The federal government should allocate a floor of funding to states and localities based on voting-age-citizen population (perhaps giving a bit more to smaller localities that cannot benefit from economies of scale). States and localities would use their discretion in spending the money, and the federal funds would not only preserve but also enhance responsible innovation that respects the rights of voters. Further, because the federal money would be earmarked for elections and could not be spent on other government services, less-wealthy localities no longer would have to choose whether to spend limited local tax dollars on democracy or on education.

Experts estimate that local governments spent approximately $1 billion on elections in 2000 (a presidential year). That may seem high, but it is not enough to ensure fair elections at the local level. A federal expenditure of $4 billion on elections every four years would double existing funds; this works out to an annual expense of less than one percent of the 2006 U.S. Department of Defense budget (0.24 percent, to be precise), or $5.17 per voting-age citizen. This would be higher than Great Britain’s expenditure of $2.62 per voter but still much lower than Australia’s $9.30 per voter. County and local tax money previously spent on elections could be used to supplement federal election funds, diverted to further beef up local services such as schools and police, or returned to voters in the form of a tax cut. The point, however, is that all Americans would live in cities and counties that provided at least a basic level of election funding.

In the preceding chapters, I’ve shown that politicians manipulate district boundaries and election rules to win elections, and their efforts are facilitated by a matrix of 4,600 different local election systems. Now that we’ve established that all voters are adversely affected by this system, I will explain how politicians use race to aquire and maintain power.

I

n December 2002, Republican Suzanne Haik Terrell had the political opportunity of her life. A month earlier, the Republicans had regained a majority in the United States Senate, securing fifty-one seats out of 100. Conservatives across the nation were now looking for Terrell to fortify the Republicans’ slim majority by beating Louisiana’s incumbent U.S. Senator, Democrat Mary Landrieu, in a runoff election on December 7.

Terrell had the right stuff. The forty-eight-year-old Roman Catholic had graduated from Tulane University and earned a law degree from Loyola. She lived in New Orleans, thirteen houses away from where she grew up. Images of Terrell’s picture-perfect physician husband and three daughters drove home a family-values message. Two years earlier, she had won a race for state elections commissioner and had become the first Republican woman elected to statewide office in Louisiana.

A few days before the December 7 runoff election, pollsters proclaimed the race between Terrell and Landrieu a dead heat. One poll showed Landrieu at 47 percent and Terrell at 45 percent, with 8 percent of voters undecided. “It is a toss-up,” said pollster Brad
Coker, who noted that in most elections, undecided voters lean toward the challenger.

But Terrell, like many Republicans around the country, had a problem. Polls showed that although 58 percent of whites supported Terrell, only 6 percent of African Americans said they would vote for her. Other Republican candidates had invested time and money trying to attract black votes with little success. The best use of Terrell's finite resources seemed to be to win over undecided moderate white voters. She could only hope that fellow Republicans such as U.S. Senator Trent Lott of Mississippi would avoid race-tinged comments that might stimulate African-American turnout and alienate white moderates.

Terrell's Democratic opponent, Senator Mary Landrieu, was also an attractive candidate. Landrieu and her husband, Frank, an attorney, had two children. Perhaps most important, she had inherited a big name. Landrieu's father, Moon Landrieu, had been mayor of New Orleans and had served in President Jimmy Carter's cabinet. Two years after graduating from Louisiana State University, Mary Landrieu became the youngest woman ever elected to the Louisiana state legislature. In the U.S. Senate, she earned a reputation as a moderate Democrat who emphasized fiscal discipline.

Landrieu had a different race problem. Black Louisianans accounted for 32.5 percent of the state's population but made up only 26 percent of the electorate in the November 5 primary—the lowest in ten years. She could have avoided the entire runoff if she had secured a majority of the votes in the primary. Why didn’t African Americans turn out for her?

Blacks had their reasons. Democratic State Senator Cleo Fields and many other African-American leaders claimed that Landrieu had failed to respond to the needs of their community. They resented her wooing of conservative white voters by boasting that she had voted with Republican President George W. Bush 74 percent of the time. “African-American voters should not be taken for granted by any elected official in a state that has such a high African-American population,” Fields warned. (The political prospects of Landrieu and other Democrats would become even more complicated three years later when Hurricane Katrina’s flooding of New Orleans prompted a mass exodus of black voters out of Louisiana.)

The polls for the December showdown shifted, depending on projections of black voter turnout. One poll, which showed Landrieu and Terrell tied if African Americans made up only 23 percent of the electorate, revealed that Landrieu would enjoy a six-point lead if black turnout reached 28 percent. A final poll—taken by Terrell’s pollster, Verne Kennedy, the night before the election—showed that Terrell would win if African Americans made up only 26 percent of those who voted. “The higher it gets over 26 percent,” said independent pollster Brad Coker, “the greater Landrieu’s odds” of winning.

By noon on Election Day, it was clear that Landrieu might lose. Early reports showed turnout in African-American precincts to be lighter than expected. And Landrieu’s opponents were on the attack. African-American youths held up signs in black neighborhoods parroting earlier statements by Democrat Cleo Fields: “Mary, if you don’t respect us, don’t expect us.” The Louisiana Republican Party orchestrated and bankrolled the “grassroots” demonstration. They knew a soft spot when they saw one. Later, defending their actions, the GOP said merely that the signs accurately reflected the African-American community’s frustration with Landrieu.

But other, less “accurate” postings had previously appeared. An unsigned flyer, distributed in African-American public-housing complexes in New Orleans just before the runoff election, claimed:

Vote!!! Bad Weather? No problem!!! If the weather is uncomfortable on election day (Saturday December 7th) Remember you can wait and cast your ballot on Tuesday December 10th.
There was no such rain date for voters to fall back on. The origins of this misleading flyer were never discovered.

The Landrieu campaign knew it was in big trouble. At 1 P.M., Louisiana native and former Al Gore campaign manager Donna Brazile set up a conference call with Landrieu, Cleo Fields, and former President Bill Clinton. One veteran political reporter said that "Brazile and Clinton were extremely blunt with Fields" in insisting that he immediately step up his get-out-the-vote operations in African-American neighborhoods in Baton Rouge. After the call, Landrieu raced to heavily black precincts in New Orleans with two popular African-American officials, Mayor Ray Nagin and Congressman William Jefferson. The trio and volunteers canvassed the community until the polls closed at 8 P.M. The Democratic phone banks did an all-out targeting of African-American neighborhoods from 6 to 8 P.M., urging residents to get out and vote.

The efforts worked. African-American turnout in Fields's district was 3.5 percent higher than in the November 5 primary. Statewide, the efforts by the Democrats pushed African-American turnout to 335,000—27.1 percent of the electorate. Summing up Landrieus victory a week later, Time magazine reported: "[N]ever the end, Landrieu managed to galvanize just enough of her crucial African-American base to break ahead."

RACE AND POLITICS TODAY

Many claim that race has become a relatively insignificant factor in politics today. Edward Blum and Roger Clegg, leading critics of the Voting Rights Act, wrote: "[T]he voting habits of white Southerners, and nearly all white Americans, are today colorblind to an extent that only the wildest optimists would have envisioned in 1965." New York University Law Professor Samuel Issacharoff claims, "[N]o longer are blacks political outsiders," and "the Southern political process is highly attuned to black political claims."

Only a zealot would refuse to acknowledge that things have improved since the 1960s. The number of African-American elected officials jumped from about 200 in 1965 to 9,040 in 2000. The electoral successes of U.S. Senators Barack Obama and Carol Moseley Braun of Illinois, and Governors Bill Richardson of New Mexico, L. Douglas Wilder of Virginia, and Gary Locke of Washington state have established that certain candidates of color can win in the right political environment.

So, are these the good, new, color-blind days?

Color blindness may be politically correct, but it isn't politically accurate. As the Landrieu-Terrell contest in Louisiana shows, race is important largely because of the differences in voting patterns between whites and people of color. Across the nation, only 30 percent of whites are Democrats, but over 60 percent of African Americans are aligned with the party. Even independent African American voters trend Democratic; in 2004, for example, 88 percent of African-American voters cast a ballot for Democratic presidential nominee John Kerry. Latinos and Asian Americans lean Democratic, although they are not as reliable as African Americans. Similarly, on social issues such as affirmative action and the role of the government in ensuring equal opportunity and integration, people of color as a group are much more liberal than whites.

And these differences do not merely stem from racial disparities in class. On average, people of color and whites of the same socioeconomic status have vastly different political preferences. Rather than getting narrower over time, the racial differences in political perspective in many areas are more significant than they were twenty years ago.

Due to different voting patterns, racial turnout determines election outcomes across the United States. The following are some recent examples of race swinging the election:
Nevada, 1998. An aggressive get-out-the-vote effort nearly doubled Latino participation compared with 1996 numbers, allowing Democrat Harry Reid to win a U.S. Senate seat by 379 votes. (In 2004, Reid became the Democratic leader in the U.S. Senate.)

Mississippi, 2003. Former National Republican Party Chair Haley Barbour beat incumbent Democratic Governor Ronnie Musgrove by fewer than 61,000 votes. African Americans, who make up more than a third of the state’s population, cast 94 percent of their votes for Musgrove, but their turnout was not large enough to offset the 77 percent of white voters who favored Barbour. By emphasizing Governor Musgrove’s opposition to the Confederate insignia on Mississippi’s state flag, Barbour attracted 115,000 new voters to the polls; four out of five of them cast their ballots for the Republican.

Washington, 2004. In a governor’s race that saw two recounts and several trips to the state supreme court, Democrat Christine Gregoire was finally certified the winner over Republican Dino Rossi two months after Election Day. Her winning margin was a mere 128 votes out of more than 2.9 million cast. Most Asian Americans voted for Gregoire. Seventy percent in the state turned out to vote, whereas only 57 percent of Asian Americans went to the polls. No recounts would have been necessary had the turnout rate among Asian Americans and whites been identical.

In political contests between candidates of different ethnicities, polarized voting is even more stark. In the 1990s, two-thirds of Southern whites voted for the white congressional candidate over the black one. And it is not that these voters were casting ballots only for Republicans. White Democratic candidates enjoyed about a ten-point advantage over black Democratic candidates in attracting white votes. Voters of color were even more cohesive, with blacks casting about 93 percent of their votes for the African-American congressional candidate. Studies of other races have shown that many Latino voters also show a preference for Hispanic candidates. As mentioned in chapter 1, for example, three of four Latinos voted for Latino challenger Raul Godinez over white incumbent Howard Berman in their 1998 California Democratic primary contest for Congress. Much has been made of the fact that racially polarized voting is on the decline, but in places such as Charleston, South Carolina, whites in recent years have been less likely to vote for African-American candidates than in earlier decades.

Throughout the United States, political contests featuring candidates of different ethnicities have sparked racial bloc voting:

Houston, 2001. Incumbent Democrat Lee Brown, the city’s first African-American mayor, increased African-American turnout by 30 percent to narrowly defeat Republican Orlando Sanchez by one percentage point. Latino turnout was double the number in 1997—and Sanchez received 72 percent of Latino votes.

Louisiana, 2003. Whites who had voted against Democrat Mary Landrieu for U.S. Senate in 2002 switched over a year later and voted for Democrat Kathleen Blanco for governor. In the twenty-six parishes that had favored former Ku Klux Klan leader David Duke in a prior election, Blanco averaged ten percentage points higher than Landrieu. How did things improve so quickly for the second white female Democrat? Ms. Landrieu faced a white opponent—Republican Suzanne Haik Terrell—while Ms. Blanco ran against Bobby Jindal, a conservative Republican of South Asian descent. Pollsters put Jindal ten points ahead of Blanco four days before the 2003 gubernatorial election, but the Republican lost by four points. One last-minute Blanco television ad proclaimed, “Wake Up, Louisiana! Before It’s Too Late!” and featured a photograph of a young, dark-skinned Jindal with his hair sticking up. “If Jindal had been white, he’d be governor right now,” said Lance Hill, head of the Southern Institute for Education and Research, a race-relations institute based at Tulane University.

Milwaukee, 2004. In a nonpartisan mayoral race featuring two
Democrats, white candidate Tom Barrett beat African-American candidate Marvin Pratt. Half of the city's residents are white, and more than a third are African American. Polls showed that 83 percent of white voters preferred Barrett, and 92 percent of African-American voters cast ballots for Pratt.

HANGING ON TO POWER

The problem of race in politics is not simply that voters cast ballots along racial lines. Voters of all races—including those with unpopular views like Ku Klux Klan sympathizers—should have the freedom to band together to participate in democracy and advocate their views. While I'm not endorsing racial factions among Louisiana Republicans or Milwaukee Democrats, the primary threat to democracy is not voters. Instead, it is political operatives who continue to win elections by manipulating election rules to doctor racial turnout.

*Kilmichael, Mississippi, 2001.* The number of African Americans in Kilmichael had grown to over 52 percent of the town's population. The mayor and all five members of the board of aldermen were white, however, and only one African American had ever been elected to the board. Prior to the June 2001 general election, several African-American candidates qualified for the mayoral and board races, and there was a very strong possibility that African-American candidates would win most of the municipal offices. Three weeks before the general election, however, the incumbent board of aldermen voted unanimously to cancel the election. The board's stated purpose was to change Kilmichael's townwide system for electing town officials to districts.

*Ville Platte, Louisiana, 2003.* The African-American population in Ville Platte jumped from about 25 percent of the town's population in 1980 to 56.6 percent in 2000. In 2003, city officials proposed a redistricting plan that reduced the African-American population in one of its six council districts from 55.1 to 38.1 percent, shifting many African Americans within this district to another that was already 78.8 percent African American. The shift effectively reduced the number of predominantly African-American council districts from four to three.

*Town of North, South Carolina, 2003.* In the early 1990s, a number of African Americans who lived southeast of the town's current boundary petitioned to become a part of North. African Americans would have become a majority of the town's population if officials accepted the petition. With no explanation, town officials denied the application. In September 2003, however, the town of North approved a petition to annex a small group of whites into their town.

In none of these examples did politicians employ billy clubs, fire hoses, tear gas, or police dogs to prevent people of color from casting a vote. But we don't need a twenty-first-century white sheriff attacking voters of color on national television in order to ask questions about race. Eliminating the doctoring of election procedures by state and local political operatives, rather than restraining troopers who inflict state-sponsored violence to prevent blacks from voting, is today's challenge.

To be sure, some would say that politics, not race, motivates many practices that exclude voters of color. For example, perhaps opponents of Mary Landrieu in New Orleans distributed misleading voting information in black neighborhoods not out of racial animus but because they wanted their candidate, Suzanne Haik Terrell, to win. Perhaps the white elected officials in Kilmichael, Mississippi, canceled the June 2001 election because they wanted to hang onto their seats, and would have taken the same action if confronted by a group of white voters likely to vote against them.

I can't sidestep the issue of race versus politics. If today's ethnicity is based not just on skin color but also on political perspective,
why does the exclusion of Latino voters raise more concern than
the exclusion of Texas Democrats? Why is racial exclusion different
from shutting out voters based on other factors, such as political
party affiliation, class, or religion?

RACE OR POLITICS?

The only reason many Americans might have heard of Bayou La
Batre, Alabama, is that it is the home of the fictional character
Forest Gump, portrayed by actor Tom Hanks in the 1994 feature
film bearing the same name. In reality, the rural town sits on the
Gulf Coast and has been hit by a downturn in the shrimp industry.
About a quarter of the boats in the community’s 120-to-130-vessel
shrimping fleet have been repossessed for nonpayment, and
$100,000 in federal assistance was distributed to help shrimpers
pay their electric bills. A local doctor accepts “fresh-caught crab,
homemade pies, and handpicked vegetables” as payment because,
she says, “Most folks in this community are too poor to afford med-
care but too rich to qualify for Medicaid.” (In 2005, Hurricane
Katrina would make matters even worse in Bayou La Batre. The
storm sank or capsized 80 percent of the town’s shrimp fleet and
destroyed or left uninhabitable 800 homes.)

While the Alabama town of 2,700 maintains a majority white
population, a recent influx of Vietnamese, Laotian, and Cambodian
immigrants has changed Bayou La Batre’s complexion. By 2004,
residents of Asian ancestry accounted for one-third of the popu-
lation. Despite their significant presence, for many years Asian
Americans did not participate in the political process. Of more than
800 votes cast in the 1996 town elections, for example, only about
fifteen were cast by Asian-American residents.

Several years ago, an area realtor, noting the trend of longtime
residents moving out of town, told a reporter, “People don’t put up

a billboard and announce they are leaving because of immigrants,
but you can tell what’s on their mind.” A former mayor, Warren
Seaman, said, “There are only one or two [Asian-Americans] in the
community I can talk to. The rest are standoffish.” Still, he
acknowledged, “They represent a third of our community and they
need representation on our council.”

In August 2004, Phuong Tan Huynh, age thirty-three, ran to
become the first Asian-American councilman in Bayou La Batre.
He had lived in the town for more than two decades. When he was
a child, Huynh’s family had moved from a refugee camp in Vietnam
to the United States and ultimately settled in Bayou La Batre. “I’ve
been drilling it in their [Asian-Americans’] heads for a few years
now that they could be the deciding factor in city elections,” Fred
Marceaux, who serves as an adviser to the local Asian-American
community, told the Mobile Register newspaper. “I think some of
them finally took it to heart.”

Huynh’s opponent was J. E. “Jackie” Ladnier, a white Alabama
native. Under state law, a campaign may challenge the qualifications
of any voter. As Asian Americans entered the polling place at
the Bayou La Batre Community Center, they were approached by
Ladnier and his supporters. Ladnier, denying racism, explained his
strategy: “A lot of them, we didn’t know but had to make a judg-
ment, say, if someone came and met them outside then led them
inside and seemed to be guiding them through it. Also, we figured
if they couldn’t speak good English, they possibly weren’t American
citizens.” Huynh’s sister, Linh Huynh Tran, had another perspec-
tive: “These people were just hoping that if they challenged our
voters, they would just back out. They’d feel like they were in some
kind of trouble or they’d be intimidated by all the paperwork in
English.”

One of the voters challenged by Ladnier’s campaign, eighty-
three-year-old Truong Tran, said through a translator, “It’s hard for
me to get out and walk as it is. . . . But I got out to vote because
people told me it would take two or three minutes." Rather than joining other voters to cast a ballot quickly on the electronic machines, however, Mr. Tran was directed to a separate area and instructed to fill out a paper challenge ballot. At the time, Mr. Tran had been a Bayou La Batre resident for sixteen years and a U.S. citizen for eight years.

Phuong Tan Huynh eventually won a council seat by fewer than 100 votes.

Let's assume, just for the sake of conversation, that Ladnier challenged the voters for the very same reason Huynh worked to turn out the Asian-American vote: Both surmised that most voters of Asian descent would cast a ballot for Huynh. Ladnier's interest in challenging a large number of voters who appeared to be of Asian descent was motivated not by racial hatred but by his desire to prevent his political opponent from collecting illegitimate, and perhaps even legitimate, votes. Imagine that the following thoughts were flowing through the heads of Ladnier and his political supporters:

Welcome to the big game. In a rough-and-tumble political world in which the pros from all parties hit hard with misleading negative campaign ads and titillating leaks about an opponent's extramarital affairs, challenging voters prone to vote against you is par for the course. Racially targeted challenges are akin to attempts to gerrymander congressional districts to diminish the strength of voters of an opposing political party, or attempts by Democrats or minority candidates to mobilize minority voters to go to the polls. Why should people of color who tend to vote in a particular way be off-limits in politics? Such an exception is itself paternalistically racist.

Ladnier's actions are not problematic, he might claim, because his acts constitute political discrimination rather than racial dis-

crimination. Is Ladnier right? Is it OK if the motivation is political gain rather than racial hatred?

Almost everyone struggles with the intersection of race and politics—including the U.S. Supreme Court. In the 1993 case Shaw v. Reno, for example, the Court criticized "bizarrely drawn" predominantly African-American districts and wrote that a constitutional violation could occur if race, rather than politics, was the "predominant factor" in drawing a district. The justices envisioned race and politics as two different things and determined that political gerrymandering is fine but racial gerrymandering is questionable. In 2001, the civil-rights community flipped the script when it persuaded the Court in Easley v. Cromartie that the unique Democratic political philosophy of most African Americans—rather than "race"—was the predominant factor that motivated the drawing of another predominantly African-American district in North Carolina. The law on race and politics remains unsettled.

When traditional civil-rights advocates confront the intersection of race and politics, they often choose to emphasize race and underplay political motive. Their tactic is understandable. Conservatives already label civil-rights groups as "liberal fronts" that covertly support Democratic candidates and progressive issues, and an acknowledgment of political motives threatens to give credence to those claims. Similarly, highlighting that political operatives often suppress African-American votes to undermine Democratic prospects might evoke little sympathy from a Republican-controlled Congress. Examining the relationship between race and politics might also undermine the moral power of civil-rights imagery established in the 1960s that continues to sustain public support for civil-rights protections. If race is the elephant in the room that conservatives refuse to acknowledge, politics is the key issue that many civil-rights advocates have so far ignored.

But civil-rights advocates cannot continue to defend prior gains without squarely facing politics. The highly publicized O.J.
Simpson trial fortified a "race card" lexicon that shapes public opinion. Many Americans presume that those who discuss race do so not to correct racial injustice but to advance a self-serving motive. According to conventional wisdom, O.J. Simpson’s lawyers portrayed detective Mark Fuhrman as a racist so that O.J. could escape a penalty for having murdered his former wife and her friend. This phenomenon carries over to politics. Democrats, the argument goes, label Republicans as Jim Crow-era vote suppressors in order to stimulate African-American voting and to try to villainize Republican candidates in the eyes of white swing voters. But charges of both politics and race may be at work. O.J. could be guilty and Mark Fuhrman might be a racist. Democratic claims of voter suppression might be motivated by party operatives' political interests, yet some Republicans might target black voters for suppression. But due to the emergence of the "race card" phenomenon, many Americans summarily dismiss a reference to race, and thus civil-rights advocates cannot rely solely on caricatures like Bull Connor to preserve civil-rights protections. A frank, contemporary discussion of the relationship between race and politics is needed.

Rather than insisting that most political operatives of the twenty-first century are "racists" in the tradition of the Ku Klux Klan, civil-rights advocates need to grapple with a thornier series of questions that confront us now. If whites and people of color have different preferences—and if political operatives attempt to suppress voters of color—to what extent should this be viewed as just "dirty politics" or as something more threatening to democracy? Politicians use a variety of criteria to categorize voters: race, gender, religion, residence, socioeconomic status, party affiliation, and past support for particular candidates. What makes race worthy of special protection on that list? Why aren’t racial groups just like other special-interest groups?

Perhaps U.S. Supreme Court Justice John Paul Stevens best articulated the claim that neither race nor politics should be used to disenfranchise voters. Justice Stevens argued that politicians disenfranchise identifiable groups of voters prone to cast ballots against them, and regardless of whether those voters can be identified as part of religious, political, economic, or racial groups, they all deserve protection. According to Justice Stevens, any interpretation that the Constitution is particularly concerned about political exclusion of African Americans or Latinos while tolerating exclusion of other identifiable groups organized along religious, economic, or political lines "would be inconsistent with the basic tenet of the Equal Protection Clause."

I can’t think of a principled reason why it is moral to suppress the votes of Republicans, Jews, or blind Americans but immoral to suppress African-American, Latino, or Asian-American votes. Such a distinction erroneously suggests that a vote cast by a person of color is worth more than a vote cast by a white American.

**RACE AS THE STARTING POINT IN VOTER PROTECTION**

Even though the votes of people of color are not worth more than those of individuals in religious, political, or other types of groups, the law should still make efforts to prevent suppression targeted at people of color. Just as a local police force directs rape-prevention information toward women—even though a woman’s bodily integrity is no more valuable than that of a man—particular traits of race justify concentrated efforts to prevent suppression of voters of color. Physical appearance, socioeconomic factors such as housing segregation, and distinct voting trends make people of color particularly vulnerable targets for exclusion.

I could go down a conventional liberal path to give race a special
status, focusing on past wrongs. I could write pages about how dis-
criminatory immigration laws—such as the 1882 Chinese
Exclusion Act and the Immigration Act of 1924—purposely shaped
the racial composition of our nation so that even today people of
color are a numerical minority. Any such lecture would note that
our racial history—including the Civil War—continues to shape the
political identity of Americans of all racial backgrounds and
explains the large numbers of upper-class black Democrats and
working-class white Republicans. Ignoring this history, the argu-
ment goes, gives license to today’s political operatives to exclude
voters of color to win elections and perpetuate racial inequality.
White supremacy is the original sin of America, the soliloquy might
point out, and, like a recovering alcoholic, our nation needs to bend
over backward to avoid falling into old habits.

I have friends who are tired of these arguments; their eyes glaze
over. They feel as though each day the history of white supremacy
is further away from our present reality. While these friends might
acknowledge history, to them the past doesn’t fully explain why the
law should make a special effort to prevent political manipulation
of voters of color today. Therefore, rather than invoking history to
try to garner either sympathy or a political reparation owed to
people of color, I will tell a story to explain what can happen in the
future if we tolerate racial suppression today. Earlier politicians
used partisan advantage rather than racial animus to justify sup-
pression of voters of color, but the political exclusion itself fueled
racial hostility.

In the early 1800s, blacks in New York state voted solidly for the
Federalist Party and against the Democratic-Republican Party
(which became the Democratic Party in the 1820s). As a result,
Democrats consistently worked to suppress the black vote.
Democratic operatives challenged the qualifications of black voters
at the polls (assuming they were runaway slaves rather than freed-
men), and the Federalists objected to this practice. State
Assemblyman Erastus Root had abolitionist leanings, yet his parti-
san affiliation with Democrats prompted him to support black dis-
enfranchisement. Commenting on a particularly close election,
Root noted: “[T]he votes of three hundred Negroes in the city of
New York, in 1813, decided the election in favor of the Federal
party, and also decided the political character of the legislature
of this state.” The Federalists soon lost their majority, and the new
political powers adopted elaborate registration requirements for
blacks, requiring that they always “bring full copies of such regis-
tration to the officers of the election.” By 1826, a Democratic-
controlled legislature erased for white males the qualifications that
voters own land worth at least $250 and pay taxes, but it maintained
the requirements for blacks.

Twenty years later, during the 1846 state constitutional conve-
tion, the committee chair, former Governor William C. Bouck, pro-
posed limiting suffrage to white men, and the Whigs moved to strike
the word white. (As successors to the Federalist Party, the Whigs
also enjoyed overwhelming black support.) The convention voted
63–37 against racial equality. The votes came down largely along
partisan lines, with four out of five Whigs voting for equality and
nineteen of every twenty Democrats voting to deny blacks the fran-
chise. When the provision was referred to the populace for ratifi-
cation, “Whig counties followed the direction of their leaders, and
Democratic counties did the same,” wrote Columbia University
Professor Dixon Ryan Fox in 1917. Even Democratic counties with
strong abolitionist leanings voted against equality for blacks. “It was
a party matter in which personalities or the fortunes of slavery in
southern states or in the territories had but little bearing.”

Race is relevant today for the same reasons it was relevant in
nineteenth-century New York. The different voting patterns of
many people of color give politicians the motive to suppress their
votes, and the unique physical and socioeconomic traits that char-
acterize people of color make them particularly vulnerable.
Race is often an observable characteristic, as was evident in Bayou La Batre in 2004. The physical aspect of race allowed someone like Jackie Ladnier to readily identify and target voters whom he believed would vote against him and for Phuong Tan Huynh.

Socioeconomic factors such as housing segregation and racial disparities in wealth, educational attainment, incarceration, and English proficiency also make people of color easy targets for political shenanigans. For example, a 2002 study showed that the median net worth of white households was more than ten times higher than that of African-American and Latino households. Latinos are twice as likely as whites to be incarcerated, and blacks are six times as likely as whites to be incarcerated. Nearly half of all Asian-language and Spanish speakers in the United States speak English less than "very well," compared with about 8 percent of the total U.S. population. These factors make today's voters of color—in the aggregate—particularly susceptible to doctored election districts, poll challenges, punch-card machines, lifetime felon-disenfranchisement rules, and English-only ballots.

Because race is inherited, the damage done by voter suppression along racial lines is particularly daunting. Excluding a racial group from the political process not only can silence a political perspective in a particular election cycle, but also can result in government policies such as segregated schools and home-ownership programs that affect a racial community for generations.

Race also warrants attention because rapidly expanding Asian-American and Latino populations pose a threat to incumbent politicians vested in the status quo. In California, whites remain the largest racial group but no longer make up a majority of the state's population. California Common Cause Executive Director Kathay Feng tells of incumbents in her state who claimed their districts contained "too many Asians" and—nervous about Asian-American challengers—had their districts redrawn to reduce Asian-American vote totals. As mentioned in chapter 1, the Mexican American Legal Defense and Educational Fund sued over similar gerrymandering that reduced Latino vote totals. Demographic trends suggest incumbents in other states will soon be tempted to adopt this strategy. Between 1990 and 2000, the Latino population quadrupled in Southern states such as Arkansas, North Carolina, and Tennessee. By 2050, whites are expected to fall from 70 percent of the U.S. population to 49.6 percent, and Latino and Asian-American populations are expected to double. Ten million new Latinos and Asian Americans are expected to join the voting rolls over the next fifteen years, and we need to ensure that incumbents do not manipulate the matrix to diminish participation by these new voters.

Rather than giving people of color "special rights," acknowledging and dismantling barriers faced by racial groups produces benefits for voters of many other backgrounds. Poor whites, for example, are more likely to be hindered by lifetime felon-disenfranchisement laws than wealthier whites. Outdated punch-card machines produce more spoiled ballots in predominantly African-American precincts than in white ones, but by adopting better technology, voters of all races will cast ballots that are more likely to be counted. Redesigning the matrix to include people of color opens democracy to millions of other Americans.

SUPPRESSION VERSUS MOBILIZATION

If race should not be used as a tool of political exclusion, why should it be used as a tool to include voters? Why should Jackie Ladnier be banned from using race as a tool to identify his likely opponents while Phuong Tan Huynh can use it to mobilize his supporters? Why scrutinize Republican attempts to suppress African-American votes and tolerate Democratic targeting of African-American neighborhoods for get-out-the-vote efforts? A
desire to win elections, rather than to empower voters, probably motivates voter-mobilization efforts by the Democrats, and perhaps to some extent candidates like Huynh.

But voter suppression and voter mobilization are fundamentally opposing objectives. First of all, mobilization of voters stimulates voter autonomy and choice. Voters can either choose to stay home or go to the polls and vote Democratic or Republican. Just as voting empowers individual voters, so does mobilization. Those who have not been mobilized are not harmed by targeted mobilization. Whites who are not mobilized by Democrats, for example, are not being denied access. Suppression, on the other hand, reduces voter autonomy by denying the voter a choice. Even when we disagree with the views of those mobilized—progressives, for example, often disdain the use of wedge issues such as the Confederate flag or gay marriage to mobilize Republican voters—mobilization furthers democracy and suppression is antidemocratic.

Second, mobilization of people of color enhances fairness and equality in representation because studies show that wealthier, better-educated whites are the most likely group to vote. Granted, one might claim that mobilization distorts results because "slack-ers' should not decide elections." But government should represent all of the people, and mobilization of people of color helps ensure that elections reflect the views of a diverse group of voters.

On the other hand, suppression of voters of color, who are already underrepresented in the political process, systematically distorts democracy and makes it more likely that government will disregard the needs and priorities of those excluded.

Political operatives of all stripes attempt to engineer racial turnout (either up or down) to win elections. We could minimize this, and ensure that government policy better reflects the population as a whole, by requiring all citizens to vote, as Australia does.

But such a law will probably not be on the books in the United States anytime soon. In light of our current system, we should recognize that suppression and mobilization differ, and we should make special efforts to prevent suppression.

THE LIMITS OF RACE

Although racial suppression poses unique dangers, race should be used carefully. For example, the law should not tolerate a double standard in which Huynh's supporters can target white voters at the polls for challenges while Ladinier's supporters can't engage in a similar practice against Asian-American voters. We should not conclude that as the party of "blacks," Democrats are entitled to a particular quota of seats in a state legislature, or that party leaders have a free pass to manipulate black populations within districts while Republicans are barred from similar activity.

But even though there must be limits to the matter of race, it is illogical to ignore the correlation between race and politics and profess that they exist in two artificial and distinct boxes—racial animus and dirty but tolerable politics. These separate racial and political paradigms give us a structure within which to analyze problems. The problem, however, is that these oversimplified approaches do not accurately describe the bulk of challenges we face today that do not fit neatly into either category. Our current discussion of race and politics is counterproductive in that it encourages civil-rights advocates to attempt to prove that political strategists are "racists" in order to justify the continued existence of voting-rights protections. It also prompts conventionally labeled political "opponents" of racial communities to dismiss real harms that stem from exclusion along racial lines.

Practices that suppress voters of color, even when undertaken or
tolerated for partisan purposes, facilitate racial inequality. By con-
sciously ensuring that election rules do not intentionally or inad-
vertently exclude voters of color, we encourage democratic
engagement and racial reconciliation that benefits the entire
nation.

As the next chapter will show, however, a primary tool for racial
inclusion—the Voting Rights Act—is currently under attack.

Chapter Four

No Backsliding

A month after Republican Abraham Lincoln’s victory in the
November 1860 presidential election, South Carolina
seceded from the United States. In the document that effectively
became the first Declaration of Independence of the Confederate
States of America, South Carolina officials wrote:

... A geographical line has been drawn across the Union, and all
the States north of that line have united in the election of a man
to the high office of President of the United States, whose opin-
ions and purposes are hostile to slavery. ... [Lincoln’s election]
has been aided in some of the States by elevating to citizenship,
persons who ... are incapable of becoming citizens; and their
votes have been used to inaugurate a new policy, hostile to the
South, and destructive of its beliefs and safety.

[On March 4, Lincoln’s Republicans] will take possession of the
Government. ... The slaveholding States will no longer have the
power of self-government, or self-protection, and the Federal
Government will have become their enemy. ... We, therefore,
the People of South Carolina ... have solemnly declared that the
Union heretofore existing between this State and the other States of North America, is dissolved...

Four years and more than 500,000 American deaths later, Confederate General Robert E. Lee surrendered on April 9, 1865, at Appomattox Court House in Virginia. Five days after Lee’s surrender, Confederate sympathizer John Wilkes Booth assassinated Republican President Abraham Lincoln at the Ford Theatre in Washington, DC. Vice President Andrew Johnson was sworn in as commander-in-chief in the hours following Lincoln’s death.

That summer, former Confederates began to regain power in the Southern states. Although Lincoln’s Emancipation Proclamation had freed slaves in Confederate states two years earlier, white Democrats enacted “Black Codes” that prohibited blacks from voting, mandated black employment, and reestablished other features of the old slave system. The Radical Republicans in Congress believed Johnson—himself a Tennessee Democrat originally tapped as Lincoln’s running mate to promote national unity—was too tolerant of the former Confederates’ power grab.

Over Johnson’s veto, a Republican-controlled Congress passed the Reconstruction Act in March 1867. The act deemed the governments in ten former Confederate states illegal and divided them into five districts to be governed by military generals. Occupying federal troops were to oversee voter registration, and adult males of all races would be entitled to vote, except for many Southern white military officers and political officers who had broken their oath to defend the U.S. Constitution by siding with the Confederacy. Since most freed African Americans were Republicans and most Southern whites were Democrats, the provisions bolstered the Republicans’ political power.

The Reconstruction Act also mandated that eligible voters in former Confederate states convene state constitutional conventions, and that each new state constitution guarantee blacks the right to vote. African-American voting rights were further solidified by ratification of the Fifteenth Amendment to the U.S. Constitution in 1870, which prohibited the denial of the right to vote on account of race.

These federal protections allowed voters to elect several blacks to become delegates to state constitutional conventions, and later state legislators and congressmen. Between 1870 and 1900, Southern states sent 700 African Americans to state legislatures and 22 African Americans to Congress. Between 1970 and 2000, these states sent 23 African Americans to Congress. In South Carolina, blacks held 69 percent of the seats in the state legislature, and Jonathan Jasper Wright sat as a justice on the state supreme court. Blacks in other states had big jobs as well: Hiram R. Revels and Blanche Kelso Bruce represented Mississippi in the U.S. Senate, and P. B. S. Pinchback served as acting governor of Louisiana. Northern white Republicans—labeled “carpetbaggers” because many moved to the south carrying their possessions in bags made of carpeting—assumed important administrative positions throughout the South. Other government posts were given to “scalawags,” native white Southern politicians who joined the Republican Party, worked with blacks, and were perceived as opportunistic turncoats by most white Southerners.

The domination of Republicans—largely freed slaves assisted by white carpetbaggers and scalawags—frightened white Democrats. White Southerners struck back by forming groups like the Ku Klux Klan to prevent voting by blacks. The Klan tortured and lynched African Americans who tried to vote, and by 1870 their terrorism helped to reestablish white Democratic rule in Georgia, North Carolina, and Tennessee. In May 1872, Congress passed the Amnesty Act, which restored voting rights to most Confederate sympathizers. Two years later, the Democrats regained domination
of the U.S. House of Representatives; by 1876, Republicans controlled state governments in only three of the eleven former Confederate states.

The tension was thick in the weeks following the 1876 presidential election. Democrat Samuel J. Tilden, governor of New York, faced Republican Rutherford B. Hayes, governor of Ohio. Tilden led by nineteen votes in the electoral college, but accusations of failure to count ballots by Republican election boards in South Carolina, Florida, and Louisiana left the nation in limbo. Republicans responded that they merely discarded returns in areas where white Democrats prevented African Americans from voting. When a recount failed to resolve the conflict, Congress created a special electoral commission comprising eight Republicans and seven Democrats.

A few days before the March 1877 inauguration ceremonies, politicians on the commission reached a deal. The Democrats would give the presidency to Republican Hayes, and the Republicans would agree to withdraw federal soldiers from the South and effectively end Reconstruction.

In the absence of federal intervention, the backsliding began. Southern white Democrats created voting regulations that denied most blacks the right to vote without explicitly mentioning race. Poll taxes, literacy tests, and other unclear the voter rolls of blacks, most of whom were Republican. Violence took care of those few blacks who dared to attempt to vote despite the regulations.

Poll taxes required that voters pay a $1 or $2 fee to vote, which few newly freed slaves could afford. Adjusted for inflation, a $2 poll tax in 1880 would equal more than $35 today. Even accounting for inflation, people earned much less in 1880, and $2 represented at least two weeks’ salary for most Americans. The poll tax also fortified Democratic Party rule by disenfranchising poor whites, many of whom were Populists (an emerging but ultimately unsuccessful third-party movement that Democrats criticized for attempting to unite whites and blacks). The Alabama poll tax, for example, disenfranchised approximately 25 percent of the white men in the state.

County registrars also required that citizens pass literacy or interpretation tests before being added to the registration rolls. Before emancipation, slaves were prohibited by law from learning to read, and most were uneducated and illiterate. Registrars often exercised discretion in administering these tests. Louisiana’s interpretation test, for example, allowed registrars to demand that prospective voters demonstrate a knowledge of the state constitution, and the registrars themselves determined whether an answer was correct. Regarding a proviso of the constitution, “FRDUM FOOF SPETCH” was considered an acceptable response from one white voter. But an African American was rejected for interpreting “people have the right peaceably to assemble” as meaning that “one may assemble or belong to any group, club or organization he chooses as long as it is within the law.”

The results were drastic. While a majority of adult black males in all but two Southern states voted in the 1880 presidential election, virtually all had been eliminated from the voter rolls by 1910. In Louisiana, the 1888 voter-registration rolls contained the names of 127,923 African Americans and 126,884 whites. By 1910, only 730 African Americans remained registered. United States Senator Ben “Pitchfork” Tillman of South Carolina, a white Democrat, boasted of black disenfranchisement in his state: “We have done our level best. We have scratched our heads to find out how we could eliminate every last one of them. We stuffed ballot boxes. We shot them. We are not ashamed of it.”

This assault on black voters emptied Congress and state legislatures of black elected officials. While twenty-two African Americans served in Congress in the aftermath of the Civil War, by 1896 Representative George White of North Carolina was the only one left. After White retired in 1901, it would be another seventy-
one years before the South would elect an African American to the U.S. Congress.

For the next six decades, African Americans were almost completely shut out of politics in the South, and segregation reigned. Blacks across the nation started to drift from the Republican Party to the Democratic Party during Franklin Roosevelt’s administration, but Southern white Democrats’ continued exclusion of blacks allowed them to maintain segregation and direct the bulk of public funds to white schools, parks, and other public facilities. Even though blacks had the right to vote under the Fifteenth Amendment, it was not effectively enforced. Whenever civil-right lawyers would successfully challenge a discriminatory voting practice in court, the locality sued would simply replace its old practice with a new one that had the same effect of excluding blacks.

Politics in Selma, Alabama—the largest city in Dallas County—illustrated this problem. By the early 1960s, Dallas County had a voting-age population estimated at 29,500, just over half of whom were black. But the county’s registration rolls included roughly two-thirds of the county’s white residents and only one percent of its black residents. White politicians held all elected positions and maintained their power by requiring that applicants for registration pass an oral exam about the U.S. Constitution and possess “good character.”

Justice Department lawyers had filed a lawsuit against the Dallas County registrars in 1961; after thirteen months of procedural wrangling, the case came to trial. By that time, the county registrar had resigned and the trial judge refused to ban tests because the new county registrars had not yet discriminated against blacks. After an appeal, federal courts finally ordered county registrars to stop requiring voters to interpret the federal constitution. At that point, the county registrars simply added a new test that required voters to demonstrate an “understanding” of the state constitution. After additional legal filings by the Justice Department, federal
courts finally banned the new test. Yet, during the four years the lawsuit was working its way through the courts, only 383 of the 15,000 eligible black citizens registered.

In early 1965, John Lewis, a twenty-five-year-old African-American leader of the Student Nonviolent Coordinating Committee (SNCC), led his group to Dallas County. On March 7, Lewis and a group of 600—including teachers, teens, beauticians, and shopkeepers—began their protest march from Selma to the state capital of Montgomery, fifty miles away. They made it only six blocks, reaching the top of the crest of the Edmund Pettus Bridge, before Lewis stopped in his tracks. He remembers what he saw:

There, facing us at the bottom of the other side, stood a sea of blue-helmeted, blue-uniformed Alabama state troopers, line after line of them, dozens of battle-ready lawmen stretched from one side of U.S. Highway 80 to the other.

Behind them were several dozen more armed men—Sheriff [Jim] Clark’s posse—some on horseback, all wearing khaki clothing, many carrying clubs the size of baseball bats.

On one side of the road I could see a crowd of about a hundred whites, laughing and hollering, waving Confederate flags.

As the marchers moved forward silently, troopers pulled on their gas masks. When the marchers reached the bottom of the bridge, they stopped. After ordering the nonviolent marchers to disperse, the troopers rushed forward, shooting canisters of tear gas, trampling marchers with horses, and pummeling them with nightsticks and whips. “[O]ne posseman had a rubber hose wrapped with barbed wire,” Lewis remembers. Even as the marchers scrambled back across the bridge, mounted and unmounted troopers went after them, attacking anyone who was in the street.

“I thought I was going to die,” recalls Lewis, who was struck in
the head and knocked unconscious. Doctors later diagnosed a fractured skull. Another ninety demonstrators suffered an assortment of injuries, which included open head gashes and broken arms, legs, ribs, jaws, and teeth.

That night, the ABC television network interrupted its Sunday-night movie, Judgment at Nuremberg—a 1961 film about Nazi Germany—to show gruesome images of peaceful protesters in America bleeding, vomiting, and crying out in agony at the hands of an army of white troopers.

The conflict, which became known as “Bloody Sunday,” shocked America and sparked a public outcry. Demonstrators organized protests in more than eighty cities denouncing the violence, and sympathizers poured into Alabama from across the nation. Eight days later, Democratic President Lyndon Johnson appeared on national television to call for the passage of a new voting-rights law.

“There is no Negro problem. There is no Southern problem. There is no Northern problem. There is only an American problem,” Johnson said. “And we shall overcome.”

Five months later, President Johnson signed the Voting Rights Act of 1965.

THE VOTING RIGHTS ACT

The act suspended literacy and interpretation tests for voters and provided federal officials to register black voters and monitor local elections in the South. Perhaps the most important part of the act, however, was the Section 5 preclearance provision.

Section 5 required that a state or locality obtain approval (“preclearance”) from the federal government whenever it wanted to change its election law. The goal was to prevent an area stripped of one discriminatory tool from backsliding by simply adopting a different exclusionary device. The preclearance requirement only applied to areas that had devices such as literacy tests and low voter turnout—initially Alabama, Alaska, Georgia, Louisiana, Mississippi, South Carolina, Virginia, and certain counties in Arizona, Hawaii, Idaho, and North Carolina.

Here’s a relatively recent example of how the law works. In August 1999, the Board of Supervisors in Dinwiddie County, Virginia, voted to move the polling place in the Darvills Precinct from the Cut Bank Hunt Club to the Bott Memorial Church. Dinwiddie County is rural, with a voting-age population of just under 19,000. It sits twenty-five miles south of Richmond and describes itself as “noted for its rich Civil War history.” The county is just under two-thirds white and more than one-third African American. The Darvills Precinct is particularly rural, has no incorporated towns or public schools, and stretches twelve miles from west to east. Soon after the Board of Supervisors voted to move the polling place, county officials submitted the change to the U.S. Justice Department for review. Section 5 required that Dinwiddie County show that the change did not worsen the political influence of African Americans in the county.

The Justice Department would have sixty days to review the polling-place change. If the department did not object within that time period, the county could move its polling place to Bott Memorial Church. If the department objected, however, the county would have to continue to use the Cut Bank Hunt Club, unless it convinced a federal court in Washington, DC, that the Bott Memorial Church location would not worsen the influence of African Americans. As an alternative, Dinwiddie County could have bypassed the Justice Department altogether and filed the change with the federal court to decide the issue. In either case, no voting change could be made without higher government approval.

At the end of September, the Justice Department requested more information from county officials. In their investigation, Justice Department analysts discovered that the Cut Bank Hunt
Club, located on the western side of the Darvill's Precinct, was a private hunting club with a predominantly black membership. A few months before the Dinwiddie County Board of Supervisors voted to move the polling place, the board had received a petition with 105 signatures, asking that the polling place be moved from the Hunt Club three miles southeast to Mansons Church. The petition stated that the polling place should be “more centrally located.” The petition also noted that the Mansons Church had agreed to open its doors as a polling place and claimed that it was “well lighted, good parking, [and] handicap accessible [sic].” Only three of the 105 signatories were African American, and only sixteen of them had voted in the previous election. Mansons Church withdrew its offer, however, and in July 1999 Bott Memorial Presbyterian Church offered its building as a polling place. Bott Memorial, located at the extreme eastern end of the precinct, had an almost exclusively white congregation. After reviewing census data and reaching out to voters, Justice Department analysts discovered that the black population was “heavily concentrated” in the western end of the precinct. Justice Department officials found that the Board of Supervisors not only abandoned the desire for a central location but also discounted the recommendation of the county electoral board to keep the polling place at the Hunt Club.

In October 1999, the Justice Department filed an objection and blocked the change. Dinwiddie County did not petition the federal district court.

A POWERFUL TOOL TO FIGHT MANIPULATION BY POLITICIANS

After the Voting Rights Act was passed in 1965, its impact was immediate. In the five years following enactment of the law, as many Southern blacks were registered as had been registered in the previous 100 years. In Mississippi, African-American registration increased from less than 6.7 percent in 1965 to 60 percent in 1968. Some state and local politicians maintained their power by devising election practices that would ensure that white voters would almost always outnumber black voters. Common tactics included redrawing electoral districts, abandoning districts altogether and shifting to countywide elections, and annexing adjacent white communities. In 1969, the U.S. Supreme Court ruled that the Voting Rights Act outlawed such manipulation. The court reasoned that the act protected not only the ability of people of color to cast a vote but also the effectiveness of such a vote.

In the years that followed, the Voting Rights Act was strengthened. The preclearance provision proved so effective that in 1970 Congress extended it for another five years and modified the coverage formula to also include parts of California, Connecticut, Idaho, Maine, Massachusetts, New Hampshire, New York, and Wyoming—all areas that had imposed voting tests and had low voter registration or participation among the electorate as a whole.

In 1975, Congress extended the preclearance provisions another seven years and recognized the need to broaden them to protect Latino, Asian-American, American Indian, and Native Alaskan voters, thus expanding coverage to all of Alaska, Arizona, and Texas, as well as counties in California, Florida, New York, North Carolina, South Dakota, and a few townships in Michigan. These areas had a combination of significant language-minority populations, English-only voting materials, and low turnout. In 1982, Congress renewed the preclearance requirements, this time for twenty-five years.

Congress had reason to be proud of this legislation. Section 5 worked wonders. The number of African-American elected officials in the South jumped from seventy-two in 1965 to almost 2,000 in 1976, and up to almost 5,000 by 1993. The number of Latino
federal, state, and local elected officials in Arizona, California, Florida, New Mexico, New York, and Texas increased from 1,280 in 1973 to 3,677 in 1991.4

Section 5 continues to be an essential tool in preventing politicians from excluding voters to maintain their own power.

In late 2003, the Waller County (Texas) district attorney, sixty-nine-year-old Republican Oliver Kitzman, sent a letter to county elections administrator Lela Loewe, asserting that students at Prairie View A&M University, a historically black college located in Waller County, were not permanent county residents and thus were ineligible to vote. Kitzman threatened to prosecute the students with a felony if they registered or voted. The letter was published in the Waller Times newspaper within a few days.

"Why is this happening again in Waller County?" asked Prairie View A&M Student Body President Henrik Maison. "This was settled twenty-five years ago."

Indeed, previous Waller County officials had attempted similar tactics. From 1966 to 1978, Waller County tax assessor collector Leroy Symm employed a residency questionnaire to effectively disenfranchise most Prairie View students. In 1976, after Symm registered only thirty-five of the 545 potential voters, the Department of Justice filed and eventually won a lawsuit arguing that the forms discriminated against the students.

Oliver Kitzman also had served in county government during the 1970s as district attorney, and he had made headlines back then for his underenforcement of the law. In covering Kitzman’s overtures to prosecute Prairie View student voters in 2004, the Dallas Morning News reported:

The last time Oliver Kitzman made big news as a district attorney, the result was a musical comedy, The Best Little Whorehouse in Texas, spoofing small-town hypocrisy. . . . In the 1970s, in an earlier stint as district attorney, [Kitzman] was a peripheral character in the flap over the Chicken Ranch, a house of prostitution in La Grange, 60 miles west of Prairie View. The episode inspired the famous musical. . . . An outraged young reporter named Marvin Zindler . . . accused Mr. Kitzman of turning a blind eye to the shenanigans, the exact opposite of his role as overzealous prosecutor in the Prairie View voting dispute. . . .

Texas’s Republican Attorney General Greg Abbott intervened in the 2004 voting controversy, issuing a ruling that no student should be excluded on residency grounds from voting. "Let me be very clear. The right to vote is a fundamental right in this state and in this country," Abbott wrote. "It is the bedrock of democracy and a right that preserves all other basic civil and political rights, and it must be and will be vigorously defended."

But Kitzman persisted in his efforts to eliminate student voters. On February 6, 2004, the Prairie View A&M University chapter of the NAACP, represented by the Lawyers’ Committee for Civil Rights, filed a lawsuit to stop his threats to prosecute student voters. The most pressing concern was an upcoming March 9 primary election in which two Prairie View students were running for office, including one for County Board of Commissioners. On February 10, the County Board of Commissioners responded to the lawsuit by voting to reduce early voting in the precinct closest to Prairie View A&M from seventeen hours over two days to six hours in a single day. The reduction in early voting not only would limit the hours that students could vote early but also threatened to affect the election outcome because the students would be on spring break on the day of the actual primary election. On February 17, the Prairie View A&M University NAACP chapter filed a second lawsuit, alleging that the county was seeking to implement a voting change without first obtaining Section 5 pre-
clearance. The board gave in on February 25, agreeing to restore the original hours of early voting at the Prairie View precinct. Kitzman also agreed not to prosecute any student voters.

Section 5 made a significant difference, according to Jon Greenbaum, the director of the Voting Rights Project of the Lawyers’ Committee for Civil Rights. “[A]lmost 400 citizens voted at the Prairie View precinct on the second day of early voting, and the Prairie View student running for the Board won his primary by less than 50 votes.” Without Section 5, incumbent politicians in Waller County could have simply doctor the election rules, and the outcome most certainly would have been different—and unfair.

RACIAL QUOTAS?

Despite—or perhaps because of—Section 5’s effectiveness, it has now come under attack. Affirmative-action critics charge that the law prevents democratic competition and extends a race-based entitlement to unqualified candidates of color at the expense of whites. Ensuring the best leadership, the argument goes, requires that we abolish race-conscious laws like Section 5.

But the preclearance process is not an employment program that entitles candidates of color to a certain quota of legislative seats, or one that gives them extra votes to remedy past discrimination. Instead, Section 5 resembles other laws that prohibit racial discrimination by protecting voters from election practices that dilute or diminish their right to vote and to elect candidates. Any benefits to candidates are incidental. The racial complexities of elected officials reveal that the law does not guarantee quotas. Americans of color make up approximately 33 percent of citizens and 28.5 percent of registered voters in states covered in whole by Section 5 but they account for less than 13 percent of the local, state, and federal elected officials.

Voters and Elected Officials in Section 5 States

<table>
<thead>
<tr>
<th></th>
<th>Registered Voters (%)</th>
<th>Total Elected Officials (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Asian</td>
<td>1.3</td>
<td>0.77</td>
</tr>
<tr>
<td>Latino</td>
<td>9.1</td>
<td>3.9</td>
</tr>
<tr>
<td>Black</td>
<td>18.1</td>
<td>8.6</td>
</tr>
<tr>
<td>White/Anglo</td>
<td>71.3</td>
<td>87.3</td>
</tr>
</tbody>
</table>

Affirmative-action opponents Edward Blum and Roger Clegg also argue that the Voting Rights Act has been a “means of second-guessing perfectly legitimate, nonracial rules” like photo-ID requirements and prohibitions on voting by former felons. But federal law should consider how these local election practices affect people of color. Since the Civil War, politicians have crafted many seemingly “nonracial rules,” such as literacy tests and poll taxes, that effectively disenfranchise people of color. Even when such laws are passed without racial animus, they deserve special attention in light of the propensity of self-interested politicians to enact rules that benefit themselves instead of the electorate. Further, the blocking of election rules that disproportionately exclude voters of color often opens democracy to others as well—especially the poor, the less educated, and senior citizens.

AN OUNCE OF PREVENTION

The editorial board of Alabama’s largest newspaper, the Mobile Register, announced its opposition to Section 5 in March 2005. The editors complained that in today’s improved racial climate, the review process is no longer needed, and that the process causes “delays, costs and bureaucratic hassles that themselves make it hard for elected officials to ensure fair and timely elections.”
Others have suggested that lawsuits can fix any remaining racial manipulation in politics. But by preventing discriminatory election practices before they are adopted, the relatively inexpensive Section 5 review process is much more efficient than lawsuits.

Since 1965, Section 5 has been used to block more than 1,000 discriminatory voting changes. Although the Justice Department continues to object to about ten voting changes per year, Section 5 is most important contribution today is deterrence. When state and local politicians in areas covered by Section 5 debate a voting change, they know that federal officials will eventually review any proposal. As a result, they often consider racial impact and design proposed changes so as not to worsen the position of voters of color. As former Justice Department Attorney Michael Pitts has written:

Having literally looked at hundreds of redistrictings submitted to the Attorney General, I can attest to the fact that the documents provided by local officials ... amply demonstrate that local officials and their demographers are acutely cognizant of the standards for preclearance and typically try to steer very clear of anything that would raise concerns with the Attorney General.

Without Section 5, politicians would be even bolder in manipulating the matrix of election practices to enhance their own power. In fact, following the 2003 redistricting in Texas, when Republicans inflated their share of the state’s congressional seats from 47 percent to 66 percent, Republican State Representative Phil King, head of the Texas House Redistricting Committee, testified that Republicans aimed to win as many seats as possible, but they were confined by the need to protect minority voting rights. Section 5 put a brake on the politicians' manipulation of district lines.

Even when local officials acting in good faith initially fail to realize that a proposed change has a discriminatory impact, the review process provides valuable feedback and allows them to modify their change voluntarily without going to court or being cited with a legal violation. Before filing an objection to a proposed election change, the Justice Department generally sends out a letter asking for answers to specific questions. The information requested often prompts local officials to realize that the proposed change would harm voters of color. “We hadn’t thought of that,” local officials commonly explain to Justice Department analysts. At that point, localities often withdraw the submission and avoid receiving an objection from the Justice Department. They later file a revised election practice that achieves the legitimate objectives of their original submission but does not worsen the position of voters of color.

The preclearance process is also less expensive than litigation. Frances Deberry is the paralegal in the South Carolina attorney general’s office who submits the state's election-law changes to the U.S. Justice Department. She estimates that when she first started in 1994, submission preparation took her an average of six months per year to complete. It now requires only four months of her time—three months at the end of the legislative session when bills are produced and another 180 to 200 hours scattered throughout the year. During the remainder of her time, she works with lawyers in the antitrust section of the attorney general’s office.

While the numbers vary from year to year, Frances generally submits up to fifty election changes per year. More election changes generally occur in the two-year window following the release of the U.S. Census count, when state and local officials redraw districts for U.S. Congress, the state legislature, and city and county councils and school boards. County election commissions generally submit their own changes to the Justice Department, although they’ll often call Frances for her insights. Frances submits revised school-district maps, however, since the state legislature redraws those boundaries.
Preparing a submission can take Frances as little as an hour or as long as a week. "It is almost impossible to estimate the time of each submission because each change is unique," she says. If she suspects that the Justice Department will look more closely at a change from a county school board that has had problems in the recent past, she will spend more time assembling data about that submission.

When she needs demographic data about a change, Frances generally calls Wayne Gilbert in Research & Statistics. Wayne, thirty-nine years old, holds a BA in statistics and an MA in public administration. Since 1992, he has worked as a manager of Geographic Information Systems (GIS) for South Carolina's Office of Research & Statistics. The GIS program is software that's loaded onto a standard desktop computer, allowing one to view and analyze data on a map. For example, by downloading a database of the street-number addresses of homes where burglaries occurred, GIS can print out a map with dots that represent the location of each burglary. Concentrations of dots reveal high crime rates and show police where to focus their enforcement efforts. Wayne uses a couple of GIS software programs—ArcView and AutoBound—to help state and local officials realign district and precinct boundaries. Dots on the maps he produces represent registered voters. If you wanted to move a district boundary two blocks to the west, Wayne could use the GIS program to tell you how many African-American voters you would pick up in the district. Political parties use similar software to tailor election-district maps to their interests.

The amount of time it takes Wayne to respond to a request from Frances varies. If Frances wants a school-board district map and a population summary report that includes race, Wayne works for roughly an hour to pull together the information. He estimates that he spends forty-five hours per year working on projects for her. Once Wayne sends the map and other data back to Frances, she analyzes it. "If I think it's going to be objected to," she says, "I'll contact a legislator, and tell him, 'Here's what's gone on in the past.'" If she thinks the change will gain preclearance, she writes a letter to the Justice Department, explaining the change. She'll also include the map and any other data she receives from Wayne.

After Frances prepares the package, she sends it to Senior Assistant Attorney General C. Havird Jones, Jr., also known as "Sonny." Sonny has twenty-five years' experience reviewing submissions to the Justice Department. It generally takes him roughly twenty minutes to review the submission and approve it, although he sometimes spends more time and asks Frances questions. After Sonny approves the package, Frances sends it to the Justice Department via registered mail.

Technology also makes compliance much easier for states and localities than it was in 1982, when Congress extended the preclearance provisions for twenty-five years. Democrat Bob Sheheen, a former speaker of the South Carolina General Assembly, guided the reapportionment process to draw the General Assembly map in the early 1980s. Without the assistance of GIS software, Sheheen had to take 1,000 pages of new U.S. Census data and correlate it to a map. It was a cumbersome process, requiring a team of five people to analyze the new census data twelve to fourteen hours a day for four weeks to determine how existing districts were affected. Sheheen estimates that the group spent about a third of its time over a six-week period analyzing the then-existing black-majority districts to see what changes had taken place during the time between the 1970 census and the 1980 census so that the General Assembly would know what changes to make to comply with one-man, one-vote guidelines and to pass scrutiny under Section 5. The cost to the state in salaries for the time the team focused on this issue works out to just above $12,000 (more than $24,000 today, adjusted for inflation). "The amount of time would have been reduced dramatically with computers," Sheheen says.
Frances Deberry is also more efficient due to technology—and not just from the GIS maps provided by Wayne Gilbert. “It’s so much easier,” she says. “I’ve been playing around with computers since 1983. I can’t function without them.” Frances uses the computer to pull up the existing law that the proposed rule will replace, and she includes the printout in the package to the Justice Department. Rather than going to the library to look up basic information—such as phone numbers of county officials—she can find it on the computer. “I stay on the computer all day long,” she raves.

Some costs of the current process are difficult to quantify. Legislative counsel, whom Frances describes as “experienced and knowledgeable,” consider Section 5 when they draft legislation along with myriad other variables. Also, the U.S. House, General Assembly, and State Senate maps, which are submitted to federal authorities once every ten years, require more resources than the average submission (the state legislature, rather than the attorney general’s office, takes charge of the submission process for these three plans). Wayne points out that even in the absence of Section 5, the state would buy GIS software to draw districts (AutoBound software costs less than $4,000 and can process publicly available census data).

Frances, Wayne, and Sonny’s hours comprise the vast bulk of costs to the state for most submissions, however. Based on government pay scales, the state annually pays out less than $18,300 in salaries devoted to compliance with Section 5, averaging under $458 per submission in a year with forty submissions.

By comparison, incumbent politicians on the Charleston County Council spent more than $1.5 million of taxpayer funds fighting a single voting-rights lawsuit against the Justice Department. The costs of attorneys, expert witnesses, depositions, travel, and responding to requests for documents added up quickly. Courts consistently held that the county council’s districting system—which benefited the incumbent politicians—violated the Voting Rights Act. After various appeals, the matter was finally resolved in 2005, four years after it was filed (the county council lost). A single voting-rights lawsuit can also require extensive spending by both the Justice Department (more than $1 million if the case goes to trial) and the court system.

By preventing problems before they occur, the preclearance process provides many of the same benefits over litigation as the federal Hart-Scott-Rodino review process. (That federal antitrust procedure protects American consumers by requiring that companies submit information about proposed mergers worth more than $56.7 million to the federal government for review. Unlike Section 5 preclearance, however, Hart-Scott-Rodino requires a filing fee of at least $45,000.)

Despite the efficiency of Section 5, litigation is still needed in certain situations. Whereas Section 5 only blocks new discriminatory voting proposals, lawsuits allow plaintiffs to challenge any election procedure that is unfair to voters of color (even one that’s been on the books for a century). While the Section 5 review process is administered by the government, litigation provides a forum for average citizens to protect their voting rights. The targeted Section 5 review process serves as an important complement to litigation, deterring and blocking discriminatory election changes, preventing unnecessary lawsuits, and ensuring that limited litigation and judicial resources are used most efficiently.

Former legislator Bob Sheheen’s 1981 General Assembly map was South Carolina’s first state legislative map that made it through Justice Department review without an objection. With regard to complying with Section 5, Sheheen didn’t whine. “I got elected to follow the law, I recognized that this is the law of the land, and I tried to pass [district maps] in accordance with the law,” Sheheen says. The former speaker also prefers to avoid being the target of litigation. “I like to think that I am a good lawyer, a lousy witness, but a particularly bad defendant when named in a lawsuit.”
“Reviewing these changes saves our state money in the long run by avoiding potential lawsuits,” says Wayne Gilbert, who is African American. “I can’t speak about other places, but in a state like South Carolina, we need this kind of process.”

ABUSING THE VOTING RIGHTS ACT FOR PARTISAN GAIN?

Samuel Issacharoff is a professor of law at New York University. As a young attorney in the 1980s, Issacharoff litigated voting-rights cases for the Lawyers’ Committee for Civil Rights in Washington, DC. While his courtroom presence made him popular among students when he started teaching in the early 1990s, Issacharoff established himself among scholars by churning out three or four important articles every year and coauthoring a leading voting-rights textbook. Much of his writing focused on the tendency of politicians to design election rules that diminish competition by benefiting themselves or their parties.

In a provocative article entitled “Is Section 5 of the Voting Rights Act a Victim of Its Own Success?” Issacharoff suggests that the Section 5 process does more harm than good because it invites partisan enforcement by the Justice Department. He notes that when the Voting Rights Act was passed in 1965, the South was entirely Democratic. As a result, denying preclearance in Southern states benefitted voters of color, instead of one party at the expense of the other. Today, however, since most whites in the South have abandoned the Democratic Party for the Republican Party, and most blacks remain Democrats, the political appointees in the Justice Department can abuse their preclearance power to benefit their political allies on the local level. A Republican Justice Department, for example, might construe a redistricting plan that favors Democrats as harming voters of color. A Democratic Justice Department can do the same to reject Republican-sponsored redistricting.

Mike Pitts, age thirty-four, disagrees with Issacharoff. After college, Pitts worked at the Justice Department as a preclearance analyst reviewing election changes submitted by states and localities. Upon graduating from Georgetown Law School, Pitts returned to the Justice Department as a lawyer working on Section 5 matters. He has written about the Voting Rights Act, and one of his articles—“Let’s Not Call the Whole Thing Off Just Yet”—resounds to Issacharoff.

Pitts acknowledges that the partisanship problem exists, but he points out that Issacharoff overlooks checks within the Voting Rights Act that diminish partisan manipulation. For example, if a Democratic Virginia state legislature fears that its redistricting map will be rejected by a partisan Republican Justice Department, it can bypass the department and request that a three-judge federal court in Washington preclear the plan. These judges, appointed by presidents for life, are generally less susceptible to partisan pressure.

Further, Issacharoff focuses on manipulation of district boundaries, but he overlooks the fact that only 2.25 percent of the election changes submitted under Section 5 to the Justice Department between 1982 and 2004 involved redistricting. While allegations of partisan manipulation in reviewing redistricting should not be ignored (61 percent of Justice Department objections between 1997 and 2002 involved redistricting), our fixation on redistricting should not overshadow Section 5’s important role in deterring manipulation of nondistricting election rules.

The fact is, political appointees in the “front office” at the Justice Department are likely to have a political interest in only a very small class of submissions—primarily redistricting for U.S. House seats, because these maps determine which party controls Congress. To a lesser extent, Justice Department appointees may