CSD Center for the Study of Democracy
An Organized Research Unit
University of California, Irvine
www.democ.uci.edu

In mid-2006, Congress acted to reauthorize key provisions of the Voting Rights Act (VRA) for another 25 years. Though Congress approved the extension almost unanimously, and President Bush signed the renewal into law just before his first appearance before the NAACP Convention, the renewed VRA is not without controversy. Although key provisions of the 1965 Act have already been subjected to and withstood constitutional scrutiny, changing circumstances are likely to lead to new constitutional challenges, and almost certainly the issues will need to be resolved before the Supreme Court.

Some legal scholars think that the strengthened VRA virtually invites a constitutional challenge because the Act is little altered from its 1982 incarnation, and 40 years have passed since the Court upheld all the key provisions of the VRA in South Carolina v. Katzenbach (Gerken 2006; Hasen 2006; Issacharoff 2006; Persily 2006; Pildes 2006; Pildes 2007; Thernstrom 2006).[1] These scholars emphasize the datedness of the compelling evidence of overt discrimination that had been relied upon by the Court in sustaining congressional discretion to implement the Civil War amendments from the passage of the Act in 1965 through its 1982 renewal and the failure to update the Act, particularly Section 5 related provisions having to do with coverage and bailout. The Court's decision about the present constitutionality of the Act will have an enormous impact on the continuation of the controversial policy of congressionally mandated race-conscious redistricting, and will have implications for other areas of affirmative action justified as remedies for lingering effects of past discrimination.

Political scientists can make a valuable contribution to the debate over race-conscious redistricting by providing information that will permit the judiciary to make a more empirically informed decision about the continued value of the VRA and the consequences of districting designed to affect the likelihood of minority electoral success. This paper presents critical recent data, in a form that is easily interpretable by non-statisticians, that will permit fact-based judgments about the impact of race-conscious redistricting at the state and congressional level and the continuing need for the creation and legal protection of majority-minority districts or other districts in which minorities possess a realistic opportunity to elect candidates of choice.[2]

---

[1] South Carolina v. Katzenbach, 383 U.S. 301 (1966); see also Allen v. State Bd. of Elections, 393 U.S. 544 (1969).

[2] There may be cases in which minorities possess a realistic opportunity to elect candidates of choice because the minority population is large enough to constitute a majority of the primary electorate for one of the two major parties, and there exists a sufficient number of white voters who identify with that party and reliably support its candidates that a minority candidate of choice who wins the party primary can be

We find that, although there is some evidence to suggest that minorities are beginning to win election from non-minority districts, the overwhelming number of minority legislators continue to win election from majority-minority districts. Furthermore, a closer examination of the evidence offered by some to suggest that minorities are much more successful in non-minority districts than used to be the case disappears when, instead of looking only at minorities in isolation from one another (e.g., blacks alone or Latinos alone), we look at combined minority populations to establish a fifty-percent minority threshold. Moreover, even in instances where minorities are elected from districts that are less than majority-minority in population (whether we consider minority groups separately or in combination), these districts are often districts where minorities are sufficiently substantial in number to comprise a majority of the Democratic party primary electorate, and thus are able to win the general election with only some – often relatively low – level of white support in the general election.

While there are some differences between the present day relationship between minority electoral success and the minority composition of the districts that elected them and the relationship that existed in 1992 (or still earlier periods), these differences are much smaller than is often claimed. Perhaps most importantly for the purposes of our analysis of the continuing need for Section 5 the VRA, such differences are found not in terms of a diminution of levels of racially polarized voting, but rather are explained by: (1) the increase in the number of majority-minority districts that have been created either directly through Section 2 litigation (and then protected by Section 5) or to avoid the potential voting rights actions (see Davidson and Grofman, 1994 for the pre-1990 picture); and (2) in the South, by the white voters deserting the Democratic party in large enough numbers to make it easier in some districts for minorities to win Democratic primaries (Grofman, Handley and Lublin, 2001).[3] In sum, race-conscious redistricting and the protections provided by Sections 2 and 5 of the VRA continue to play a valuable role in assuring that minority voters and their chosen representatives can participate meaningfully in the political process and in the government at the local, state and federal levels.

I. Historical Background and Literature Review

Section 5 of the voting Rights Act requires "covered jurisdictions"[4] to obtain permission for all changes in their voting practices or procedures from either the U.S. Attorney

---

expected to win the general election (even if the primary winner is himself or herself a member of the minority community). See the discussion in Grofman, Handley, Lublin (2001) and later in this text.

[3] In the former type of district, because of the size of the minority electorate, minorities can elect candidates of choice even when voting is racially polarized in both primary and general elections. In the latter type of district, minorities can elect candidates of choice in the primary election of a given party even when voting is racially polarized in that primary, and can expect to win election in the general if there is also a sufficiently high and reliable level of white crossover voting for the candidate of that party.

[4] Jurisdictions covered by Section 5 remain primarily located in the southern states which historically showed the greatest resistance to black enfranchisement. However, past renewals of the Act extended Section 5 coverage to other groups found to have a severe history of political disenfranchisement and

General or the D.C. District Court.[5] This preclearance process allows the federal government to prevent new voting or election legislation from going into effect if it will have a retrogressive impact on minority voters – that is, if minority voters will suffer a decrease in their voting strength should the legislative go into effect. Under the Supreme Court's ruling in Allen v. State Board of Elections in 1969, covered jurisdictions are required to not only preclear laws directly affecting suffrage, but also redistricting (or annexation) plans that involve changes to constituency boundaries.[6] The Court explained that the right to vote went beyond the mechanical act of being permitted to cast a ballot but included the right to cast a meaningful vote.[7] In Beer v. U.S.,[8] the Supreme Court held that redistricting plans that were retrogressive – that is, that would lead to a decrease in minority voters' ability to elect their preferred candidates[9] – would be denied preclearance. In the most recent U.S. Supreme Court case interpreting Section 5 standards, Georgia v. Ashcroft,[10] a broader definition of retrogression was advanced by the Court majority, but the 2006 renewal of the Act explicitly states that the interpretation of congressional intent offered in Beer is the correct one.

Section 2 of the VRA, a permanent provision of the Act that did not require renewal, has an even broader impact than Section 5 because it (1) applies to all jurisdictions, not only those jurisdictions covered by Section 5, (2) the test it imposes goes beyond simply determining if a change will be retrogressive to hold it violative of the VRA; and (3) enforcement of Section 2 allows a right of private action. In particular, minority plaintiffs can use litigation under Section 2 to seek to force jurisdictions, whether or not they are covered by Section 5, to alter redistricting plans which impinge

---

discrimination, such as Native Americans, Asian-Americans, and those of Spanish heritage. Revisions to the formula triggering Section 5 coverage led to the extension of coverage (in whole or in part) to various southwestern jurisdictions, to Alaska, and to various other jurisdictions, including two boroughs of New York City.

[5] In the event that preclearance approval is denied by the U.S. Department of Justice, jurisdictions may sue in the federal district court of the District of Columbia to have the Department's decision overturned; they may also choose to bypass the Department and go to the district court directly. For reasons of speed, since the Department of Justice has only 60 days to review a preclearance request (although it can extend that time by requesting additional information), virtually all preclearance requests go to the Department of Justice.

[6] Changes in the boundaries of polling stations are also subject to preclearance.

[7] The Act gives a broad interpretation to the right to vote and recognizes that "the Voting Rights Act was aimed at the subtle, as well as the obvious, state regulations which have the effect of denying citizens their right to vote because of their race. Moreover, compatible with the decisions of this Court, the Act gives a broad interpretation to the right to vote, recognizing that voting includes 'all action necessary to make a vote effective'." 393 U.S. 544. 565-566 (with internal citations omitted).

[8] Beer v. United States, 425 U.S. 130 (1976).

[9] Candidates preferred by minority voters are often referred to as *minority candidates of choice* and a there has grown up a body of case law interpreting the meaning of that term (See Grofman, Handley and Niemi, 1992).

[10] Georgia v. Ashcroft, 539 U.S. 461 (2003).

upon the ability of minorities to elect the candidates which they prefer. In 1986, in Thornburg v. Gingles,[11] the Supreme Court established a clear standard for challenging at-large, multi-member or other redistricting plans as dilutive of minority voting strength, leading to a considerable number of Section 2 lawsuits prior to the 1990s round of redistricting. And, because Congress made clear in the 1982 amendments to Section 2 the VRA that plaintiffs only had to prove a discriminatory effect, rather than a discriminatory intent, in order to win a redistricting challenge, the bulk of these lawsuits were successful (Davidson and Grofman 1994; Grofman, Handley and Niemi 1992). The success of these Section 2 lawsuits, as well as the preclearance process adopted by the Department of Justice – incorporating a Section 2 test into its review of redistricting plans during the 1990s round of redistricting – led to the creation of many new majority-minority districts during the decennial line drawing which followed in the wake of the 1990 Census.

Key provisions of the Voting Rights Act, including the Section 5 preclearance provisions and the Section 3 language access provisions, were set to expire in 2007 (the 1992 renewal of these provisions of the Act set an expiration date of 25 years in the future).[12] In 2005, civil rights groups began to mobilize to lobby for the Act's renewal and to generate research to put before Congress as further evidentiary support for that renewal. A number of academic conferences were held to consider the history and effects of the Act. Congressional hearings on proposed legislation to renew the VRA were held in the first half of 2006, leading to passage of the Act by the House on July 13 and the Senate on July 20, 2006. On July 27, 2006, President Bush signed into law the 25 year renewal of the Act in a form very close to that passed in 1982.[13]

For a variety of reasons, the intentional taking into account of race to assure that protected minority groups have a realistic opportunity to elect candidates of choice has not been without controversy: Political scientists have strongly debated the necessity of race-conscious redistricting to elect minority officials on jurisprudential, philosophical, and empirical grounds. Some scholars have argued that race-conscious redistricting was never constitutionally required. Some go even further, claiming that race-conscious redistricting is morally repugnant and ought to have been prohibited. Other scholars contend that majority-minority districts, whatever their previous value in adding diversity to the legislature, are, as a matter of empirical fact, no longer crucial to minority electoral success (Cameron, Epstein and O'Halloran 1996; Swain 1995; Thernstrom 1987; Thernstrom and Thernstrom 1999).[14] However, another groups of scholars argue that majority-minority districts remain vital to the election of African-American and Latino

[11] Thornburg v. Gingles, 478 U.S. 30 (1986).

[12] The Section 2 provisions of the VRA, on the other hand, are "permanent," i.e., they remain in place unless and until Congress changes them.

[13] The only changes involved the addition of language designed to alter the way in which the Supreme Court had interpreted some aspects of the Act's standards in cases that came before it in the 1990s.

[14] There is also a debate about the impact of minority elected officials on public policy affecting minority interests. See Pildes (1995), Lublin and Segura (2005), Grofman and Brunell (2006), and Brunell and Grofman (2005) for reviews of the literature on race-conscious redistricting and its consequences.

legislators (Davidson and Grofman 1994; Grofman and Handley 1989; Grofman and Handley 1991; Handley, Grofman and Arden 1998; Lublin 1997; Brunell and Grofman 2005), while acknowledging that minorities can win in some white-majority districts under special circumstances (Grofman, Handley and Lublin 2001).[15]

Judicial decisions about when redistricting plans are dilutive of minority voting strength (or are retrogressive in nature) have been greatly influenced by social science research presented at trial, although a jurisdiction-specific analysis must be conducted – a determination of whether or not minority-preferred candidates can win election in specific districts at issue is central to most redistricting challenges. However, trial court decisions have also naturally been guided by Supreme Court decisions on the constitutionality of taking race into account in drawing district boundaries and on the appropriate constitutional and statutory standards to use when race is implicated.

Following on the heels of decisions limiting the scope of affirmative action, the Supreme Court has issued a series of decisions since 1992 which have somewhat curtailed the ability of states and local jurisdictions to draw majority-minority districts. In Shaw v. Reno[16] and subsequent related cases, the Supreme Court said that race could be taken into account during the redistricting process but that courts must engage in "strict scrutiny" if they find that race was the "predominant factor" in the construction of a redistricting plan. A court must find that the redistricting plan's use of race is "narrowly tailored" to fulfill a "compelling governmental interest" in order to survive strict scrutiny. The meaning of these pronouncements from the bench has been debated. The bizarre boundaries of the districts at issue in Shaw and other related cases initially led scholars to conclude that majority-minority districts can survive legal challenge only if their boundaries are not too bizarre (Pildes and Niemi 1993). However, in the most recent case in this lineage, the Court revisited the latest version of the North Carolina Twelfth Congressional District and upheld it with a finding that partisan politics and incumbency protection, not race, could best account for the strange contours of the district.[17]

The Supreme Court has also constrained the Attorney General's ability to force jurisdictions to draw new majority-minority districts. It declared in Reno v. Bossier Parish I[18] that the Department of Justice cannot use the Section 5 preclearance process to enforce Section 2. The Court's decision in this case means that, even if a new redistricting plan violates Section 2 in the view of the Department of Justice, the Attorney General must preclear the plan so long as it does not violate Section 5 by leaving minorities *worse off* than they were under the old plan. In Reno v. Bossier Parish II,[19] the Supreme Court went another step – it reinterpreted the statutory language of Section 5, holding that voting changes made for racially discriminatory purposes do not

[15] For example, scholars who focus on Mississippi find that, in that state, districts above 50 percent black are needed to make probable the election of minority candidates (Coleman 1993; Lublin and Thomas 2007; Parker 1990). See further discussion below.

[16] Shaw v.Reno, 509 U.S. 630 (1993).

[17] Hunt v. Cromartie, 526 U.S. 541 (1999).

[18] Reno v. Bossier Parish School Board I, 520 U.S. 471 (1997).

[19] Reno v. Bossier Parish School Board II, 528 U.S. 320 (2000).

violate Section 5 unless the purpose was clearly retrogressive, that is, unless there was a specific intent to worsen the voting strength of minority voters.

In Georgia v. Ashcroft[20] the Supreme Court indicated that jurisdictions covered under Section 5 could even adopt plans which reduce the number of majority-minority districts under certain circumstances. As part of an effort to protect white Democrats and overall Democratic control of the Georgia legislature, Georgia, then under Democratic control, adopted state legislative plans that reduced the proportion of African Americans in a number of the existing majority-minority districts (maintaining a majority-black population but not necessarily a black majority among registered voters) and added black population to other districts held by white Democrats The plan was supported by virtually all black legislators in the Georgia legislature. Indeed, Rep. John Lewis, a civil rights icon, defended it in during the judicial challenge to the plan. The Ashcroft decision said that it was acceptable to reduce the number of minority districts if it was part of an overall plan that did not retrogress in the overall "electoral influence" of the minority group.[21]

The VRA as renewed in 2006 has made some changes to the language which have the effect of overturning some of the Court's decisions – although Shaw and Bossier I continue to stand, the Supreme Court's new approaches for judging retrogression outlined in Georgia v. Ashcroft and Reno v. Bossier Parish II have essentially been rejected by Congress as not reflective of congressional intent. The renewed Act (especially Section 5) will undoubtedly face legal challenge and it remains to be seen whether the Supreme Court will continue to insist that only the approaches presented in Bossier II and Ashcroft are compatible with the legitimate exercise of congressional powers under the Civil War Amendments.[22]

The renewed Act is likely to face some additional legal challenges. For example, the trigger in Section 4 that captures jurisdictions for Section 5 coverage remains unchanged: The mechanism to determine which jurisdictions will be covered continues to rely on data about practices and election outcomes from 1982 and earlier and still captures primarily southern states which did not enfranchise their African-American populations until after the passage of the original VRA in 1965. In addition, the renewed VRA does not make it easier for covered jurisdictions to "bailout" permanently from coverage by the Act.

---

[20] Georgia v. Ashcroft, 539 U.S. 461 (2003).

[21] While the Ashcroft court did not reach a decision on the merits of the Georgia State Senate case (which was simply remanded to the district court in D.C. for further consideration under the appropriate legal standard – a remand that was mooted by the adoption by a now Republican controlled legislature of a new plan), remarks in the majority opinion make it clear that it was viewed as nearly a foregone conclusion that the 2001 plan would be upheld. Among the key facts relied upon by Justice O'Connor for that view was the fact that the plan was supported by minority representatives in the legislature. However, had the remand not been mooted by subsequent events, we regard the likely outcome of a trial about whether the 2001 plan satisfied the standard laid down in Ashcroft as unclear since the case facts on minority influence were cloudier the Supreme Court realized, and the new standard raises empirical issues on which there was no previous trial record (Grofman and Handley 2007).

[22] The Supreme Court has held that Congress has the power to implement voting rights protections in a fashion stronger than courts might themselves do directly under the authority of these amendments.

When the Supreme Court originally upheld the Section 5 preclearance process in South Carolina v. Katzenbach, it did so in large part because repeated previous attempts by Congress to assure African Americans in the South access to the ballot had failed. Justifying such measures in today's changed racial climate may be more difficult. Defenders of the Act's constitutionality will have to have to explain how it can be said, given an improved racial climate, that Congress was exercising a rational exercise of its discretionary powers when it returned Section 5 to close to the form in which was implemented in the 1970s and 1980s. While it is obvious that Congress believed it was exercising its constitutional powers when it renewed the Act, the fate of legal attacks remains to be seen.

In our view, Congress was not acting unreasonably in renewing Section 5 basically as originally written. We believe that the Section 2 and Section 5 protections provided by the Voting Rights Act remain vital to creating and protecting effective minority districts and ensuring minority representation in state legislatures and in the U.S. Congress. (The focus of this paper is on majority-minority districts but we have written elsewhere that in some circumstances, in some jurisdictions, effective minority districts may not require that a majority of the population be minority – a jurisdiction-specific analysis is needed to determine the percentage minority needed to offer minority voters a realistic opportunity to elect candidates of choice.)

The remainder of this paper provides, both at the aggregate level and for individual states with substantial minority populations, empirical evidence regarding the importance of race-conscious redistricting for the election of minority officials to state legislatures and to the U.S. House of Representatives. The evidence offered allows us to make credible inferences about what would happen to minority representation if Section 5 of the VRA (or portions thereof) is found unconstitutional. Since the necessity of race-conscious redistricting relates directly to the constitutional justification for the VRA, our broad-ranging and factually indisputable empirical findings should influence the legal resolution of the continued constitutionality of the VRA's Section 5 preclearance rules.[23]

In the next section we detail changes in the rates of African-American and Latino representation in state legislatures and the U.S. House between 1992 and 2005 in states with greater than ten percent black or Latino populations. We then turn to a more detailed examination of the extent to which minority legislators continue to win election primarily from majority-minority districts.

II. Empirical Evidence about the Links between Minority Population and Minority Representation, 1992-2005

Table 1 presents the share of African-American legislators in both chambers of the state legislatures as well as the U.S. House for 1992 and 2005 in states with substantial minority populations. We include the eleven states of the former Confederacy as well as

[23] For a more general discussion of whether the various VRA provisions renewed in 2006 can be justified as congressional action that was "congruent and proportional" with congressional goals see Grofman (2007 forthcoming).

the eight states in the non-South that have a black population greater than 10 percent. Data was not available for Alabama or Maryland state house and senate elections or for Missouri state senate elections in 1992 because elections had not yet been held in these states under the post-1990 redistricting plan.[24] Comparisons made in the text between groups of states will always include only those states for which data are available for both 1992 and 2005.

The number of African-American elected officials has increased in both the South and the non-South. In the South, the share of black state representatives rose from 14.7 to 17.2 percent – every state profiled except Louisiana experienced an increase in the share of African-American elected officials in the state house. In the seven non-South states for which data is available in both 1992 and 2005, the share of black state representatives increased from 10.5 to 13.1 percent. The share of African Americans in state senates also rose over the same period, climbing from 13.5 to 15.6 percent in the South, and from 8.9 to 12.4 percent in the non-South. The share of African Americans declined in none of the state senates examined here, though it did remain unchanged between 1992 and 2005 in 6 of these 17 states. At least some of this increase may be attributed to the increase in black population in both the southern and non-southern states. Although the increase in the percent black population is not dramatic in any of the states (and actually decreased in a few southern states examined: Arkansas, North and South Carolina, and Texas), neither is the increase in the percent of African Americans elected to legislative office.

In contrast to increases at the state legislative level, the share of African Americans in U.S. House delegations remained practically unchanged in both the southern and non-southern states examined here. In both 1992 and 2005, blacks composed slightly less than 14 percent of House members in the South and 13 percent in the non-South. However, even though the aggregate level picture remained essentially unchanged, the number of African Americans elected to the federal House changed in some states. Louisiana and Missouri elected one fewer African-American representative in 2005 than in 1992, while the number of African-American representatives increased in Georgia and Texas. We should also note that the proportion of blacks elected to Congress in some states changed even when the number of minority representatives did not simply because the total number of representatives from these states changed due to reapportionment after the 2000 elections.

Table 2 shows the Latino share of state and federal legislators in 1992 and 2005 for all ten states in which Hispanics formed more than 10 percent of the population in 2000.[25] There was an increase in both Latino state legislators and members of congress from these states. There was also an increase, often substantial, in the percentage Hispanic population in each of these states.

---

[24] Almost all data from 1992 is from Handley, Grofman and Arden (1998). Some of the data presented here for Illinois and New Jersey, which were less than ten percent Latino in 1990 but more than ten percent Latino in 2000, is from the dataset used to create Handley, Grofman, and Arden (1998) but not included in the tables presented there; the rest is from The Almanac of American Politics (1994).

[25] "Latino" and "Hispanic" are used interchangeably in this paper. All data from 1992 is from Handley, Grofman and Arden (1998).

TABLE 1: PERCENT AFRICAN-AMERICAN ELECTED LEGISLATORS IN 1992 AND 2005

	Percent Black		State House			State Senate			U.S. House		N
	1990	2000	1992	2005	N	1992	2005	N	1992	2005	1992/2005
South											
Alabama	25.2	25.9		24.8	105		22.9	35	14.3	14.3	7/7
Arkansas	15.9	15.6	10.0	12.0	100	8.6	8.6	35	0.0	0.0	4/4
Florida	13.1	14.2	11.7	14.2	120	10.0	17.5	40	13.0	12.0	23/25
Georgia	26.8	28.5	17.2	21.1	180	16.1	19.6	56	27.3	30.8	11/13
Louisiana	30.6	32.3	22.9	21.0	105	20.5	23.1	39	28.6	14.3	7/7
Mississippi	35.4	36.2	26.2	29.5	122	19.2	21.2	52	20.0	25.0	5/4
North Carolina	21.9	21.4	15.0	15.8	120	12.0	14.0	50	16.7	15.4	12/13
South Carolina	29.7	29.4	14.5	20.2	124	15.2	17.4	46	16.7	16.7	6/6
Tennessee	15.9	16.3	12.1	16.2	99	9.1	9.1	33	11.1	11.1	9/9
Texas	11.6	11.3	9.3	9.3	150	6.5	6.5	31	6.7	9.4	30/32
Virginia	18.6	19.4	7.0	11.0	100	12.5	12.5	40	9.1	9.1	11/11
Total			14.7	17.8	1325	13.5	16.2	457	13.6	13.7	125/131
Comparable Total			14.7	17.2	1220	13.5	15.6	422	13.6	13.7	125/131
Non-South											
Delaware	16.7	18.9	4.9	7.3	41	4.8	4.8	21	0.0	0.0	1/1
Illinois	14.6	14.9	10.2	16.1	118	13.6	15.3	59	15.0	15.8	20/19
Maryland	24.6	27.7		22.7	141		21.3	47	25.0	25.0	8/8
Michigan	13.8	14.1	10.0	14.5	110		13.2	38	12.5	13.3	16/15
Missouri	10.7	11.2	8.0	10.4	163	8.8	8.8	34	22.2	11.1	9/9
New Jersey	12.7	13.0	12.5	12.5	80	5.0	12.5	40	7.7	7.7	13/13
New York	14.3	14.8	13.3	14.0	150	8.2	14.5	62	12.9	13.8	31/29
Ohio	10.6	11.4	12.1	14.1	99	9.1	12.1	33	5.3	5.6	19/18
Total			10.5	14.6	902	8.9	13.8	334	12.8	12.5	117/112
Comparable Total			10.5	13.1	761	8.9	12.4	249	12.8	12.5	117/112

Note: Percent Black Population includes only the non-Hispanic black population for 1990 and the non-Hispanic black one Race population as a share of the total population in 2000. Totals for 1992 are only for states for which data is available. Data is missing for some states in 1992 because elections had not yet been held under the post-1990 redistricting plan. Sources: Data for 2005 compiled by author. Data from 1992 is from Handley, Grofman and Arden (1998).

The share of Latino state house members increased in each of the ten states, rising from 10.3 percent in 1992 to 14.1 percent in 2005 percent across all of them. The most impressive increase in Latino state house members was in California where the proportion of Latinos more than doubled, jumping from 10.0 to 23.8 percent. Latinos also made substantial, albeit less impressive, gains in state senates, with the overall share of Latinos climbing from 9.8 to 12.5 percent in the ten states examined here. However, this statistic is somewhat deceptive as the share of Latinos in the state senate grew in only four of the ten states; the percentage of Latino state senators remained the same in five states (Colorado, Florida, Nevada, New Jersey, and New York) and actually declined slightly in New Mexico. As in state house elections, Latinos made their most striking gains in California where the proportion of Latinos in the California Senate more than tripled, from 7.5 to 25.0 percent.

Latinos comprised 13.0 percent of U.S. House members in the ten states in 2005, compared to only 9.1 percent in 1992. As in state legislatures, the gains in the number of Latinos elected were uneven. The share of Latinos in the congressional delegations of Arizona, California, Colorado, Florida and Texas increased from 1992 to 2005 (rising most substantially once again in California, where the share of Latino representatives increased from 7.0 to 17.0 percent); remained unchanged in Illinois, Nevada, New Jersey, and New York;[26] and declined in New Mexico. New Mexico, the state with the highest share of Latinos in the nation, elected a Latino to Congress in 1992, but no longer included a Latino in its congressional delegation in 2005.[27]

As we have seen from Tables 1 and 2, the number of African American and Latino legislators has increased between 1992 and 2005. To what do we attribute this increase? Is it simply that there has been an increase in the proportion of blacks and Hispanics in these states? If there has been an increase, perhaps this has led to an increase in the number of majority-minority districts created, which has in turn led to an increase in the number of minorities elected to legislative office? Or maybe majority-minority districts are now more successful at electing minorities to office – that is, is there now higher victory rate for minorities in these districts? Or perhaps minority representatives are winning in an increasing number of majority-white districts? If so, is the necessity of race-conscious redistricting declining as minority representatives win more victories in majority-white districts?

[26] The percentage of Latino representatives grew slightly in some states due to a decline in the number of congressional seats allocated to the state even as the number of Latino representatives remained unchanged.

[27] Rep. Bill Richardson, New Mexico's sole Latino representative, left Congress to become Secretary of Energy before winning election as New Mexico's governor.

TABLE 2: PERCENT LATINO ELECTED LEGISLATORS IN 1992 AND 2005

	Percent Hispanic		State House			State Senate			U.S. House		N
	1990	2000	1992	2005	N	1992	2005	N	1992	2005	1992/2005
Arizona	18.8	25.3	10.0	18.3	60	10.0	16.7	30	16.7	25.0	6/8
California	25.8	32.4	10.0	23.8	80	7.5	25.0	40	7.7	17.0	52/53
Colorado	12.9	17.1	9.2	7.7	65	5.7	5.7	35	0.0	14.3	6/7
Florida	12.2	16.8	8.3	10.8	120	7.5	7.5	40	8.7	12.0	23/25
Illinois	7.9	12.3	3.4	5.9	118	3.4	6.8	59	5.0	5.3	20/19
Nevada	10.4	19.7	0.0	2.4	42	4.8	4.8	21	0.0	0.0	2/3
New Jersey	9.6	13.3	2.5	6.3	80	0.0	0.0	40	7.7	7.7	13/13
New Mexico	38.2	42.1	37.1	41.4	70	35.7	33.3	42	33.3	0.0	3/3
New York	12.3	15.1	4.7	8.0	150	6.6	6.5	62	6.5	6.9	31/29
Texas	25.5	32.0	18.0	20.0	150	19.4	22.6	31	16.7	18.8	30/32
Total			10.3	14.1	935	9.8	12.5	400	9.1	13.0	186/192

Sources: Data for 2005 compiled by author. Data from 1992 is from Handley, Grofman and Arden (1998).

The next section examines these possibilities. What we find is that although minorities now find it marginally easier to win election from majority-white districts, the vast majority of African-American and Latino legislators at both the state and federal levels continue to win election from majority-minority districts. Furthermore, in most of the instances in which minorities have been successful in majority-white districts, these are districts with substantial minority populations such that minority voters control the Democratic primary.

Explaining Minority Descriptive Representation

We find that African Americans and Latinos have exhibited gains in representation in both (non-Hispanic) white-majority and majority-minority (majority black, majority Hispanic, or majority black plus Hispanic) districts. However, the vast majority of minority legislators still win in majority-minority districts. African-American legislators still win predominately in black-majority districts and, while the number of these districts has remained relatively stable, reflecting the relatively stable black population percentages across the states examined, black voters have been more successful at electing African Americans representatives in these districts. Although the share of non-black majority districts electing African-American legislators has also increased slightly since 1992, it still remains quite low in 2005. Moreover, blacks and Latinos together comprise a majority in many of the non-black-majority districts won by black candidates. In other non-majority-minority districts where African-American candidates are successful, we find minority population concentrations sufficiently large to virtually guarantee that minority voters comprise a majority of the electorate in the Democratic primary even though they do not form a majority of the overall electorate.

In contrast to African Americans, Latinos have experiences a substantial growth in population and a parallel increase in the number of majority-Hispanic legislative districts. But like black voters, Hispanic voters are more likely to elect Latinos in the majority-minority districts that have been created than they were in 1992 (at least with regard to state senate and congressional districts). And like African American representatives, the vast majority of Latino representatives are elected from majority-minority districts. There has been a rise in the percentage of non-Hispanic-majority districts with Latino representatives since 1992, but, like the increase in the number of African American representatives elected from non-black-majority districts, it is small. Moreover, a number of the Latino representatives elected from non-Hispanic-majority districts win in districts in which blacks and Hispanics together form a majority. However, the share of Latino victories in combined black and Hispanic-majority districts is lower than the equivalent share of African American victories in such districts.

African Americans

Table 3 displays the percentage of majority black districts that elected African Americans to legislative office in 1992 and 2005. African Americans[28] were victorious in around four-fifths of black-majority state house districts in 1992, and that proportion rose further in 2005. For states which we have comparable data for both 1992 and 2005, the share of majority-black state house districts won by African Americans rose from 81.0 to 86.3 percent in the South, and 79.7 to 88.5 percent in the non-South. The proportion of black-majority state house seats won by blacks declined only in New York, North Carolina, and Texas. The greatest increase occurred in South Carolina, where the share of black-majority state house districts represented by African Americans rose from 64.3 to 80.6 percent.

As in state house elections, African Americans won the lion's share of state senate elections held in black-majority districts in 1992, and further increased their success rates in 2005, especially in non-southern states. Blacks represented 84.1 percent of the southern black-majority state senate districts in 2005—a gain of 1.3 percentage points over the level in 1992. In the six non-southern states examined here, the share of black-majority state senate districts won by African Americans rose from 79.2 percent in 1992 to 92.3 percent in 2005, an increase of 13.3 percentage points. Ohio was the only non-southern state in which blacks won a lower share of black-majority state senate districts in 2005 than in 1992. In the South, however, the share of black-majority state senate seats held by African Americans dropped in Arkansas, North Carolina, and South Carolina, the result of either the failure to win a new black-majority district (Arkansas) or the loss of one previously held black-majority district (North Carolina and South Carolina).

Although black voters were more successful at electing African Americans to state legislative office from majority black districts, the actual number of black-majority legislative districts remained relatively stable. Among sets of states for which we have data for both 1992 and 2005, the number of black-majority state house seats rose by two in the South and four in the non-South between 1992 and 2005; while the number of black-majority state senate districts declined by one in the South and stayed exactly the same in the non-South.

The story is slightly different at the federal level: African Americans won all of the majority black congressional districts in all of the states examined in both 1992 and 2005. However, as Table 3 shows, the number of black-majority congressional districts declined from 17 to 12 in the South in the wake of the Shaw v. Reno line of cases, which invalidated some majority-minority districts where race was held to be the predominant factor in line-drawing, and gave jurisdictions pause in the 2000 round about drawing additional minority seats. In the 1990s, Texas lost both of its black-majority districts while Georgia, Louisiana, and North Carolina lost one apiece.

[28]In these situations, we believe it plausible to assume that the black victor was a candidate of choice of the black community. But, of course, this is a matter for empirical investigation in any situation which may be in doubt.

TABLE 3: PERCENT BLACK-MAJORITY DISTRICTS WHICH ELECTED AFRICAN AMERICANS, 1992 AND 2005

	State House				State Senate				U.S. House			
South	**1992**		**2005**		**1992**		**2005**		**1992**		**2005**	
Alabama			92.6	(27)			100.0	(8)	100.0	(1)	100.0	(1)
Arkansas	76.9	(13)	92.3	(13)	100.0	(3)	75.0	(4)	-	(0)	-	(0)
Florida	92.3	(13)	100.0	(13)	100.0	(3)	100.0	(3)	100.0	(3)	100.0	(3)
Georgia	71.4	(42)	80.5	(41)	69.2	(13)	84.6	(13)	100.0	(3)	100.0	(2)
Louisiana	92.3	(26)	81.5	(27)	88.9	(9)	90.0	(10)	100.0	(2)	100.0	(1)
Mississippi	84.2	(38)	92.3	(39)	83.3	(12)	91.7	(12)	100.0	(1)	100.0	(1)
North Carolina	93.8	(16)	80.0	(15)	100.0	(4)	66.7	(3)	100.0	(2)	100.0	(1)
South Carolina	64.3	(28)	80.6	(31)	63.6	(11)	60.0	(10)	100.0	(1)	100.0	(1)
Tennessee	100.0	(11)	100.0	(13)	100.0	(3)	100.0	(3)	100.0	(1)	100.0	(1)
Texas	100.0	(11)	87.5	(8)	100.0	(1)	-	(0)	100.0	(2)	-	(0)
Virginia	58.3	(12)	83.3	(12)	100.0	(5)	100.0	(5)	100.0	(1)	100.0	(1)
Total	81.0	(210)	87.0	(239)	82.8	(64)	85.9	(71)	100.0	(17)	100.0	(12)
Comparable Total	81.0	(210)	86.3	(212)	82.8	(64)	84.1	(63)	100.0	(17)	100.0	(12)
Non-South												
Delaware	100.0	(2)	75.0	(4)	100.0	(1)	100.0	(1)	-	(0)	-	(0)
Illinois	66.7	(18)	88.9	(18)	87.5	(8)	100.0	(8)	100.0	(3)	100.0	(3)
Maryland			82.4	(34)			100.0	(10)	100.0	(2)	100.0	(2)
Michigan	76.9	(13)	83.3	(12)			80.0	(5)	100.0	(2)	100.0	(2)
Missouri	78.6	(14)	88.2	(17)	75.0	(4)	75.0	(4)	100.0	(1)	100.0	(1)
New Jersey	66.7	(6)	100.0	(2)	66.7	(3)	100.0	(1)	100.0	(1)	100.0	(1)
New York	93.3	(15)	88.2	(17)	71.4	(7)	100.0	(8)	100.0	(3)	100.0	(3)
Ohio	100.0	(6)	100.0	(8)	100.0	(1)	50.0	(2)	100.0	(1)	100.0	(1)
Total	79.7	(74)	86.6	(112)	79.2	(24)	92.3	(39)	100.0	(13)	100.0	(13)
Comparable Total	79.7	(74)	88.5	(78)	79.2	(24)	91.7	(24)	100.0	(13)	100.0	(13)

Florida, Georgia, North Carolina, and Texas all gained seats during the 2000 reapportionment cycle but none created new black-majority districts.[29]

Given the decrease in the number of majority black congressional districts in the South between 1992 and 2005, but the stable number of African American congressional representatives, it must be the case that more African Americans won non-majority black districts in 2005. Table 4 confirms that is the case in the South. While blacks did not win a single southern House district without a black majority in 1992, blacks held 5.0 percent of such districts in 2005.

In contrast, in the non-South, the pattern for black electoral success in U.S. House elections remains virtually unchanged. The number of black-majority U.S. House districts – thirteen – remained stable between 1992 and 2005 in the non-southern states, despite the fact that half of these states actually lost congressional seats during the 2000 reapportionment of seats among the states. Shaw v. Reno and its progeny had relatively little impact on non-southern black districts because most were reasonably compact districts based in urban areas. In this part of the country, in districts without a black majority, African Americans are not experiencing any more success in 2005 than in 1992 – which is to say that the percentage of non-southern congressional districts which elect African Americans is still minuscule, around 1%.

The share of African American victories in non-black-majority districts also increased slightly for both state house and state senate elections in both South and non-South. Still, the percentage of non-black-majority seats held by African American state legislators remains very low. In 2005, in the South, African Americans won 2.7 percent of the state house districts that lacked a black majority, and 3.6 percent of such state senate districts. The figures are only slightly higher for non-black majority districts in the non-South, where African Americans won only 4.5 percent of such house districts and 4.0 percent of such state senate districts in 2005.

Do these small increases in the share of non-black majority districts represented by African American office-holders herald a trend toward diversification of the electoral base of black elected officials? Not if by diversification we mean districts with a sizable majority of non-Hispanic white voters. Table 5 shows the percentage of African-American legislators from districts with a black majority, combined black and Hispanic majority, and other districts. Non-Hispanic whites form a majority in the vast bulk of "other" districts. A quick glance at the table makes obvious that the overwhelming majority of black legislators still win office from majority black districts. In the South, 80 percent of state representatives, 80 percent of state senators, and 67 percent of U.S. House members win in districts in which blacks compose a majority of the population. In the non-southern states, 73 percent of state representatives, 78 percent of state senators, and 93 percent of U.S. House members gained election from black-majority districts.

A closer examination of the non-majority districts which elect the minority of black legislators from districts without a black majority offers little hope of a dramatic change in the election of African American legislators from white-majority districts. Most black elected officials who win in districts without a black majority hail from districts in which blacks and Hispanics together form a majority.

[29] The Fourth District in Georgia had a black-majority in 2000 but did not when the district first came into being prior to the 1996 election.

TABLE 4: PERCENT NON-BLACK-MAJORITY DISTRICTS WHICH ELECTED AFRICAN AMERICANS, 1992 AND 2005

	State House				State Senate				U.S. House			
South	**1992**		**2005**		**1992**		**2005**		**1992**		**2005**	
Alabama			1.3	(78)			0.0	(27)	0.0	(6)	0.0	(6)
Arkansas	0.0	(87)	0.0	(87)	0.0	(32)	0.0	(31)	0.0	(4)	0.0	(4)
Florida	1.9	(107)	3.7	(107)	2.7	(37)	10.8	(37)	0.0	(20)	0.0	(22)
Georgia	0.7	(138)	3.6	(139)	0.0	(43)	0.0	(43)	0.0	(8)	18.2	(11)
Louisiana	0.0	(79)	0.0	(78)	0.0	(30)	0.0	(29)	0.0	(5)	0.0	(6)
Mississippi	0.0	(84)	0.0	(83)	0.0	(40)	0.0	(40)	0.0	(4)	0.0	(3)
North Carolina	2.9	(104)	6.7	(105)	4.3	(46)	10.6	(47)	0.0	(10)	8.3	(12)
South Carolina	0.0	(96)	0.0	(93)	0.0	(35)	5.6	(36)	0.0	(5)	0.0	(5)
Tennessee	1.1	(88)	3.5	(86)	0.0	(30)	0.0	(30)	0.0	(8)	0.0	(8)
Texas	2.2	(139)	4.9	(142)	3.3	(30)	6.5	(31)	0.0	(28)	9.4	(32)
Virginia	0.0	(88)	1.1	(88)	0.0	(35)	0.0	(35)	0.0	(10)	0.0	(10)
Total	1.0	(1010)	2.6	(1086)	1.1	(358)	3.4	(386)	0.0	(108)	5.0	(119)
Comparable Total	1.0	(1010)	2.7	(1008)	1.1	(358)	3.6	(359)	0.0	(108)	5.0	(119)
Non-South												
Delaware	0.0	(39)	0.0	(37)	0.0	(20)	0.0	(20)	0.0	(1)	0.0	(1)
Illinois	0.0	(100)	3.0	(100)	2.0	(51)	2.0	(51)	0.0	(17)	0.0	(16)
Maryland			3.7	(107)			0.0	(37)	0.0	(6)	0.0	(6)
Michigan	1.0	(97)	6.1	(98)			3.0	(33)	0.0	(14)	0.0	(13)
Missouri	1.3	(149)	1.4	(146)	0.0	(30)	0.0	(30)	12.5	(8)	0.0	(8)
New Jersey	8.1	(74)	10.3	(78)	0.0	(37)	10.3	(39)	0.0	(12)	0.0	(12)
New York	4.4	(135)	4.5	(133)	0.0	(54)	1.9	(54)	0.0	(28)	3.8	(26)
Ohio	6.5	(93)	6.6	(91)	6.3	(32)	9.7	(31)	0.0	(18)	0.0	(17)
Total	3.1	(687)	4.4	(790)	1.3	(224)	3.4	(295)	1.9	(104)	1.0	(99)
Comparable Total	3.1	(687)	4.5	(683)	1.3	(224)	4.0	(225)	1.9	(104)	1.0	(99)

TABLE 5: THE PERCENT OF BLACK STATE HOUSE, STATE SENATE, AND U.S. REPRESENTATIVES IN 2005 BY DISTRICT RACIAL COMPOSITION

	State House			State Senate			U.S. House		
South	Black Majority Districts	B + L Majority Districts	Other Districts	Black Majority Districts	B + L Majority Districts	Other Districts	Black Majority Districts	B + L Majority Districts	Other Districts
Alabama	96	0	4	100	0	0	100	0	0
Arkansas	100	0	0	100	0	0	-	-	-
Florida	76	6	18	43	43	14	100	0	0
Georgia	87	8	5	100	0	0	50	25	25
Louisiana	100	0	0	100	0	0	100	0	0
Mississippi	100	0	0	100	0	0	100	0	0
North Carolina	63	26	11	29	43	29	50	50	0
South Carolina	100	0	0	75	13	13	100	0	0
Tennessee	81	0	19	100	0	0	100	0	0
Texas	50	50	0	0	100	0	0	67	33
Virginia	91	0	9	100	0	0	100	0	0
Total	88	7	5	80	15	5	67	22	11
Non-South									
Delaware	100	0	0	100	0	0	-	-	-
Illinois	84	11	5	89	0	11	100	0	0
Maryland	88	6	6	100	0	0	100	0	0
Michigan	63	13	25	80	0	20	100	0	0
Missouri	88	0	12	100	0	0	100	0	0
New Jersey	20	20	60	20	20	60	100	0	0
New York	71	29	0	89	0	11	75	25	0
Ohio	57	14	29	25	0	75	100	0	0
Total	73	12	14	78	2	20	93	7	0

Note: All people who checked the black category on the 2000 Census were counted as black whether or not they check other boxes for purposes of determining the racial composition of districts. A small number of elected officials appear in rosters of both black and Latino elected officials but were counted in this study as either black or Latino but not as both.

Due to lower citizenship and turnout rates, Latinos almost invariably form a substantially lower share of the electorate than they do of the population. The black share of the electorate is consequently usually higher than the black share of the population in districts with a combined black and Hispanic majority. One cannot attribute the election of blacks from these districts to a great diversification of the electoral base of black officials.

In the South, a majority of all black legislators elected from outside of black-majority districts won in districts with a mixed-black and Latino majority. The situation is somewhat different outside the South. Only one of the black state senators elected outside of a black-majority district won in a district with a combined black and Latino majority. On the other hand, Rep. Charlie Rangel, the only non-southern African-American U.S. representative elected outside of a black-majority district, represents a district in which blacks and Latinos together form an overwhelming majority of the population. Close to one-half of the black state house members from districts without a black majority represent districts with a combined black and Latino majority.

Districts with a majority of non-Hispanic whites elect only a small share of black legislators:[30] 5 percent of black state representatives and 5 percent of black state senators win election from these largely white districts in the South. The figures are somewhat higher for the non-South with 14 percent of state representatives and 20 percent of state senators winning election from districts with white majorities. However, not a single non-southern black member of U.S. House won election from a white district. Only 11 percent, or two, black southern U.S. House members won election from white-majority districts.

Latinos

Table 6 indicates the percentage of majority Hispanic districts that elected Latinos to legislative office in 1992 and 2005. The share of Latino-majority state legislative districts represented by Latinos changed less than the share of black-majority districts represented by African Americans: Latinos represented a slightly higher share of Latino-majority state senate districts in 2005 than in 1992 (an increase from 75.0 to 76.9), but a somewhat lower share of Latino-majority state house districts (a drop from 78.4 to 76.3 percent) in the ten states examined here. On the other hand, the share of Latino-majority U.S. House districts held by Latinos increased from 75.0 to 80.0 thanks to the election of two more Latinos in California and one more Latino in Texas. California and Texas remained the only states to send non-Latinos to Washington from Latino-majority congressional districts.

Unlike the number of black-majority districts, the number of Hispanic-majority districts grew substantially between 1992 and 2005.

[30] Furthermore, when we look more closely at the racial composition of the limited number of specific districts with non-Hispanic white majorities from which African-Americans were elected, we find that many (more than half in the case of the South) of these districts have substantial – though not majority – minority populations. See Grofman, Handley and Lublin (2001) for a far more detailed discussion of these effective, albeit not majority-minority, districts.

TABLE 6: PERCENT HISPANIC-MAJORITY DISTRICTS WHICH ELECTED LATINOS, 1992 AND 2005

	State House				State Senate				U.S. House			
	1992		2005		1992		2005		1992		2005	
Arizona	62.5	(8)	75.0	(8)	50.0	(4)	75.0	(4)	100.0	(1)	100.0	(2)
California	60.0	(10)	76.5	(17)	25.0	(4)	87.5	(8)	57.1	(7)	70.0	(10)
Colorado	-	(0)	25.0	(4)	-	(0)	100.0	(1)	-	(0)	-	(0)
Florida	100.0	(9)	100.0	(11)	100.0	(3)	100.0	(3)	100.0	(2)	100.0	(3)
Illinois	100.0	(4)	75.0	(8)	100.0	(2)	100.0	(4)	100.0	(1)	100.0	(1)
Nevada	-	(0)	0.0	(2)	-	(0)	0.0	(1)	-	(0)	-	(0)
New Jersey	50.0	(2)	50.0	(2)	0.0	(1)	0.0	(1)	-	(0)	-	(0)
New Mexico	78.3	(23)	83.3	(30)	86.7	(15)	70.6	(17)	-	(0)	-	(0)
New York	63.6	(11)	64.3	(14)	100.0	(4)	66.7	(6)	100.0	(2)	100.0	(1)
Texas	86.7	(30)	80.0	(35)	71.4	(7)	85.7	(7)	71.4	(7)	75.0	(8)
Total	78.4	(97)	76.3	(131)	75.0	(40)	76.9	(52)	75.0	(20)	80.0	(25)

Table 6 shows that the number of Latino-majority state house districts leapt from 97 to 131—an increase of more than one-third. All of the states except Arizona and New Jersey gained at least two additional Hispanic-majority districts since 1992. The share of state senate districts in which Latinos composed a majority also rose close to one-third, from 40 to 52 seats. Increases of one or two new Latino-majority state senate districts occurred in Colorado, Illinois, Nevada, New Mexico, and New York. California accounted for one-third of the new Latino-majority senate districts; the number of Latino-majority districts in the Golden State doubled from four to eight between 1992 and 2005. The number of Latino-majority congressional districts also increased, with a net gain of five seats. While New York lost one its two Latino-majority districts due to a *Shaw*-based legal challenge,[31] California created three new Latino-majority congressional districts and Arizona, Florida, and Texas each gained one new Latino-majority congressional district.

The increase in the number of Latino-majority districts played a critical role in boosting the number of Latino legislators. In black-majority districts, most gains in the number of black officials stemmed from increases in the share of seats won rather than in the number of seats since the number of majority black seats remained relatively constant. In contrast, the increase in the number of Latinos elected from Latino-majority districts arises mostly from an increase in the number of Latino-majority districts. The greater gains in the number of Latino-majority districts are unsurprising due to the increase in the Latino population (as a comparison of the first two columns in Table 2 illustrates). Of course, it should be remembered that Latino-majority districts may lack a Latino majority in the electorate due to much higher non-citizenship rates and lower rates of voter turnout among Latinos as compared to either whites or blacks.

Table 7 examines the percentage of non-Hispanic-majority districts held by Latinos. Although the share of non-Hispanic-majority districts won by Latinos increased slightly between 1992 and 2005, the percentage remains quite low. Only 4.0 percent of non-Hispanic majority state house districts were represented by Latinos in 2005, up from 2.4 percent in 1992. Arizona and California witnessed the most impressive increases in the share of non-Hispanic majority districts represented by Latinos; on the other hand, the percentage of Hispanic majority districts represented by Latinos in New Mexico fell from 17.0 percent in 1992 to 10.0 percent in 2005. Latinos represented 2.9 percent of non-Hispanic majority state senate districts in 2005, a marginal increase over the 2.5 percent held by Latinos in 1992. As in state house contests, Arizona and California saw the greatest increase in the share of non-Hispanic majority districts held by Latinos.

At the congressional level, there was a slight increase in the percentage of non-Hispanic majority seats won by Latinos from 1.2 percent to 3.0 percent. This increase was due to a net gain of two seats: While Latinos won new non-Hispanic majority districts in California, Colorado, and New York; they lost the one House seat held by a Latino in New Mexico.

[31] Latina Nydia Velazquez won the seat in 1992 when it was a Latino-majority district and continued to hold the seat after it was redrawn so it did not have a Latino-population majority.

TABLE 7: PERCENT NON-HISPANIC-MAJORITY DISTRICTS WHICH ELECTED LATINOS, 1992 AND 2005

	State House				State Senate				U.S. House			
	1992		2005		1992		2005		1992		2005	
Arizona	1.9	(52)	9.6	(52)	3.8	(26)	7.7	(26)	0.0	(5)	0.0	(6)
California	2.9	(70)	9.5	(63)	5.6	(36)	9.4	(32)	0.0	(45)	4.7	(43)
Colorado	9.2	(65)	6.6	(61)	5.7	(35)	2.9	(34)	0.0	(6)	14.3	(7)
Florida	0.8	(111)	1.8	(109)	0.0	(37)	0.0	(37)	0.0	(21)	0.0	(22)
Illinois	0.0	(114)	0.9	(110)	0.0	(57)	0.0	(55)	0.0	(19)	0.0	(18)
Nevada	0.0	(42)	2.5	(40)	4.8	(21)	5.0	(20)	0.0	(2)	0.0	(3)
New Jersey	1.3	(78)	5.3	(78)	0.0	(39)	0.0	(39)	7.7	(13)	7.7	(13)
New Mexico	17.0	(47)	10.0	(40)	7.4	(27)	8.0	(25)	33.3	(3)	0.0	(3)
New York	0.0	(139)	2.2	(136)	0.0	(57)	0.0	(56)	0.0	(29)	3.6	(28)
Texas	0.9	(120)	1.7	(115)	4.5	(24)	4.2	(24)	0.0	(23)	0.0	(24)
Total	2.4	(838)	4.0	(804)	2.5	(359)	2.9	(348)	1.2	(166)	3.0	(167)

TABLE 8: THE PERCENT OF LATINO STATE HOUSE, STATE SENATE, AND U.S. REPRESENTATIVES IN 2005 BY DISTRICT RACIAL COMPOSITION

	State House			State Senate			U.S. House		
	Latino Majority Districts	L + B Majority Districts	Other Districts	Latino Majority Districts	L + B Majority Districts	Other Districts	Latino Majority Districts	L + B Majority Districts	Other Districts
Arizona	55	18	27	60	20	20	100	0	0
California	68	11	21	70	0	30	78	0	22
Colorado	20	0	80	50	0	50	0	0	100
Florida	85	15	0	100	0	0	100	0	0
Illinois	86	14	0	100	0	0	100	0	0
Nevada	0	0	100	0	100	0	-	-	-
New Jersey	20	20	60	-	-	-	0	100	0
New Mexico	86	0	14	86	0	14	-	-	-
New York	75	25	0	100	0	0	50	50	0
Texas	93	3	3	86	0	14	100	0	0
Total	76	9	15	80	4	16	80	8	12

Note: All people who checked the black category on the 2000 Census were counted as black whether or not they check other boxes for purposes of determining the racial composition of districts. A small number of elected officials appear in rosters of both black and Latino elected officials but were counted in this study as either black or Latino but not as both.

The percentage of Latinos elected to legislative office from majority-white districts is somewhat higher than the percentage of African-American representatives elected from majority white districts, especially African-American southern state legislators. According to Table 8, 15 percent of Latino state representatives and 12 percent of Latino state senators won in districts in which neither Latinos alone nor Latinos and African Americans in combination formed a majority. [32] Twelve percent of Latino members of the U.S. House also represented majority-white districts. Again, it is important to emphasize that the share of Latinos elected from districts with a non-Latino electoral majority is likely higher because districts with a Latino population majority may lack a Latino electoral majority due to lower citizenship and turnout rates among Latinos than either non-Latino whites or blacks. Nevertheless, over three-quarters of Latino legislators in the states we consider are still elected from districts with a Latino population majority.

III. Conclusion

The central of purpose of race-conscious redistricting since the passage of the original VRA has been to provide minority voters with the opportunity to elect some of their preferred candidates, and to prevent racial considerations in redistricting being used to minimize or cancel out minority voting strength – as was previous practice (see, for example, Parker 1990; McDonald 2003). Race-conscious redistricting in its modern form thus grants to minorities some of the same opportunities available to whites by virtue of their majority status. As Chief Justice Warren explained, race-conscious redistricting in its modern form assured that minority participation in the political process was not merely a symbolic, but ultimately ineffectual act, but instead allowed minorities to exercise the franchise in a meaningful way to elect minority-preferred candidates from some districts.

Before passage of the VRA, race-conscious redistricting was usually employed to fragment minority voters across districts so that they could not make up a majority of voters in any given district. This practice, combined with the fact that racial-bloc voting almost always prevented the election of minority-preferred candidates from majority white districts, meant that minority-preferred candidates were rarely elected to office. When the VRA was first applied to redistricting, race-conscious redistricting was transformed in the hands of the federal government into an instrument designed to prevent minority votes from being packed or cracked and was seen as vital to permitting minorities to have a voice in the halls of government.

Although much time has passed, the evidence presented above demonstrates that the fundamental argument in favor of the creation of majority-minority districts remains valid today: The vast majority of minority legislators still win election from majority

[32] A look at the racial composition of the districts with non-Hispanic white majorities that elect Latinos to office indicate that more than a third of these have substantial (more than 35 percent), albeit not majority, Hispanic populations. See Grofman, Handley and Lublin (2001) for a discussion of non-majority minority districts that are effective at electing minority-preferred candidates to office.

minority districts. The share of non-black-majority districts with African-American state legislators and congressional representatives remains extremely low – 5 percent or less in 2005. This is true in both the South and the non-South in the states included in our analyses – that is, those states in which the minority population is substantial. Moreover, many of these minority officials won election from districts where African Americans and Hispanics together formed a population majority but African Americans dominated politically, at least partially due to substantially lower Hispanic participation rates. And much of the remaining African-American successes can be attributed to districts where African-Americans and Latinos, while not a majority of the general electorate, are still a majority of the electorate in the Democratic primary.

Majority-Hispanic districts play a similarly crucial role in the election of Latino officials. The share of non-Hispanic-majority districts electing Latinos to legislative office is minuscule – less than 4 percent of these districts elected Latinos in 2005 in the ten states studied here. Latino-majority districts continue to elect the overwhelming majority of Latino officials.

While we did not provide data on redistricting consequences for racial representation at the local level, the patterns across levels of government tend to be very similar. Moreover, the need for voting rights protections at the local level is likely to be even greater than at the state or congressional level since (1) many local elections are at-large or multi-member, and the potential for minority vote dilution is even greater than in these elections than in the elections held in single seat constituencies (see Davidson and Grofman, 1994) – the type of elections characteristic of Congress, and of most state legislative districts; and (2) the bulk of local elections are non-partisan, and thus the potential for minority electoral success in Democratic party primaries that will carry them to victory in the general election is absent.

In sum, since race-conscious redistricting and the creation of effective minority districts remains the basis upon which most African-American and Latino officials gain election, the Voting Rights Act, including both Sections 2 and 5, remains a valuable tool to protect the ability of minorities to elect their preferred candidates.[33]

The need for judicial scrutiny of claims of retrogression or minority vote dilution rests on the presence of racial-bloc voting that severely restricts the ability of minorities to elect candidates of choice. Section 5 provisions only apply to the extent that one can show that racially polarized voting impedes the election of minorities from districts where minorities are not a majority of either the primary or general electorate. Once levels of racially polarized voting in the U.S. diminish to the point that race conscious forms of redistricting are no longer needed, Section 5 of the VRA, in effect, self-destructs. We may differ over when, if ever, that point will be reached, but we do not

[33] We note that the ability of minorities to win election from districts with percentages of blacks or Latinos lower than a population majority varies from state to state and within states. While upholding the Voting Rights Act, the Courts should continue to focus on a district-specific inquiry into the minority population share needed to give minorities the effective opportunity to elect their preferred candidates, rather than relying solely on a dichotomous classification of districts as either majority-minority districts or not (Grofman, Handley and Lublin 2001). Such a legal rule also helps to prevent unnecessary over-packing of minorities into districts with the intention or consequence of wasting minority votes rather than advancing minority representation.

need to resolve this question, since the way in which Section 5 operates is automatically self-limiting.

Moreover, allowing districts to pass legal muster if the evidence clearly demonstrate that, *because of reliable white crossover*, minorities possess a realistic opportunity to elect candidates of choice (including an ability to elect candidates who are themselves, members of that minority), makes it easier for the Supreme Court to hold the Voting Rights Act constitutional. That is because, under such a legal construction, regardless of the formal period of VRA renewal, VRA redistricting-related provisions now take on a what we might think of as an automatic "sunset" clause. [34]

[34] Fortunately, focusing on the realistic opportunity of minorities to elect (taking into account both primary and general elections) rather than on minority population, *per se*, appears to be becoming a consensus view in both academia and in American jurisprudence. In particular, in applying the Beer test, both the majority and dissenting opinions in Georgia v. Ashcroft supported protecting the share of blacks in a particular district only to the extent needed to give minorities a realistic opportunity to elect candidates of choice, and this approach also appears to characterize how the Voting Rights Section of the U.S. Department of Justice has approached preclearance decisions in many recent cases (Grofman 2006; Grofman and Brunell 2006).

References

Brunell, Thomas L. and Bernard Grofman. 2005. "Evaluating the Impact of Redistricting on District Homogeneity, Political Competition, and Political Extremism in the U.S. House of Representatives, 1962-2002." Paper presented at the annual meeting of the American Political Science Association, Washington, 1 September.

Cameron, Charles, David Epstein, and Sharyn O'Halloran. 1996. "Do Majority-Minority Districts Maximize Substantive Black Representation in Congress?" American Political Science Review 90: 4(December): 794-812.

Coleman, Mary D. 1993. "Black Politics and Political Change in Mississippi," in Mississippi Government and Politics: Modernizers and Traditionalists, ed. Dale Krane and Stephen D. Shaffer, 236-67.

Davidson, Chandler and Bernard Grofman, eds. 1994. Quiet Revolution in the South: The Impact of the Voting Rights Act 1965-1990. Princeton, NJ: Princeton University Press.

Gerken, Heather. 2006. "A Third Way for the Voting Rights Act: Section 5 and the Opt-In Approach." Columbia Law Review 106: 708-52.

Grofman, Bernard. 2006. "Operationalizing the Section 5 Retrogression Standard of the Voting Rights Act in the Light of Georgia v. Ashcroft: Social Science Perspectives on Minority Influence, Opportunity and Control." Election Law Journal 5(3): 250-282.

Grofman, Bernard. Forthcoming 2007. "Can 390 Representatives, 98 Senators, and 1 President be Wrong? The Constitutionality of the 2006 Voting Rights Act Renewal in the Light of the Congruence and Proportionality Test." In Paula McLain (ed.) The Voting Rights Act (title tentative). University Press of Virginia.

Grofman, Bernard and Thomas Brunell. Forthcoming 2006. "Extending Section 5: Law and Politics." In Epstein, David L., Rodolfo O. de la Garza, Sharyn O'Halloran and Richard H. Pildes (Eds). The Future of the Voting Rights Act. New York: Russell Sage Foundation.

Grofman, Bernard and Lisa Handley. 1989. "Minority Population and Black and Hispanic Congressional Success in the 1970s and 1980s." American Politics Quarterly 17(October): 436-45.

Grofman, Bernard and Lisa Handley. 1991. "The Impact of the Voting Rights Act on Black Representation in Southern State Legislatures." Legislative Studies Quarterly 16: 1(February): 111-28.

Grofman, Bernard and Lisa Handley. 2007. "An Examination of the 2001 Georgia State Senate Plan in the Light of the *Georgia v. Ashcroft* Non-Retrogression Standard: Social Science Perspectives." School of Social Sciences, University of California (work in progress).

Grofman, Bernard, Lisa Handley, and David Lublin. 2001. "Drawing Effective Minority Districts: A Conceptual Framework and Some Empirical Evidence." North Carolina Law Review 79: 5(June): 1383-1430.

Grofman, Bernard, Lisa Handley, and Richard G. Niemi. 1992. Minority Representation and the Quest for Voting Equality. New York: Cambridge University Press.

Handley, Lisa, Bernard Grofman, and Wayne Arden. 1998. "Electing Minority-

Preferred Candidates to Legislative Office: The Relationship Between Minority Percentages in Districts and the Election of Minority-Preferred Candidates." In Race and Redistricting in the 1990s, ed. Bernard Grofman, 13-38.

Hasen, Richard. 2006. An Introduction to the Expiring Provisions of the Voting Rights Act and Legal Issues Relating to Reauthorization: Hearing before the U.S. Senate Judiciary Committee. 109th Cong., 2nd Sess., 9 May.

Issacharoff, Samuel. 2006. An Introduction to the Expiring Provisions of the Voting Rights Act and Legal Issues Relating to Reauthorization: Hearing before the U.S. Senate Judiciary Committee. 109th Cong., 2nd Sess., 9 May.

Lublin, David. 1997. The Paradox of Representation: Racial Gerrymandering and Minority Interests in Congress. Princeton, NJ: Princeton University Press.

Lublin, David and Gary Segura. 2005. "An Evaluation of the Electoral and Behavioral Impacts of Majority-Minority Districts." Presented at the Annual Meeting of the American Political Science Association, Washington, 1-4 September.

Parker, Frank. 1990. Black Votes Count: Political Empowerment in Mississippi After 1965. University of North Carolina Press.

Persily, Nate. 2006. "Understanding the Benefits and Costs of Section 5 Pre-Clearance: Hearing before the U.S. Senate Judiciary Committee. 109th Cong., 2nd Sess., 17 May.

Pildes, Richard H. 1995. "The Politics of Race (Review of Davidson & Grofman, eds.: Quiet Revolution in the South)." Harvard Law Review 108: 6(April): 1359-92.

Pildes, Richard H. 2006. The Continuing Need for Section 5 Pre-Clearance: Hearing before the U.S. Senate Judiciary Committee. 109th Cong., 2nd Sess., 16 May.

Pildes, Richard H. Forthcoming 2007. "The Future of Voting Rights Policy: From Anti-Discrimination to the Right to Vote." Howard University Law Journal.

Pildes, Richard H. and Richard G. Niemi. 1993. "Expressive Harms, 'Bizarre Districts,' and Voting Rights: Evaluating Election-District Appearances after *Shaw v. Reno*." Michigan Law Review 92: 3(December): 483-587.

McDonald, Laughlin. 2003. The Voting Rights Odyssey: Black Enfranchisement in Georgia. Cambridge University Press.

Swain, Carol M. 1995. Black Faces, Black Interests: The Representation of African Americans in Congress, Enlarged Edition. Cambridge, MA: Harvard University Press.

Thernstrom, Abigail. 1987. Whose Votes Count? Affirmative Action and Minority Voting Rights. Cambridge, MA: Harvard University Press.

Thernstrom, Abigail. 2006. "Understanding the Benefits and Costs of Section 5 Pre-Clearance: Hearing before the U.S. Senate Judiciary Committee. 109th Cong., 2nd Sess., 17 May.

Thernstrom, Stephen and Abigail Thernstrom. 1999. America in Black and White: One Nation, Indivisible. New York: Simon and Schuster.