-judge-says> (Nov. 2, 2018).

<sup>168</sup> The Leadership Conference Education Fund, *Democracy Diverted: Polling Place Closures and the Right to Vote* (Sept. 2019), 32. According to this report, then-Secretary of State Kemp “encouraged counties to consolidate voting locations. He specifically spelled out twice – in bold font – that noting that ‘as a result of the *Shelby vs. Holder* Supreme Court decision, [counties are] no longer required to submit polling place changes to the Department of Justice for preclearance.’”

<sup>169</sup> Kristina Torres, “Cost-Cutting Raises Voter Access Fears,” *Atlanta Journal Constitution*, (Oct. 13, 2016); Kristina Torres, “State Monitored For Voting Rights Issues,” *Atlanta Journal Constitution*, (Jun. 20, 2016).

disproportionately affected voters in the majority Black county in poor and rural areas with no access to regular transportation.”<sup>170</sup>

By 2019, the Leadership Conference Education Fund found that Georgia had closed over 200 polling locations in Georgia since the *Shelby County* decision despite adding millions of voters to the voter rolls.<sup>171</sup> By 2019, “eighteen counties in Georgia closed more than half of their polling places, and several closed almost 90 percent.”<sup>172</sup> In 2020, the nine counties in metro Atlanta that had nearly half of the registered voters (and the majority of the Black voters in the state) had only 38% of the state’s polling places.<sup>173</sup> Unsurprisingly, because of the fewer polling places, the lines at majority-Black polling places increased, and sometimes dramatically so. In the June 2020 primary, for example, waiting times to vote in some metro Atlanta suburbs, such as Union City (a subdivision that is 88% Black majority) was as long as five hours.<sup>174</sup> Union City was not an outlier. A 2020 study found that “about two-thirds of the polling places that had to stay open late for the June primary to accommodate waiting voters were in majority-Black neighborhoods, even though they made up only about one-third of the state’s polling places.”<sup>175</sup>

#### **b. Voter Purges and Challenges**

After *Shelby County*, Georgia officials also made more systematic efforts to purge the voting rolls in ways that particularly disadvantaged minority voters and candidates. Between 2012 and 2018, for example, then-Secretary of State Kemp removed 1.4 million voters from the eligible voter rolls. In a single day in 2017, Georgia removed over 500,000 names from the list of 6.6 million registered voters, which according to election law experts might be the “largest mass disenfranchisement in U.S. history.”<sup>176</sup> While there can be legitimate reasons to drop names from

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<sup>170</sup> *Id.*

<sup>171</sup> The Leadership Conference Education Fund, *Democracy Diverted: Polling Place Closures and the Right to Vote* (Sept. 2019), 31.

<sup>172</sup> *Id.*

<sup>173</sup> Stephen Fowler, “Why Do Nonwhite Georgia Voters Have to Wait in Line for Hours? Their Numbers Have Soared, and Their Polling Places Have Dwindled,” *ProPublica*, <https://www.propublica.org/article/why-do-nonwhite-georgia-voters-have-to-wait-in-line-for-hours-their-numbers-have-soared-and-their-polling-places-have-dwindled>, (Oct. 17, 2020).

<sup>174</sup> Mark Niese and Nick Thieme, “Fewer Polls Cut Voter Turnout Across Georgia,” *Atlanta Journal Constitution*, 15 December, 2009; Fowler, “Why Do Nonwhite Georgia Voters Have to Wait in Line for Hours?”

<sup>175</sup> Fowler, “Why Do Nonwhite Georgia Voters Have to Wait in Line for Hours?”

<sup>176</sup> Alan Judd, “Georgia’s Strict Laws Lead to Large Purge of Voters,” *Atlanta Journal Constitution*, 27 October, 2018.

the eligibility rolls (such as for a voter who is deceased, who has moved, or who has a felony conviction), the vast majority of those purged were those who simply had not voted in intervening years. While those kinds of purges are technically permitted (though not required) by federal law, those purged were significantly over-represented in precincts that overwhelmingly voted for Stacey Abrams, the Black candidate in the 2018 gubernatorial race.<sup>177</sup>

One of the most insidious forms of voter disenfranchisement by Georgia in recent years which disproportionately affected minority voters was Georgia’s “exact matching” procedures. As the Northern District of Georgia has explained, Georgia’s exact match procedures policies meant that when a prospective voter submitted a voter registration application, Georgia would check the registration against its Department of Driver Services (“DDS”) or files from the Social Security Administration (“SSA”). If the applicants’ information did not match those files exactly, “then the voter registration application is placed in ‘pending status,’ and the person may not vote until the person corrects the information. The burden is on the applicant to take the next steps to correct any information and/or present the necessary proof required to the appropriate officials to become a Georgia voter.” *Georgia Coal. for People's Agenda, Inc. v. Kemp*, 347 F. Supp. 3d 1251, 1255–56 (N.D. Ga. 2018). If the voter did not present new information, their application was rejected. *Id.*

The legal history of exact-match legislation in Georgia is complex. It was originally passed by the Georgia General Assembly in 2008, and was originally blocked under preclearance, though it received Department of Justice approval in 2010 when the Secretary of State agreed to place “safeguards” on the practice. As the Department of Justice later argued, however, it is not clear if those safeguards were ever used. After *Shelby County*, Georgia operated the exact match procedures without strict safeguards, leading to federal suits such as the one above.

As civil rights groups have shown, Georgia’s exact match procedures were more likely to disenfranchise minority voters. Between 2013 and 2016, more than 34,000 Georgia voters’ applications were suspended using the exact-match system. Under the DDS match, Black Georgians, who made up only 28.2 percent of the registered voters, were 53.3 percent of those voters whose applications were cancelled or placed in pending status. By contrast, non-Hispanic

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<sup>177</sup> Angela Caputo, Geoff Hing, and Johnny Kaufman, “After the Purge: How a Massive Voter Purge Affected the 2018 Election,” APM Reports, <https://www.apmreports.org/story/2019/10/29/georgia-voting-registration-records-removed> (Oct. 29, 2019).

whites, who were almost half of registered voters in Georgia, made up a far lower 18.3 percent of those applications that were canceled or pending. Under the SSA match, the discrepancy was even starker. Black Georgians made up 74.6 percent of those in the cancelled and pending files, while non-Hispanic whites were only 9.5 percent. By July 2018, 51,111 voters' applications were suspended, and placed in the "pending voter" category, of whom 80% were either African American, Hispanic/Latino, or Asian.<sup>178</sup> By 2019, Georgia agreed to largely abandon its exact matching process.<sup>179</sup>

Voter challenges directed at minority voters have also persisted in modern Georgia. In advance of the 2016 election, the Hancock County Election Board, which at the time was majority white, used the voter challenge process to challenge approximately 180 voters, almost all of whom were Black. Those Black residents made up nearly a fifth of the city's registered voters. In pursuit of the challenges, the Hancock County Board dispatched the local police to summon those Black residents to hearings to prove their residence or lose their voting rights. Many thought they were being arrested, and many of those challenged were intimidated and did not vote in the fall election. The white candidate for mayor won a narrow victory.<sup>180</sup>

Although the Hancock County attorney denied that this purge was "about . . . race," the Georgia State Conference of the NAACP, the Georgia Coalition for the People's Agenda, and four voters who had their registrations challenged sued the Hancock County Board of Elections seeking an injunction to force the Board to end their use of the challenge procedures. The U.S. District Court for the Northern District of Georgia later ordered the defendants to pay the plaintiffs'

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<sup>178</sup> Abrams, *Our Time is Now*, 58–61; Anderson, *One Person, No Vote*, 78–81; McCrary Report.

<sup>179</sup> Aja Arnold, "Ex Post Facto: Abrams v Kemp," *The Mainline* 11 May 2020, <https://www.mainlinezine.com/ex-post-facto-abrams-vs-kemp-2018/>; Brentin Mook, "How Dismantling the Voting Rights Act Helped Georgia Discriminate Again," *Bloomberg City Lab*, 15 October, 2018, <https://www.bloomberg.com/news/articles/2018-10-15/how-georgia-s-exact-match-program-was-made-possible>; Stanley Augustin, "Georgia Largely Abandons its Broken 'Exact Match' Voter Registration Process," *Lawyers' Committee For Civil Rights*, 5 April, 2019, <https://www.lawyerscommittee.org/georgia-largely-abandons-its-broken-exact-match-voter-registration-process/>

<sup>180</sup> Michael Wines, "Critics: Racial Bias Creeping Back Into Electoral Purges," *Atlanta Journal Constitution*, 1 August, 2016



attorney fees and required the Board of Elections to follow a strict process that required the Board to notify the plaintiffs' counsel if the Board made any future voter challenges.<sup>181</sup>

### c. Senate Bill 202

Of final note is the Georgia General Assembly's passage of Senate Bill (SB) 202 in the spring of 2021 in the wake of significant minority voting strength in Georgia and the election of Georgia's first Black United States Senator. SB 202 is currently the subject of multiple lawsuits which allege that it violates both Section 2 of the VRA and the Fourteenth and Fifteenth Amendments, including by the United States Department of Justice.<sup>182</sup>

These allegations are not surprising. Many of the provisions of SB 202 target methods of voting that Black voters used to tremendous effect in the 2020 General Election and 2021 Runoff election, and also specifically target voting in the Atlanta metro area, home to the majority of Georgia's Black voters.<sup>183</sup> While SB 202 has more than 40 provisions, some of its most notable changes are: (1) reducing the time available to request an absentee ballot, (2) increasing identification requirements for absentee voting, (3) banning state and local governments from sending unsolicited absentee ballot applications, (4) limiting the use of absentee ballot drop boxes, (5) banning mobile polling places, (6) and prohibiting anyone who is not a poll worker from giving food or drink to voters in line to vote.<sup>184</sup>

One of SB 202's most notable changes to voting access is to drop boxes, which were used extensively by Black voters in the 2020 General Election. In that election, in the four core Atlanta Metro counties, Cobb, DeKalb, Fulton, and Gwinnett, 56% of absentee ballot voters, or 305,000

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<sup>181</sup> *Ga. State Conference of the NAACP v. Hancock Cnty. Bd. of Elections & Registration*, No. 5:15-CV-00414 (CAR) (M.D. Ga. Mar. 30, 2018); Michael Wines, "Critics See Efforts by Counties and Towns to Purge Minority Voters From Rolls," *New York Times* (New York, NY), July 31, 2016, <https://www.nytimes.com/2016/08/01/us/critics-see-efforts-to-purge-minorities-from-voter-rolls-in-new-elections-rules.html>; Kristina Torres, "Georgia suit settled alleging black voters wrongfully disqualified," *Atlanta Journal-Constitution* (Atlanta, GA), March 16, 2017, <https://www.ajc.com/news/state--regional-govt--politics/georgia-suit-settled-alleging-black-voters-wrongfully-disqualified/djDIIfYjpvYJJcZW8CJzgKL/>

<sup>182</sup> See *United States v. Georgia*, No. 1:21-cv-02575 (N.D. Ga. June 25, 2021).

<sup>183</sup> For a helpful summary, see Stephen Fowler, "What Does Georgia's New Voting Law SB 202 Do?" NPR, <https://www.gpb.org/news/2021/03/27/what-does-georgias-new-voting-law-sb-202-do>

<sup>184</sup> Georgia Senate Bill 202 (2021); see also Stephen Fowler, "What Does Georgia's New Voting Law SB 202 Do?" NPR, <https://www.gpb.org/news/2021/03/27/what-does-georgias-new-voting-law-sb-202-do>



of 547,000, used drop boxes.<sup>185</sup> After SB 202, the number of drop boxes in those counties will drop from the 111 available in the 2020 election to 23.<sup>186</sup> In Fulton County, the number will drop from 38 to 8. Cobb County Election Director Janine Eveler told the *Atlanta Journal-Constitution* that drop boxes “are no longer useful. The limited numbers mean you cannot deploy them in sufficient numbers to reach the voting population.”<sup>187</sup>

SB 202 also made significant changes to how votes will be counted and who will supervise the counting. These changes included (1) removing the Secretary of State as the Chair of the State Election Board and replacing the Chair with someone appointed by a majority of the Georgia General Assembly, (2) giving the State Election Board (and by extension the Georgia General Assembly) more power to intervene in county election boards, and (3) allowing the State Election Board (and by extension the Georgia General Assembly) more power to suspend election board members and replace them.<sup>188</sup>

The collective impact of these provisions is substantial. University of Georgia Political Scientist Charles Bullock explained that when all the obstacles in SB 202 are considered “as a package, the bill’s voting restrictions could deter thousands of people from voting in future elections” and could very well alter the outcome of close statewide races.<sup>189</sup> “Each new obstacle,” Dr. Bullock explained, “has the potential to stop voters ... from participating in democracy.”<sup>190</sup>

Indeed, SB 202 is already being used against county election officials, and particularly Black officials. By June 2021, Georgia County commissions had replaced ten county election

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<sup>185</sup> Niese, et. al., “Drop box use heavy in Democratic areas before Georgia voting law,” *Atlanta Journal-Constitution*, July 12, 2021, <https://www.ajc.com/politics/drop-box-use-soared-in-democratic-areas-before-georgia-voting-law/N4ZTGHLWD5BRBOUKBHTUCFVOEU/>.

<sup>186</sup> “How New State Voting Laws Could Impact Voters,” *Brennan Center for Justice*, September 1, 2021, <https://www.brennancenter.org/our-work/research-reports/how-new-state-voting-laws-could-impact-voters>.

<sup>187</sup> Mark Niese, “ID Law Adds Hurdles For Thousands,” *AJC*, 1 June, 2021; “Application For Official Georgia Absentee Ballot,” [https://sos.ga.gov/admin/uploads/2021\\_Absentee\\_Ballot\\_Application2.pdf](https://sos.ga.gov/admin/uploads/2021_Absentee_Ballot_Application2.pdf); “Democratic Counties Showed Higher Drop Box Use”

<sup>188</sup> Georgia Senate Bill 202 (2021); see also Stephen Fowler, “What Does Georgia’s New Voting Law SB 202 Do?”

<sup>189</sup> Mark Niese, *New Georgia law changes voting rules—and maybe results*, *Atlanta-Journal Constitution* (Mar. 28, 2021), available at <https://www.ajc.com/politics/new-georgia-law-changes-voting-rules-and-maybe-results/4QBKQXRS45GUZHBSQ67W4FVLR/>.

<sup>190</sup> *Id.*

officials, most Democrats, half of them Black.<sup>191</sup> As of December 2021, six counties in Georgia have fully reorganized their county board of supervisors since the passage of SB 202. In Spaulding County, in particular, the three Black women who constituted a majority of the Board has been replaced, as has the elections supervisor. A majority of three white Republicans now control the board and has already moved to restrict voting access, including by eliminating Sunday voting.<sup>192</sup> In five of the counties that restructured election boards—Troup, Morgan, Pickens, Stephens, and Lincoln—the legislature shifted the power to appoint some or all election board to local county commissioners, all of which are controlled by Republicans. Previously the appointments had been split evenly between the local Democratic and Republican parties, with the intent to ensure a politically balanced election board.<sup>193</sup> In December, 2021, Lincoln County, whose elections board was recently disbanded under SB 202, indicated plans to close six of the county’s seven polling places, a move that would require some registered voters to travel as far as twenty-three miles to the nearest polling site and which would disadvantaging the county’s Black voters.<sup>194</sup> And while it has not yet occurred, shortly after the passage of SB 202, the Georgia State Election Board set up a review board to review the performance of the Fulton County Election Board, setting up the prospect for a takeover of the Elections Board in Fulton, the home of hundreds of thousands of Black Georgians.<sup>195</sup>

**d. Electoral success of Black candidates.**

Even today, more than fifty years after the original 1965 VRA, most Black candidates in Georgia are only able to win in districts which are majority Black. The following tables show just how stark this phenomenon has been in Georgia’s 2020 elections for the General Assembly. In the

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<sup>191</sup> Nick Corasanti and Reid J. Epstein, “How Republican States Are Expanding Their Power Over Elections,” *New York Times*, July 1, 2021, <https://www.nytimes.com/2021/06/19/us/politics/republican-states.html>; Mark Niese and Brad Branch, “Fulton County Elections Takeover Mulled,” 27 July, 2021

<sup>192</sup> James Oliphant and Nathan Layne, Georgia Republicans purge Black Democrats from County Election Boards, Reuters, Reuters, 9 December 2021, <https://www.reuters.com/world/us/georgia-republicans-purge-black-democrats-county-election-boards-2021-12-09/>.

<sup>193</sup> *Id.*

<sup>194</sup> Susan McCord, “Lincoln County Looks to Eliminate All Polling Places But One,” *Augusta Chronicle*, 21 December, 2021.

<sup>195</sup> Nick Corasanti and Reid J. Epstein, “How States are Expanding Their Control Over Elections,” *New York Times*, 19 June, 2021; Mark Niese and Brad Branch, “Fulton County Elections Takeover Mulled,” 27 July, 2021

Georgia House, for example, none of Georgia's Black House members were elected from a district with more than 55% white voters. In the Georgia Senate, none of Georgia's Black Senators were elected from a district with more than 47% white voters. This trend is not surprising given the historically pervasive racially polarized voting in the state. These figures are shown below:<sup>196</sup>

Winning Candidates in 2020 in Georgia House of Representatives

Percentage white registered voters in district	White Republicans <sup>197</sup>	Black Democrats	White Democrats
Under 40%	0	48	7
40–46.2%	1	3	2
46.2–54.9	11	1	6
55–62.4%	23	0	5
Over 62.4%	68	0	0

Winning Candidates in 2020 in Georgia State Senate

Percentage white registered voters in district	White Republicans	Black Democrats	White Democrats
Under 47%	0	16	1
47–54.9%	3	0	3
Over 55%	51	0	0

Black candidates have faced similar difficulties in running for statewide office throughout the South. The three victories of Raphael Warnock, in the 2020 general election, in the 2020 runoff, and in the 2022 general election, are rare instances of a Black candidate winning statewide office.

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<sup>196</sup> Lawyers Committee for Civil Rights, *The Central Role of Racial Demographics in Georgia Elections: How Race Affects Elections for the Georgia General Assembly* (May 2021).

<sup>197</sup> There are currently no Black Republicans in the Georgia General Assembly.

According to a recent study (2022) reflected in the table below, from 1989 to 2018 Black success in statewide races in the South is rare:<sup>198</sup>

Success of Candidates for Statewide Office in the South, 1989-2018

A. Democrats

Race of candidate	Democrats won %	Democrats Lost	n
White	42.6	57.4	455
Black	15.9	84.1	69
Latino	25	75	16
Total	38.7	63.3	540

B. Republicans

Race of Candidate	Republicans won%	Republicans lost%	n
White	61.4	38.6	526
Black	20	80	5
Latino	77.8	22.2	9
Total	61.3	38.7	540

## V. THE RELATIONSHIP BETWEEN RACE AND PARTISANSHIP IN GEORGIA POLITICS

### A. Historical Foundations of the Partisan Divide Among Black and White Georgians

Since Reconstruction, conservative whites in Georgia and other southern states have more or less successfully and continuously held onto power. While the second half of the twentieth century was generally marked by a slow transition from conservative white Democrats to conservative white Republicans holding political power, the reality of conservative white political dominance did not change. As discussed below, the Democratic Party's embrace of civil rights

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<sup>198</sup> Charles Bullock III, Susan A. McManus, Jeremy D. Mayer, and Mark Rozell, *African American Statewide Candidates in the New South*, (New York: Oxford University Press, 2022), 8, 9. The tables include all of the states of the Old Confederacy except for Louisiana. The volumes cover has photographs of Stacey Abrams and Raphael Warnock.

legislation—and the Republican Party’s opposition to it—was the catalyst of this enduring political transformation.<sup>199</sup>

The Democratic Party’s embrace of civil rights policies in the mid-20th Century caused Black voters to leave the Republican Party (the Party of Lincoln) for the Democratic Party. At the same time, the Democratic Party’s embrace of civil rights legislation sparked what Earl Black and Merle Black describe as the “Great White Switch,” in which white voters abandoned the Democratic Party for the Republican Party. In the 1948 presidential election, South Carolina Governor J. Strom Thurmond mounted a third-party challenge against Democratic President Harry Truman in protest of Truman’s support for civil rights, including his integration of the armed forces. Thurmond ran on the so-called Dixiecrat party which claimed the battle flag of the Confederacy for its symbol. Thurmond’s campaign ended Democratic dominance of deep South states by winning South Carolina, Alabama, Mississippi, and Louisiana.<sup>200</sup>

This trend of white voters in Georgia abandoning the Democratic Party due to its support of civil rights was readily apparent in the 1964 and 1968 presidential elections. In 1964, the Republican nominee, Barry Goldwater, won only six states in a landslide defeat to President Lyndon B. Johnson: his home state of Arizona, and all five states comprising the Deep South (South Carolina, Georgia, Alabama, Mississippi, and Louisiana). In fact, Goldwater was the first Republican presidential candidate to *ever* win Georgia’s electoral votes.<sup>201</sup> In 1968, Georgia’s electoral votes were won by George Wallace, another third-party presidential candidate who ran on a platform of vociferous opposition to civil rights legislation.<sup>202</sup> And other than favorite son Jimmy Carter, no Democratic nominee for President has since won Georgia’s electoral votes until President Joe Biden’s victory in 2020.

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<sup>199</sup> Nancy J. Weiss, *Farewell to the Party of Lincoln: Black Politics in the Age of FDR* (Princeton, NJ: Princeton University Press, 1983); Barbara M. Linde, *African Americans in Political Office: From the Civil War to the White House* (New York: Lucent Press, 2015).

<sup>200</sup> Joseph Crespino, *Strom Thurmond’s America: A History* (New York: Farrar, Straus and Giroux, 2012); Nadine Cohodas, *Strom Thurmond and The Politics of Southern Change* (Macon: Mercer University Press, 1993); Jack Bass & Marilyn W. Thompson, *Strom: The Complicated Personal and Political Life of Strom Thurmond* (New York: Public Affairs, 2005).

<sup>201</sup> “1964,” The American Presidency Project, *available at* <https://www.presidency.ucsb.edu/statistics/elections/1964> (last accessed Dec. 5, 2022).

<sup>202</sup> “1968,” The American Presidency Project, *available at* <https://www.presidency.ucsb.edu/statistics/elections/1968> (last accessed Dec. 5, 2022).

White southerners abandoned the Democratic Party for the Republican Party because the Republican Party identified itself with racial conservatism. Consistent with this strategy, Republicans today continue to use racialized politics and race-based appeals to attract racially conservative white voters.<sup>203</sup> As Goldwater told a group of Republicans from southern states, it was better for the Republican Party to forego the “Negro vote” and instead court white southerners who opposed equal rights.<sup>204</sup> Historians and political scientists agree that Goldwater “sought to create a general polarization of southern voters along racial lines.” The effectiveness of what was called the “Southern strategy” during Richard Nixon’s presidency had a profound impact on the development of the nearly all-white modern Republican Party in the South. South Carolinian Harry Dent, who had previously worked for Senator Strom Thurmond, became Nixon’s advisor and helped implement the “Southern strategy.”<sup>205</sup> Although more subtle in his appeal to white southern voters, Nixon followed the advice of Republican Party strategist Kevin Phillips in 1970. Phillips argued that “[t]he GOP can build a winning coalition without Negro voters.” He understood, and made certain others understood, that “Negro-Democratic mutual identification” was important for the building of a white Republican Party in the South. With Phillips’s Southern Strategy, the Democratic Party in the South became identified as the “Negro party through most of the South.” With the Democratic Party identified with African Americans, whites in the South would become Republicans, and that would allow the Republican Party to become the majority party in what had

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<sup>203</sup> Earl Black & Merle Black, *Politics and Society in the South* (Cambridge: Harvard University Press, 1987); Thomas F. Schaller, *Whistling Past Dixie: How Democrats Can Win Without the South*, (New York: Simon and Schuster, 2006), 65; Kevin P. Phillips, *The Emerging Republican Majority* (New Rochelle, NY: Arlington House, 1969); Dan T. Carter, *Politics of Rage: George Wallace, the Origins of the new Conservatism, and the Transformation of American Politics* (Baton Rouge: Louisiana State University Press, 2000); Dan T. Carter, *From George Wallace to Newt Gingrich: Race in the Conservative Counterrevolution, 1963-1994* (Baton Rouge: Louisiana State University Press, 1996); Rick Perlstein, *Before the Storm: Barry Goldwater and the Unmaking of the American Consensus* (New York: Hill and Wang, 2001); Timothy N. Thurber, *Republicans and Race: The GOP’s Frayed Relationship with African Americans, 1945-1974* (2013); Heather Cox Richardson, *To Make Men Free: A History of the Republican Party* (New York: Basic Books, 2021), 10, 11, 321-408, 456-475.

<sup>204</sup> Dan T. Carter, “Unfinished Transformation: Matthew J. Perry’s South Carolina,” in *Matthew J. Perry: The Man, His Times, and His Legacy*, ed., W. Lewis Burke and Belinda F. Gergel (Columbia: University of South Carolina Press, 2004), 251.

<sup>205</sup> David Stout, “Harry Dent, an Architect of Nixon ‘Southern Strategy,’ Dies at 77,” N.Y. Times (Oct. 2, 2007), available at <https://www.nytimes.com/2007/10/02/us/02dent.html>.

traditionally been the solid Democratic South.<sup>206</sup> After studying Phillips's plan, Nixon told his staff to implement the strategy and emphasized, "don't go for Jews and Blacks."<sup>207</sup>

Matthew D. Lassiter, a historian of the Atlanta suburbs, observed that "the law-and-order platform at the center of Nixon's suburban strategy tapped into Middle American resentment toward antiwar demonstrators and black militants but consciously employed a color-blind discourse that deflected charges of racial demagoguery."<sup>208</sup> And John Ehrlichman, President Nixon's domestic policy advisor, admitted in 1994 that the war on drugs—a key part of law-and-order campaigns—had an ulterior motive. He observed that "the Nixon campaign in 1968, and the Nixon White House after that, had two enemies: the antiwar left and black people." While the Nixon campaign "couldn't make it illegal to be either against the war or black," they knew that "by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, [they] could disrupt those communities."<sup>209</sup>

Georgia is a flash point of this modern strategy. According to Dr. Peyton McCrary, a historian who recently retired after a 26-year career with the Department of Justice: "In Georgia politics since 2002, state government is dominated by the Republican Party, the party to which now most non-Hispanic white persons belong. The greatest electoral threat to the Republican Party and Georgia's governing elected officials is the growing number of African American, Hispanic, and Asian citizens, who tend strongly to support Democratic candidates. The increase in minority population and the threat of increasing minority voting strength provides a powerful incentive for Republican officials at the state and local level to place hurdles in the path of minority citizens seeking to register and vote. That is what has happened."<sup>210</sup> Moreover, "In white-majority Georgia,

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<sup>206</sup> Kevin P. Phillips, *The Emerging Republican Majority* (New York: Arlington House, 1969), 467-68.

<sup>207</sup> Carter, *From George Wallace to Newt Gingrich*, 45; Kenneth O'Reilly, *Nixon's Piano: Presidents and Racial Politics from Washington to Clinton* (New York: Free Press, 1995), 285-86; Dan Carter, "Civil Rights and Politics in South Carolina: The Perspective of One Lifetime, 1940-2003" in *Toward the Meeting of the Waters: Currents in the Civil Rights Movement of South Carolina during the Twentieth Century*, ed. Winfred B. Moore, Jr. and Orville Vernon Burton (Columbia: University of South Carolina Press, 2008), 413.

<sup>208</sup> Matthew D. Lassiter, *The Silent Majority: Suburban Politics in the Sunbelt South* (Princeton, NJ: Princeton University Press, 2006), 234.

<sup>209</sup> Dan Baum, "Legalize It All," *Harper's* (April 2016).

<sup>210</sup> Expert Rep. of Dr. Peyton McCrary at 8, *Fair Fight Action v. Raffensperger*, No. 1:18-cv-05391SCJ, (N.D. Ga. Apr. 24, 2020), ECF No. 339 ("McCrary Report").



Republicans benefitted from a pattern of voting that was polarized along racial lines.”<sup>211</sup> University of Georgia political scientist Charles Bullock noted that “the relationship between race and voting in 2002 was striking.”<sup>212</sup> Moreover, Bullock and Keith Gaddie showed that “since 1992, Democrats have always taken at least 80 percent of the black vote while most whites invariably preferred Republicans.”<sup>213</sup> Indeed, the racial bloc voting in Georgia is so strong, and race and partisanship so deeply intertwined, that statisticians refer to it as multicollinearity, meaning one cannot, as a scientific matter, separate partisanship from race in Georgia elections.<sup>214</sup>

To be sure, Republicans nominated a Black candidate—Herschel Walker, a former University of Georgia football legend—to challenge Senator Raphael Warnock in the 2022 general election for U.S. Senate. But Walker’s nomination only underscores the extent to which race and partisanship remain intertwined. Republican leaders in Georgia admittedly supported Walker because they wanted to “peel[ ] off a handful of Black voters” and “reassure white swing voters that the party was not racist.”<sup>215</sup> The strategy failed. Exit polls clearly showed that Warnock remained the candidate of Black voters and Walker was the candidate of white voters.<sup>216</sup> In fact, Walker’s share of the Black vote was virtually identical to that of Governor Brian Kemp, who was also on the general election ballot in his re-election bid against Stacey Abrams.<sup>217</sup>

	U.S. Senate	Governor
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<sup>211</sup> McCrary Report at 30.

<sup>212</sup> Charles S. Bullock III, “Georgia: Republicans at the High Water Mark?” in Bullock and Mark J. Rozell (eds.), *The New Politics of the Old South* (New York, Rowman & Littlefield, 5th ed. 2014), 58.

<sup>213</sup> Charles S. Bullock III & Ronald Keith Gaddie, *The Triumph of Voting Rights in the South* (Norman, University of Oklahoma Press, 2009), 100.

<sup>214</sup> Donald E. Farrar & Robert R. Glauber, “Multicollinearity in Regression Analysis: The Problem Revisited,” *Review of Economics and Statistics*, XLIX (February 1967), 92-107, esp. p. 98; Peyton McCrary, Clark Miller, & Dale Baum, “Class and Party in the Secession Crisis: Voting Behavior in the Deep South, 1856-1861,” *Journal of Interdisciplinary History* viii:3 (Winter 1978): 450, n.35.

<sup>215</sup> Cleve R. Wootson Jr., “Herschel Walker’s Struggles Show GOP’s Deeper Challenges in Georgia,” *Washington Post* (Sept. 22, 2022), <https://www.washingtonpost.com/politics/2022/09/22/herschel-walker-georgia-black-voters/>

<sup>216</sup> NBC News, Georgia Senate Exit Polls (Nov. 8, 2022), *available at* [https://www.nbcnews.com/politics/2022-elections/georgia-senate-results?icid=election\\_statenav](https://www.nbcnews.com/politics/2022-elections/georgia-senate-results?icid=election_statenav); NBC News, Georgia Governor Exit Polls, (Nov. 8, 2022), *available at* [https://www.nbcnews.com/politics/2022-elections/georgia-governor-results?icid=election\\_statenav](https://www.nbcnews.com/politics/2022-elections/georgia-governor-results?icid=election_statenav).

<sup>217</sup> *See supra* n.218.

	WARNOCK (D)	WALKER (R)	ABRAMS (D)	KEMP (R)
Black men	85%	12%	84%	14%
Black women	93%	5%	93%	6%
White men	27%	71%	23%	76%
White women	30%	68%	27%	72%

Similarly, a CNN poll of Black voters, released on Friday, December 2, 2022, found Mr. Walker winning just three percent of Black voters.”<sup>218</sup> And when New York Times reporters interviewed more than “more than two dozen Black voters across Georgia, many said they did not see Mr. Walker, who has taken a conciliatory approach to matters of race, as representing the interests of Black people.”<sup>219</sup> The Times reported that “many Black voters disagree with how Mr. Walker,” quoting Black human resources coordinator, Ms. Darca Davis, “views the nation and also other African American people.”<sup>220</sup>

It is undeniable that support in Georgia for the Democratic and Republican parties remains profoundly split by race. The 2022 Senate race between Walker and Warnock—two Black men—produced utterly asymmetrical voting patterns among white and Black voters, demonstrating more clearly than any recent election in Georgia’s history the continued salience of race in Georgia elections and how the two parties are intricately defined by race.

### **B. Racial Appeals in Georgia Politics**

Explicit racial appeals in politics are more taboo today than they were in the mid-20th Century. Nonetheless, implicit or subtle appeals to race are still common and contribute to Georgia’s racial polarization. The success of the Democratic Party in the South relies crucially on engaging and mobilizing Black voters. Consequently, the modern Republican party has made attacking the Black core of the Democratic Party, especially urban areas where most Black voters live, one of its fundamental strategies.

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<sup>218</sup> Maya King, Clyde McGrady, & Jezmine Ulloa, “In Georgia, a Heated Senate Race Stirs Mixed Emotions in Black Voters,” *N.Y. Times* (Dec. 3, 2022), <https://www.nytimes.com/2022/12/03/us/politics/georgia-senate-runoff-black-voters.html>.

<sup>219</sup> *Id.*

<sup>220</sup> *Id.*

### i. Historical Foundations

Republican political operative Lee Atwater from Georgia's neighbor South Carolina had learned from fellow South Carolinian and Nixon Southern strategist Harry Dent. As Atwater, the Republican campaign aide and strategist who helped George H.W. Bush win election in 1988 by helping to create the infamous "Willie Horton" advertisement, notoriously explained in 1981 that when the Republican Party recognized that overt appeals were no longer effective, they shifted to ideas with plainly racial ties: "forced busing, states' rights, and all that stuff."<sup>221</sup> These implicit racial appeals communicate the same ideas as explicit racial appeals by alluding to "racial stereotypes or a perceived threat" from racial or ethnic minorities. Atwater was especially candid in his explanation:

You start out in 1954 by saying, "Nigger, nigger, nigger." By 1968 you can't say "nigger"—that hurts you, backfires. So you say stuff like, uh, forced busing, states' rights, and all that stuff, and you're getting so abstract. Now, you're talking about cutting taxes, and all these things you're talking about are totally economic things and a byproduct of them is, blacks get hurt worse than whites.... "We want to cut this," is much more abstract than even the busing thing, uh, and a hell of a lot more abstract than "Nigger, nigger."<sup>222</sup>

Princeton University Political Scientist Tali Mendelberg defined Atwater's implicit racial appeal as "one that contains a recognizable – if subtle – racial reference, most easily through visual references."<sup>223</sup> Ian Haney Lopez, the Chief Justice Earl Warren Professor of Public Law at Berkeley Law, University of California, described implicit racial appeals as a "*coded* racial appeal," with "one core point of the code being to foster deniability," since the "explicit racial appeal of yesteryear now invites political suicide." One characteristic of implicit racial appeals is that they are usually most successful when their racial subtext goes undetected.<sup>224</sup> Implicit racial

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<sup>221</sup> Peter Baker, "Bush Made Willie Horton an Issue in 1988, and the Racial Scars Are Still Fresh," N.Y. Times (Dec. 3, 2018), <https://www.nytimes.com/2018/12/03/us/politics/bush-willie-horton.html>; Rick Perlstein, "Exclusive: Lee Atwater's Infamous 1981 Interview on the Southern Strategy," *The Nation* (Nov. 13, 2012), <http://www.thenation.com/article/170841/exclusive-lee-atwaters-infamous-1981-interview-southern-strategy>.

<sup>222</sup> Rick Perlstein, "Exclusive: Lee Atwater's Infamous 1981 Interview on the Southern Strategy," *The Nation* (Nov. 13, 2012), <http://www.thenation.com/article/170841/exclusive-lee-atwaters-infamous-1981-interview-southern-strategy>.

<sup>223</sup> Tali Mendelberg, *The Race Card: Campaign Strategy, Implicit Messages, and the Norm of Equality* (Princeton, N.J.: Princeton University Press, 2001), 9, 11.

<sup>224</sup> Lopez, *Dog Whistle Politics*, 130, 4.

appeals make use of coded language to activate racial thinking.<sup>225</sup> Racial cues, in the form of code words, such as “welfare queen,” “lazy,” “criminal,” “taking advantage,” “corruption,” “fraud,” “voter fraud,” and “law and order” are racial code words that refer back to Reconstruction era when African Americans were first elected to office. Other coded issues, such as “poverty” and “immigration,” prime racial attitudes among white voters.

Reagan’s 1980 presidential campaign was extremely effective at using subtle racial appeals to win white votes. Indeed, he chose to open that campaign with a state’s rights speech at the Neshoba County Fair in Mississippi, the notorious scene of the murder of three civil rights workers in 1964. His campaign also used racial coded terms such as “welfare queen” and “strapping young buck.”<sup>226</sup> 22% of Democrats ultimately supported Regan in 1980, but those defections were substantially higher among Democrats with racially conservative views.<sup>227</sup> 71% of Democrats who felt “the government should not make any special effort to help [African Americans] because they should help themselves” voted for Reagan.<sup>228</sup>

Similarly, in the 1988 campaign, Republican candidate George H.W. Bush associated Democratic candidate Governor Michael Dukakis with Willie Horton, an African American convicted of murder who committed an additional murder and rape when released on a weekend furlough program for prisoners that had been supported by Governor Dukakis. The Bush campaign showed images of Mr. Horton, rendering the racial appeal clear: supporting Dukakis would allow Black murderers to roam the streets. This appeal to the racial fears contributed to Bush’s victory in 1988.<sup>229</sup>

Georgia was a focal point of this strategy. Following the leadership of Richard Nixon and the Republican National Committee, the Georgia Republican party insurgence was grounded on

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<sup>225</sup> Nicholas A. Valentino, Vincent L. Hutchings, and Ismail K. White. “Cues that Matter: How Political Ads Prime Racial Attitudes During Elections,” *American Political Science Review* 96 (2002), 75-90.

<sup>226</sup> Ian Haney-Lopez, “The Racism at the Heart of the Reagan Presidency,” Salon (Jan. 11, 2014), *available at* [https://www.salon.com/2014/01/11/the\\_racism\\_at\\_the\\_heart\\_of\\_the\\_reagan\\_presidency/](https://www.salon.com/2014/01/11/the_racism_at_the_heart_of_the_reagan_presidency/).

<sup>227</sup> *Id.*

<sup>228</sup> *Id.*

<sup>229</sup> Ian Haney Lopez, *Dog Whistle Politics: How Coded Racial Appeals Have Reinvented Racism and Wrecked the Middle Class* (New York: Oxford University Press, 2013) 59, 105-7; Orville Vernon Burton, *Justice Deferred: Race and the Supreme Court* (Cambridge: The Belknap Press of Harvard University Press, 2021), 260, 328.

fiscal conservatism, opposition to integration (particularly busing), and a growing demand among white suburbanites for “law and order.” The rallying cry of “law and order” became a dog whistle for many candidates and voters.<sup>230</sup> And the person who perhaps more than anyone else helped steer the Republican Party to this new form of race baiting was Georgia politician Newt Gingrich, who was first elected to Congress from a suburban Atlanta district in 1978 and became the Republican speaker of the U.S. House of Representatives in 1994.

The title of former Emory University history professor Dan T. Carter’s study of race and politics illustrates the trajectory of race appeals: *From George Wallace to Newt Gingrich: Race in the Conservative Counterrevolution, 1963-1994*.<sup>231</sup> For Dr. Carter, Wallace is the key figure in the modern use of code words and racist language. But Gingrich is, in the words of Dana Milbank, the “architect of our [current political] dysfunction.”<sup>232</sup> Gingrich ran against Virginia Shephard, a white Democrat, during his first campaign in 1978. He distributed a flyer showing his opponent in a photo with Black Georgia representative Julian Bond which read:

If you like welfare cheaters, you’ll love Virginia Shephard. In 1976, Virginia Shephard voted to table a bill to cut down on welfare cheaters. People like Mrs. Shephard, who was a welfare worker for five years, and Julian Bond fought together to kill the bill.<sup>233</sup>

One of Gingrich’s campaign aides later said “we went after every rural southern prejudice we could think of.”<sup>234</sup> Gingrich’s first act after being elected to Congress was to call for the expulsion of Democrat Charles Diggs from Detroit, the first Black member of Congress elected from an urban district in Michigan, who had diverted \$6,000 in funds from his congressional payroll for his personal use—even though similar infractions by white legislators had not previously resulted

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<sup>230</sup> Matthew D. Lassiter, *The Silent Majority: Suburban Politics in the Sunbelt South* (Princeton, N.J.: Princeton University Press, 2006), 234.

<sup>231</sup> Dan T. Carter, *From George Wallace to Newt Gingrich: Race in the Conservative Counterrevolution, 1963-1994* (Baton Rouge: Louisiana State University Press, 1996)

<sup>232</sup> Dana Milbank, *The Destructionists: The Twenty-Five-Year Crack-Up of the Republican Party* (New York: Doubleday, 2022), 49; see also Julian E. Zelizer, *Burning Down the House: Newt Gingrich, The Fall of a Speaker, and the Rise of the New Republican Party* (New York: Penguin, 2020).

<sup>233</sup> Milbank, *The Destructionists*, 66.

<sup>234</sup> *Id.*

in expulsion. Gingrich led the successful campaign for Representative Diggs' expulsion, though he was subsequently re-elected.<sup>235</sup> According to Dana Milbank:

Gingrich claimed to be racially progressive (he favored a Martin Luther King Jr. federal holiday), but was proficient in racist dog whistles, railing against the “corrupt, liberal welfare state,” drafting a Republican platform in Georgia warning that “America is in danger of decaying into a jungle of violent crimes,” saying that because of civil rights leader Jesse Jackson “it’s going to be a Dukakis-Jackson administration no matter who the vice presidential nominee is.” He argued for branding Democrats with the words “welfare” and “criminal rights.” He claimed that “it is in the interest of the Republican Party...[ellipsis in original] to invent new Black leaders, so to speak—people who have a belief in discipline, hard work, and patriotism. He decried “multicultural nihilistic hedonism.” He fought civil rights groups in trying to add a new category, “multi-cultural to the census. When Gingrich’s Republicans won the House in 1994, it was in large part because for the first time since Reconstruction, Democrats had lost their southern majority in Congress.”<sup>236</sup>

Racism, whether dog whistled or communicated directly, became a hallmark of the Gingrich Republican Party. Georgia Republican congressman Bob Barr, in the 1990s addressed the Council of Conservative Citizens, a descendant of the White Citizens Council.<sup>237</sup> Radio commentator Rush Limbaugh said at one point that “if any race of people should not have guilt over slavery, it’s Caucasians.”<sup>238</sup> Gingrich himself remains active in Georgia politics, campaigning for Trump-backed candidates in the 2022 election cycle, opining that Kamala Harris “is the dumbest vice president ever,” while reinforcing stereotypes while challenging them, arguing that Republican African American Senate candidate Herschel Walker “is dramatically smarter than people think he is.”<sup>239</sup>

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<sup>235</sup> *Id.*

<sup>236</sup> *Id.* at 66–67.

<sup>237</sup> *Id.* at 68.

<sup>238</sup> *Id.*

<sup>239</sup> Shannon McCaffrey, “Back in Georgia, Newt Gingrich looks to make his mark on 2022 election,” *Atlanta Journal Constitution* (May 28, 2022), <https://www.ajc.com/politics/election/back-in-georgia-newt-gingrich-looks-to-make-his-mark-on-2022-election/HFSZFXCZFRDKZB4CLVAJTE427I/>.

## ii. Modern Examples

### a. 2018 Gubernatorial Race

Racist appeals have continued to characterize Georgia elections and reached a crescendo in 2018 when Stacey Abrams, the Democratic minority leader in the Georgia House of Representatives, challenged Brian Kemp, the Republican Secretary of State, in the 2018 race for Governor. Kemp's efforts and successes to limit Black voting strength by striking voters, especially minority voters from the voting rolls are discussed elsewhere in this report. *See supra* Part IV.I. Kemp justified this disfranchisement by claiming that he was defending the integrity of the vote against "radical leftists," "outside agitators," and "criminal illegals" who were invading the state in large numbers. He claimed that Abrams was encouraging "illegals"—which for Kemp included both documented and undocumented immigrants. He told Georgia voters, echoing Donald Trump, that "we can build a wall—a big, red, beautiful wall—around the state of Georgia to knock that blue wave down."<sup>240</sup>

Kemp also circulated on social media a photograph of a few members of the New Black Panther Party, considered a hate group by the Southern Poverty Law Center, attending an Abrams rally with guns. Although Abrams condemned the New Black Panther Party, Kemp circulated the photo on Facebook with the accompanying message: "The New Black Panther Party is a virulently racist and antisemitic organization whose leaders have encouraged violence against whites, Jews, and police officers. SHARE if you agree that Abrams and the Black Panthers are TOO EXTREME for Georgia!"<sup>241</sup> The post spread quickly through right-wing media.<sup>242</sup> As one media commentator later noted, "[i]t was too easy for Brian Kemp's last-minute dog whistle about Stacey Abrams to go viral."<sup>243</sup>

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<sup>240</sup> Carol Anderson, *One Person, One Vote: How Voter Suppression is Destroying Our Democracy* (New York: Bloomsbury Publishing, 2020), 173.

<sup>241</sup> April Glaser, "It Was Too Easy for Brian Kemp's Last-Minute Dog Whistle About Stacey Abrams To Go Viral," *Slate* (Nov. 6, 2018), <https://slate.com/technology/2018/11/brian-kemp-stacey-abrams-dog-whistle-black-panthers-facebook.html>.

<sup>242</sup> *See* Penny Starr, *Armed Black Panthers Lobby for Democrat Gubernatorial Candidate Stacey Abrams*, *Breitbart* (Nov. 4, 2018), *available at* [https://www.breitbart.com/politics/2018/11/04/armed-black-panthers-lobby-for-democrat-gubernatorial-candidate-stacey-abrams/?utm\\_source=wnd&utm\\_medium=wnd&utm\\_campaign=syndicated](https://www.breitbart.com/politics/2018/11/04/armed-black-panthers-lobby-for-democrat-gubernatorial-candidate-stacey-abrams/?utm_source=wnd&utm_medium=wnd&utm_campaign=syndicated).

<sup>243</sup> April Glaser, "It Was Too Easy for Brian Kemp's Last-Minute Dog Whistle About Stacey Abrams To Go Viral," *supra* n.241.



Abrams was attacked with even more overtly racist appeals from third parties. For example, a robo-call created by a fringe right-wing group circulated in the Atlanta suburbs before the election. The speaker in the robo-call imitated Oprah Winfrey and stated:

“This is the magical Negro, Oprah Winfrey, asking you to make my fellow Negro, Stacey Abrams, governor of Georgia. Yes, also the Jews who own the American media saw something in me—the ability to trick dumb white women to think like me. And to do, read, and think what I told them to do.... I see that same potential in Stacey Abrams. Where others see a poor man’s Aunt Jemima, I see someone that white women can be tricked into voting for—especially the fat ones.”<sup>244</sup>

The FCC later called for a \$12 million fine against the originator of the racist robo-calls.<sup>245</sup> As one commentator noted after the 2018 election, “racist appeals didn’t hurt” the candidates making them in Georgia and throughout the South, and actually “did help them.”<sup>246</sup>

#### **b. 2020 U.S. Senate Race**

Racial appeals were also evident in the 2020 U.S. Senate race. Democrats nominated Raphael Warnock, a Black minister preaching from the same pulpit Martin Luther King Jr. once occupied at Ebenezer Baptist Church, attempting to be the first Black senator from the state of Georgia. Warnock faced racist attacks throughout the 2020 campaign, often through “dog whistle” attacks that did not explicitly focus on Warnock’s race as explained above.

Warnock’s opponent in the general election was then-Senator Kelly Loeffler. Loeffler attacked Warnock repeatedly as a “radical liberal” and characterized his sermons delivered at Ebenezer Baptist Church as un-Christian. Congressman Doug Collins, who was defeated by Loeffler defeated in the Republican primary but later supported her in the general election, said that “there is no such thing as a pro-choice pastor. What you have is a lie from the bed of hell. It is time to send *it* back to Ebenezer Baptist Church,” referring to Warnock as an “it” and Ebenezer

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<sup>244</sup> Madison Feller, “A Racist, Anti-Semitic Robo-Call Targeting Stacey Abrams is Going Out to Georgia Voters,” *Elle* (Nov. 6, 2018), <https://www.elle.com/culture/career-politics/a24662570/robo-call-georgia-voters-targeting-stacey-abrams-racist/>.

<sup>245</sup> Mark Niesse, “Racist robocalls attacking Stacey Abrams lead to proposed fines,” *Atlanta Journal Constitution* (Jan. 31, 2020), <https://www.ajc.com/news/state--regional-govt--politics/racist-robocalls-attacking-stacey-abrams-lead-proposed-fines/3gqUT9zGxqKkHCN1XtInVN/>.

<sup>246</sup> Jarvis De Berry, “The Dirty South: Racist Appeals Didn’t Hurt Candidates, Did Help Them,” *Nola* (Nov. 17, 2018), [https://www.nola.com/opinions/article\\_2affbc92-aaf4-5c6c-88d6-9fe1db466492.html](https://www.nola.com/opinions/article_2affbc92-aaf4-5c6c-88d6-9fe1db466492.html)

Baptist Church as satanic.<sup>247</sup> This line of attack crossed a line and exposed the “fragile relationship that Georgia Republicans have maintained with Ebenezer Baptist Church, and by extension, the King family.”<sup>248</sup> Loeffler claimed in response that “there is not a racist bone in my body.”<sup>249</sup>

Leaving the question of her bones aside, Loeffler was supported by a number of prominent racists and white nationalists. She was photographed with Chester Doles, a former “Grand Klaliff” of the Ku Klux Klan in North Georgia and a member of the neo-Nazi National Alliance,<sup>250</sup> and did an interview on the One America News Channel with Jack Posobiec, “a TV pundit associated with white supremacy and Nazism.”<sup>251</sup> Senator Loeffler also received the enthusiastic support of the newly elected congresswoman from North Georgia Marjorie Taylor Green, who had recorded a number of videos which stated, among other things, that Black people’s progress is hindered by African American gang activity, drugs, lack of education, Planned Parenthood, and abortions.<sup>252</sup> Warnock also faced blatant racist attacks on the campaign trail. For example, one of his virtual town hall meetings was interrupted by hecklers who were “chanting the N-word” in an attempt to shut down the virtual event.<sup>253</sup>

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<sup>247</sup> Rick Rojas, “Georgia Pastors See Attacks on Black Church in Campaign Against Warnock,” N.Y. Times (Dec. 19, 2020), <https://www.nytimes.com/2020/12/19/us/georgia-pastors-see-attack-on-black-church-in-campaign-against-warnock.html>.

<sup>248</sup> Jim Galloway, “Taking Senator Kelly Loeffler to Church,” *Atlanta Journal-Constitution* (Dec. 1, 2020), <https://www.ajc.com/politics/politics-blog/opinion-the-kelly-loeffler-raphael-warnock-runoff-crosses-a-line/Z7YGGZ4MBOFFNJHKBBIJT6SHJM/>.

<sup>249</sup> Rick Rojas, “Georgia Pastors See Attacks on Black Church in Campaign Against Warnock,” N.Y. Times, *supra* n.247.

<sup>250</sup> “Loeffler campaign: She had ‘no idea’ she posed with neo-Nazi,” Associated Press (Dec. 13, 2020), *available at* <https://apnews.com/article/race-and-ethnicity-georgia-media-social-media-elections-99c40bece8a6fc6904647727493f1257>.

<sup>251</sup> Leon Stafford, “Warnock Tests Loeffler’s View That She’s Not Racist,” *Atlanta Journal Constitution* (Dec. 22, 2020), <https://www.ajc.com/politics/senate-watch/campaign-check-warnock-tests-loefflers-view-that-shes-not-racist/SOWX3GL3ARDJNBFDWWZYQ75BVM/>.

<sup>252</sup> Ally Mutnick & Melanie Zanora, “House Republican Leaders Condemn GOP Candidate Who Made Racist Videos,” Politico (June 17, 2020), <https://www.politico.com/news/2020/06/17/house-republicans-condemn-gop-candidate-racist-videos-325579>; Greg Bluestein, “QAnon Believer’s Victory a Mixed Blessing for GOP,” *Atlanta Journal Constitution*, Aug. 13, 2020, at A1.

<sup>253</sup> Jason Braverman, “Town Hall with Georgia US Senate Candidate Allegedly Interrupted With Racist Attacks, Pornography,” *11 Alive* (Aug. 25, 2022), <https://www.11alive.com/article/news/politics/elections/virtual-town-hall-with-democratic-us-senate-candidate-hacked-with-racist-attacks-pornography/85-ba6f9c4d-b55f-4465-8a15-5d1d856cd8f7>.

**c. 2022 Gubernatorial Race**

Racial appeals dominated Stacey Abrams's second run for Governor in 2022. Governor Kemp faced a primary challenge from former Senator David Perdue, who attempted to win over Republican primary voters through racist attacks against Abrams. Perdue said in a televised interview that Abrams was "demeaning her own race" and should "go back where she came from."<sup>254</sup> Kemp, who eventually defeated Perdue, repeatedly attacked Abrams in the general election as "upset and mad," evoking the trope and dog whistle of the "angry Black woman."<sup>255</sup> Moreover, Kemp's campaign deliberately darkened Abrams's face in campaign advertisements in an effort to create a darker, more menacing image.<sup>256</sup>

As was true in the 2018 campaign, Abrams faced repeated racist attacks from third parties. After Stacy Abrams planned a campaign rally in Forsythe County, in suburban Atlanta, the Republican Party of Forsythe County issued a digital flyer that was "a 'call to action' encouraging 'conservatives and patriots' to 'save and protect our neighborhoods,'" and accused both Abrams and Senator Warnock of being "designers of destructive socialism" that would be "crossing over our county border."<sup>257</sup> The flier carried echoes of the infamous pogrom in Forsythe County in 1912, when most of the Black people in the county were forcibly expelled.<sup>258</sup>

**d. "Voter Fraud" and "Fulton County"**

The use of "coded terms" has been a common racial appeal across elections in Georgia. And among "coded terms" in modern politics, probably none has the racial salience of "voter fraud." Although accusations of minority voter fraud were a major theme in the efforts of

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<sup>254</sup> Ewan Palmer, "David Perdue Doubles Down on 'Racist' Stacey Abrams Remarks in TV Interview," *Newsweek*, (May 24, 2022), <https://www.newsweek.com/david-perdue-racist-stacey-abrams-go-back-georgia-1709429>.

<sup>255</sup> Abby Vesoulis, "Did Brian Kemp Employ a Dog Whistle During His Campaign Against Stacey Abrams?," *Mother Jones* (Oct. 18, 2022), <https://www.motherjones.com/politics/2022/10/Georgia-debate-governor-abrams-kemp/>.

<sup>256</sup> Doug Richards, "Darkened Skin in Anti-Abrams Ad Racially Charged, 'Pernicious,' Political Analysts Say," *11 Alive* (Sept. 30, 2022), <https://www.11alive.com/article/news/politics/darkened-skin-in-georgia-political-ads-2022/85-3ff31b49-c451-4af8-8033-fd732fe787ae>.

<sup>257</sup> Maya King, "In Georgia County With Racist History, Flier Paints Abrams as Invading Enemy," *N.Y. Times* (Sept. 16, 2022), <https://www.nytimes.com/2022/09/16/us/politics/stacey-abrams-forsyth-georgia-republicans.html>.

<sup>258</sup> See Patrick Phillips, *Blood at the Root: A Racial Cleansing in America* (New York: Norton, 2016).

conservative whites during and after Reconstruction to restrict and eliminate Black suffrage, the phrase “voter fraud” is a relatively recent addition to America’s toxic racial vocabulary. In the 1960s, the heyday of the civil rights movement, the phrase “voter fraud” appeared precisely twice in the pages of the *New York Times*, and in the four decades from 1960 to 1999 it appeared 185 times. From 2015 through April 2022, the phrase “voter fraud” appeared in the pages of the *New York Times* 1,526 times.<sup>259</sup>

At the national level, a turning point in the recent history of “voter fraud” accusations was the 2000 presidential election in Florida and its razor-thin margins. Beyond the obvious post-election turmoil related to recounts, 180,000 ballots, close to 3% of the total votes cast, failed to be counted in Florida, and subsequent analysis showed that election officials discarded one in ten votes cast by Black voters as opposed to less than one in fifty votes cast by whites. Various methods used by election officials in counting ambiguous ballots, as well as the purging of allegedly disenfranchised felons, which included many persons eligible to vote, were consequential to the results of the election and in the end, likely cost Democratic presidential candidate Al Gore more than fifty thousand votes.<sup>260</sup> The racial disparity in the Florida recount is, in the opinion of historian Allan Lichtman, “the great underreported scandal of the twenty-first century,” as the general public, following news coverage, tended to blame faulty ballot design, the notorious “hanging chads” and butterfly ballots, rather than the systematic disenfranchisement of Black voters.<sup>261</sup>

Underreported it may be, but Republicans learned an important lesson from the Florida fight—claiming that Democratic officials engaged in voter fraud and disenfranchising as many likely Democratic voters as possible can be a valuable tool in creating chaos and winning elections. As voting law expert Richard L. Hasen stated, “before 2000, there were some rumblings about

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<sup>259</sup> These figures are drawn from the ProQuest data base, “Historical Newspapers: The New York Times” through the end of 2018, and the search feature for the daily *New York Times* from 2019 through 2 April 2022. The term “vote fraud” has an older history, but in recent years it has largely been supplanted, in the *New York Times* and other newspapers, by “voter fraud.” If there is a difference between the two phrases, vote fraud need not be committed by voters—for instance, corrupt officials can either stuff or conveniently lose ballot boxes, or, more recently used advanced technology to manipulate voting totals. “Voter fraud” on the other hand, implies the illegal action is directly taken by voters.

<sup>260</sup> Allan J. Lichtman, *The Embattled Vote in America: From the Founding to the Present* 181–186 (2020)

<sup>261</sup> *Id.*

Democratic voter fraud, but it really wasn't part of the main discourse."<sup>262</sup> Afterwards, "the myth that Democratic voter fraud is common, and that it helps Democrats win election, has become part of the Republican orthodoxy."<sup>263</sup> But perhaps more importantly, reference to fraud has become a racial code word for minority and Black voters. Or in the words of Emory University Professor Carol Anderson, the real lesson of 2000 for Republicans was to do whatever it takes to limit the growing demographic presence of racial minorities among voters, that "those who controlled the key levers of the electoral and political machinery could give purges, bureaucratic runarounds, and other types of chicanery the aura of legality," and above all lie about election fraud.<sup>264</sup> And lie "often, loudly, boldly, unashamedly, and consistently," until lies "drowned out the truth."<sup>265</sup> Those lies have only become noisier and more brazen since 2000.

These parallel historical narratives about election integrity and voter fraud (false tropes from the excuses for overthrowing the interracial democratically elected governments from Reconstruction era), racial dynamics in Georgia, and coded discussions about the interaction between those two ideas all came to a head during the Trump presidency. Accusations of electoral malfeasance was a staple of Donald Trump's campaigns. Following the Iowa caucuses in February 2016, for example, Trump finished second to Texas Senator Ted Cruz. Calling for the caucus results to be nullified and for a new election, he claimed "Ted Cruz didn't win Iowa, he stole it."<sup>266</sup>

Trump proceeded to regularly assert during campaign appearances that "the election is going to be rigged," and cast aspersions on urban voters.<sup>267</sup> He claimed without any evidence that without strict in-person voter ID laws, there will be people who will "vote ten times," and "keep

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<sup>262</sup> Cited in Ari Rabin-Haut and Media Matters for America, *Lies, Incorporated: The World of Post-Truth Politics* (New York: Anchor Books, 2016), 135.

<sup>263</sup> Jane Meyer, "The Voter Fraud Myth," *The New Yorker* (Oct. 22, 2012), <https://www.newyorker.com/magazine/2012/10/29/the-voter-fraud-myth>.

<sup>264</sup> Carol Anderson, *One Person, No Vote: How Voter Suppression is Destroying Our Democracy* (New York: Bloomsbury, 2018), 50.

<sup>265</sup> *Id.* at 60–62; Ari Berman, *Give Us the Ballot: The Modern Struggle for Voting Rights in America* (New York: Picador, 2015) 222–224, 226–229; Stacey Abrams, *Our Time is Now: Power, Purpose, and the Fight for a Fair America* (Henry Holt, 2020), 75–76.

<sup>266</sup> Amy Tennery, "Trump Accuses Cruz of Stealing Iowa Caucuses Through Fraud," *Reuters* (Feb. 3, 2016), available at <https://www.reuters.com/article/us-usa-election-trump-cruz/trump-accuses-cruz-of-stealing-iowa-caucuses-through-fraud-idUSMTZSAPEC23ZBL9YS>.

<sup>267</sup> Jonathan Blitzer, "Trump and the Truth: The 'Rigged' Election," *The New Yorkers* (Oct. 8, 2016), available at <https://www.newyorker.com/news/news-desk/trump-and-the-truth-the-rigged-election>.

voting and voting and voting.”<sup>268</sup> He also suggested that voter fraud would come from cities with large African American and minority populations. In October 2016, for example, candidate Trump said that “voter fraud is all too common, take a look at Philadelphia, what’s been going on, take a look at Chicago, take a look at St. Louis,” and said what was happening in those cities was “horrendous.”<sup>269</sup> That fall, Trump told an almost all-white crowd outside Pittsburgh that it was “so important that you watch other communities, because we won’t have this election stolen from us.”<sup>270</sup> He also complained that undocumented immigrants, most of whom were persons of color, would be used to defraud the election, and that President Obama was “letting people pour into the country so they can vote.”<sup>271</sup>

Donald Trump later brought these racial appeals to Georgia by using references to “Fulton County” as coded language. As part of his effort to overturn the 2020 election results in Georgia, Trump called Georgia Secretary of State Brad Raffensperger and told him that “political corruption” in Fulton County was “rampant” and that many Republican votes in Fulton County were shredded, along with other baseless conspiracy theories.<sup>272</sup> Trump’s campaign later attacked two Black poll workers in Fulton County: Ruby Freeman and her daughter Shaye Moss. In his testimony before the Georgia Senate, Rudy Giuliani showed a video which purported to show Freeman and Moss engaging in “surreptitious illegal activities” akin to “drug dealers” who were “passing out dope,” reflecting old racist tropes about persons of color.<sup>273</sup> Although the accusations were utter nonsense, former President Trump told Secretary Raffensperger that Ruby Freeman was a “professional vote scammer and hustler.”<sup>274</sup> The two women received harassing phone calls and death threats, often laced with racial slurs, frightening nighttime knocks on their doors—they had to leave their residence and go into hiding—along with suggestions that they should be “strung up

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<sup>268</sup> *Id.*

<sup>269</sup> *Id.*

<sup>270</sup> *Id.*

<sup>271</sup> *Id.*

<sup>272</sup> Quinn Scanlan, “Trump ‘Just Plain Wrong’ on Fraud Claims: Georgia Secretary of State Raffensperger,” ABC News (Jan. 4, 2021), *available at* <https://abcnews.go.com/Politics/trump-plain-wrong-fraud-claims-georgia-secretary-state/story?id=75032595>.

<sup>273</sup> Jason Szep and Linda So, “Trump Campaign Demonized Two Georgia Election Workers—And Death Threats Followed,” Reuters, (Dec. 1 2021),

<https://www.reuters.com/investigates/special-report/usa-election-threats-georgia/> (emphasis added).

<sup>274</sup> *Id.*



from the nearest lamppost and set on fire,” horribly echoing the calls for lynchings of Black citizens from earlier years who were attempting to participate in the political process.<sup>275</sup> As discussed above, the intense focus on Fulton County is not random—reference to this large, urban, majority-minority county in Georgia has been used as a coded racial appeal in the election context.

The drumbeat of allegations against the “integrity” of Georgia’s electoral processes, especially as practiced in the interracial county governments in the Atlanta metro area, has continued. In August 2021, Republican Congressman Jody Hice, who challenged Raffensperger in the Republican primary in the race for Secretary of State, stated that “as long as *these people* are allowed to continue cheating, they will continue to do so.” Kemp claimed that “Fulton County has a long history of mismanagement, incompetence, and lack of transparency when it comes to running elections, including during the 2020 elections.” Butch Miller, a candidate for lieutenant-governor argued that “maintaining integrity of our elections is of the utmost importance to me and my colleagues in the state senate. Unfortunately, Fulton County’s apparent disregard for election procedures and state law have called that integrity into doubt.”<sup>276</sup>

### **C. Divergent Race-Related Views of Members of the Democratic and Republican Parties in Georgia**

Aside from the use and effect of racial appeals in Georgia, the significant impact race has on the state’s partisan divides is made readily apparent when one considers the opposing positions that members of Georgia’s Democratic and Republican parties take on issues inextricably linked to race. For example, the Democratic and Republican members of Georgia’s congressional delegation consistently oppose one another on issues relating to civil rights. As indicated in the table below, each Republican member of the delegation during the 2017-2019 congressional session received extremely low scores (no higher than 6-13% on a scale of 0-100%) on the civil rights scorecard produced by the NAACP, an organization dedicated to promoting minority rights. Meanwhile, each Democratic member received extremely high scores (81-100%).

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<sup>275</sup> *Id.*

<sup>276</sup> Mark Niese, “Board Launches Fulton County Election Woes Inquiry,” *Atlanta Journal Constitution* (Aug. 19, 2021), <https://www.ajc.com/politics/panel-appointed-to-investigate-fulton-election-problems/IBRJTD4ERAP7HRIFZ7D243JAA/>.



<b>Pro-Civil Rights Votes Among Georgia’s Congressional Delegation, 2017-2019 Congressional Session<sup>277</sup></b>			
<b>Republican Members</b>		<b>Democratic Members</b>	
Johnny Isakson	13%	Sanford Bishop Jr.	81%
David Perdue	9%	Hank Johnson	100%
Earl “Buddy” Carter	6%	John Lewis	97%
Drew Ferguson	13%	David Scott	84%
Rob Woodall	9%		
Austin Scott	13%		
Doug Collins	6%		
Jody B. Hice	6%		
Barry Loudermilk	6%		
Rick W. Allen	9%		
Tom Graves	9%		

The Pew Research Center’s *Beyond Red and Blue: The Political Typology* (issued in November 2021) confirm these differences between the parties on issues relating to race. This study divided political allegiance into nine distinct typology groups, four leaning Republican, four leaning Democratic, with the “Stressed Sideliners,” uncertain and generally not following politics very closely.<sup>278</sup> Among the four Republican groupings [Faith and Flag Conservatives (85% white), Committed Conservatives (82% white), Populist Right (85% white), and Ambivalent Right (65% white)], the survey found “no more than about a quarter say a lot more has to be done to ensure equal rights for all Americans regardless of their racial or ethnic backgrounds, by comparison, no fewer than about three-quarters of any Democratic group [Progressive Left (68% white), Establishment Liberals (51% white), Democratic Mainstays 46% white), and Outsider Left (49% white) says a lot more needs to be done to achieve this goal.”<sup>279</sup> The four Republican groups agreed between 78 and 94% that “white people do not benefit much or not at all from the advantage that Black people do not have,” or in other words, that there is no systematic racism at work in American society or institutions.<sup>280</sup> Among the four Democratic leaning groups, there was

<sup>277</sup> Nat’l Ass’n for the Advancement of Colored People, “NAACP Civil Rights Federal Legislative Report Card, Congressional Votes 2017-2018” (Feb. 1, 2019), <https://naacp.org/sites/default/files/documents/115th-Final-Report-Card.pdf>.

<sup>278</sup> Pew Research Center, *Beyond Red and Blue: The Political Typology*, (Nov. 9, 2021), <https://www.pewresearch.org/politics/2021/11/09/beyond-red-vs-blue-the-political-typology-2/>.

<sup>279</sup> *Id.* at 7.

<sup>280</sup> *Id.* at 14.

agreement (between 73 and 96%) that “a lot more needs to be done to ensure equal rights for all Americans regardless of their ethnic or racial backgrounds.”<sup>281</sup>

Georgia-specific polls suggest the same. An NORC poll conducted for 3,291 likely Georgia voters just before the 2020 election found that 45% were Democratic or Democratic leaning, 51% Republican or Republican leaning. Among voters who believed that racism was the most important issue facing the country, 78% voted for Joe Biden and 20% voted for Donald Trump. Among voters who believed that racism was “not too or not at all serious,” 9% voted for Biden and 90% voted for Trump. And among voters who believe that racism is a serious problem in policing, 65% voted for Biden and 33% voted for Trump.<sup>282</sup>

### C. Conclusion

As this report has shown, Georgia has worked for decades to diminish the voting power of Black Georgians, both at the structural electoral level (in terms of redistricting and electoral arrangements), and at the individual level (in terms of voter requirements). These efforts have often been successful, stymying Georgia’s Black voters from exercising their full political power. It is my opinion that Georgia’s newest congressional plan is best viewed with this historical context.

Moreover, the correlation between race and party in Georgia is no coincidence. Instead, race and issues inextricably linked to race have long played a role in separating Black voters and white voters along partisan lines, and they continue to contribute to the partisan divisions we see today.

### APPENDIX A: Representative Discriminatory Voting Tactics

<b>Voting Mechanism Adoption</b>	<b>Name of Georgia Jurisdiction</b>	<b>Details</b>
<b>Majority voting requirement</b>	Americus (city)	Adopted plurality to majority vote for mayor and city council in 1968

<sup>281</sup> *Id.* at 29

<sup>282</sup> A.P. VoteCast, “Georgia Voter Surveys: How Different Groups Voted,” N.Y. Times, (Nov. 3 2020), <https://www.nytimes.com/interactive/2020/11/03/us/elections/ap-polls-georgia.html>.

	Jackson (city)	Adopted majority vote after passage of VRA, enjoined in 1981
	Covington (city)	Adopted a majority vote and runoff election requirement for city council in 1967
	St. Mary's (city)	Adopted majority vote requirement for city council in 1967
	Waynesboro (city)	Adopted a majority vote requirement in 1971, ignored §5 finding against the city until 1976
	Moultrie (city)	Adopted majority vote requirement for city council in 1965; used at-large elections
	Augusta, Alapaha, Ashburn, Athens, Butler, Cairo, Camilla, Crawfordville, East Dublin, Hartwell, Hinesville, Hogansville, Jesup, Jonesboro, Lakeland, Louisville, Lumber City, Madison, Nashville, Newman, Palmetto, Sandersville, Sylvester, Thomson, Wadley, Waynesboro, Wrens	Other cities in Georgia that adopted majority vote requirements after 1970
<b>At-Large Voting</b>	Dooley County	Utilized at-large voting from 1967 to 1981
	Miller County	Utilized at-large voting from 1967 to 1980
	Pike County	Utilized at-large voting from 1967 to 1980. No preclearance

		was sought. In 1979, the US AG said preclearance was necessary, but county refused to honor this until a subsequent lawsuit in 1980.
	Harris County	Utilized at-large voting for board of commissioners starting in 1974
	Sumter County	Utilized at-large voting for county commissioners in 1972 following Section 5 finding that the county was malapportioned. In 1981 a three-judge federal panel found that this required preclearance.
	Jackson (city)	Utilized at-large voting following passage of Voting Rights Act; Annexed several dozen areas to suppress Black voting; enjoined by federal court in 1981
	Burke County	Utilized at-large voting until 1976, until enjoined by a federal court in 1981
	Putnam County	Utilized at-large voting until 1981
	McDuffie County	Utilized at-large voting until a 1978 consent decree .
	Coffee County	Utilized at-large voting until a 1977 consent decree .

	Douglas County	Utilized at-large voting until a 1977 consent decree.
	Peach County	Utilized at-large voting until a 1979 consent decree .
	Waynesboro (city)	Utilized at-large voting until a 1977 consent decree.
	Americus (city)	Utilized at-large voting until a 1980 consent decree.
	Dawson County	Utilized at-large voting until a 1980 consent decree.
	Madison County	Utilized at-large voting until a 1978 consent decree.
	Morgan, Newton, and Twiggs Counties	Adopted at-large voting in 1971
	Wilkes, McDuffie Counties	Adopted at-large voting in 1972
	Newton and Bibb Counties	Adopted at-large voting for Board of Education in 1971
	Baldwin, Truetlen, McDuffie, Camden, Putnam, Pike, Spalding, and Wilkes Counties	Adopted at-large voting for Board of Education in 1972
	Toombs, Sumter, and Clarke Counties	Adopted at-large voting for Board of Education in 1973
	Harris, Charlton, and Taylor Counties	Adopted at-large voting for Board of Education in 1975
	Long County	Adopted at-large voting for Board of Education in 1975
<b>Numbered Post System</b>	Dawson (city)	Adopted numbered-post system in 1970
	Kingsland (city)	Adopted numbered-post system in 1967

<b>Other tactics</b>	DeKalb County	Limited minority voting registration drives in 1980
	Seminole County	Used voting districts drawn in 1933 (which severely diluted Black voting strength) up until 1980.
	Camden County	Designated an all-white women's club as the new municipal polling place in 1978
	Peach County	Adopted staggered voting for County Commissioners in 1968
	Moultrie (city)	Instituted a literacy test for new Black poll workers but grandfathering in all previously serving all-white poll workers in 1978.

Source: Laughlin McDonald, *Voting Rights in the South: Ten Years of Challenging Continuing Discrimination Against Minorities* (ACLU, Southern Regional Office, 1982); Laughlin McDonald, *A Voting Rights Odyssey: Black Enfranchisement in Georgia* (Cambridge: Cambridge University Press, 2003), 141–143.