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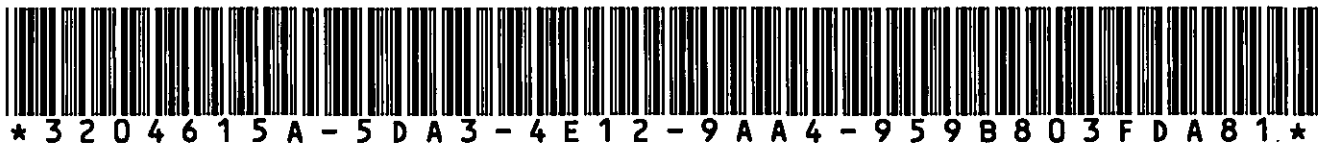

Texas Young Lawyers Association

Voter Rights and Registration Resource Guide 1990

Texas Young Lawyers Association

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I. INTRODUCTION

Texas Young Lawyers Association

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INTRODUCTION

1990 has been a remarkable year. People all over the world have celebrated new opportunities to participate in their governments and have seen progress in their battle for empowerment.

The United States, however, suffers from a decline in the number of people voting. Our country, which proclaims itself the beacon of democracy and judges other countries on the basis of how well they imitate our system, has one of the worst records of the world democracies for having people vote.

We nurture the idea that the people actually can make a difference. We raise our children to believe they really participate in government by picking those who make the decisions that impact their lives.

Of course, this is true. But a large part of the population is not participating. Our rulers are being picked by fewer and fewer people. The concern created by this diminishing pool of participants is whether those who are governing represent the needs of all the people or only a select few.

When large blocks of people are not voting, the candidates and the political parties shape the debate around only those who vote. Candidates and political parties are able to discard and abandon people who rely on them for help and protection in favor of trying to satisfy the agenda of the few, even though the agenda may conflict with the needs of large segments of the rest of the population. Those governing are able to ignore the rest of the population and survive politically. The resulting government is no longer true democracy where everyone's voice, or even a majority's voice, is heard. Instead, we experience a partial democracy, where the rulers listen to a limited call.

We must assure that more people vote. The spirit and vitality of a democracy depend on it.

The Texas Young Lawyers Association hopes to help educate Texans about not only the importance of voting, but how to exercise this important right. This resource guide is part of this effort. TYLA hopes to make a positive investment in our future by strengthening our popular form of government.

Kirk P. Watson, President
Texas Young Lawyers Association

Texas Young Lawyers Association
Vote

II. NATIONAL DEVELOPMENT OF VOTER RIGHTS

A. Historical Development of National Voter Rights Under the U.S. Constitution and Statutes

1869 - The 14th Amendment which guaranteed citizenship to former slaves was ratified.

1870 - The 15th Amendment which guaranteed black men the right to vote was ratified.

1920 - The 19th Amendment which guaranteed women the right to vote was ratified.

1957 - The Civil Rights Act of 1957 set up the U.S. Civil Rights Commission to inquire into claims of voter discrimination.

1960 - The Civil Rights Act of 1960 provided for the appointment of federal voting referees to register qualified persons to register to vote in federal elections.

1961 - The 23rd Amendment, giving the citizens of the District of Columbia the right to vote, in national elections, was ratified.

1964 - The 24th Amendment eliminating the use of a poll tax in national elections, was ratified. The Voting Rights Act of 1964 was enacted which forbade the use of any registration requirement in an unfair or discriminating fashion.

1965 - The Voting Rights Act of 1965 was passed (and extended by Amendments of 1970, 1975 and 1982) which suspended the use of any literacy test or similar device in any state or county where less than half of the population of voting age had been registered or had voted in the 1964 elections; the Attorney General was authorized to appoint voting examiners to serve in any of those states or counties with the power to register voters and otherwise oversee the conduct of elections in those areas; any new election laws in those states must obtain "pre-clearance" by the Department of Justice. States affected: Alabama, Georgia, Louisiana, Mississippi, South Carolina, Virginia, and 40 counties in North Carolina.

1970 - The Voting Rights Act of 1970 extended the 1965 Act for an additional five (5) years. Alaska, Arizona, California, Idaho, New Mexico and Oregon were added to the coverage of the Act.

1971 - The 26th Amendment extending the right of voting to individuals who are 18 years or older was ratified.

1975 - The Voting Rights Act was extended for seven (7) years; extended coverage to any state or county where more than 5% of the voting age population belongs to certain "language minorities" - persons of Spanish heritage, American Indians,

Asian Americans, and Alaskan natives. In each of those areas, all ballots and official election materials must be printed both in English and in the language of the minority or minorities involved.

1982 - Amendments to the Voting Rights Act were extended for another 25 years, except the language-minority provisions which are to remain in effect until 1992.

B. The Voting Rights Act of 1965

In the spring of 1965, "The Sound of Music" was playing in theaters throughout the country, LBJ was in the White House, the war in Vietnam was escalating, and Martin Luther King and his followers were preparing to march on Selma, Alabama. The problems encountered by black voters which were addressed by the Voting Rights Act of 1965 are possibly best exemplified by conditions in Selma, Alabama in 1965. King's proposed march from Selma to Montgomery and the ensuing violence all but assured the Act's passage.

In 1965, Selma had 29,500 residents - 14,400 whites, and 15,100 people of African American descent. The city's voting rolls were 99% white and 1% black. This phenomenon of virtually no registered African Americans voters in a city with a majority of African-Americans residents was a product of certain state voting laws common in the South during the '60s combined with the particular personality of Selma's sheriff - James Clark. Clark was a committed segregationist and many of his volunteers were Klu Klux Klansmen. They repeatedly turned African-Americans registrants away or arrested them for contempt of court, truancy, juvenile delinquency, or parading without a permit.[1]

In February, 1964, all Alabama County Boards of Registrars, including the Dallas County Board in Selma, began using a new application form for voter registration. This form included a complicated literacy and knowledge of government test. Since voter registration was permanent in Alabama, the great majority of white voters in Selma and Dallas County were already registered under previous, easier standards and did not have to pass the test. African-Americans, however, largely unregistered at the time, faced another substantial obstacle to voting.[2]

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[1] See "The Nation: Civil Rights," Time, (March 19, 1965), p. 23

[2] See Katzenbach, "Voting Rights Act of 1965," Vital Speeches of the Day, v. 31 (April 15, 1965), p. 391, 393

Under the new test, the applicant had to demonstrate his ability to spell by writing individual words as the registrar dictated them. Applicants in Selma were required to spell such difficult and technical words as "emolument," "capitation," "impeachment," "apportionment," and "despotism."[3]

Upon this scene in Selma in 1965 arrived the Reverend Martin Luther King and his followers. King organized hundreds of blacks at a time, and led them on marches to the county courthouse to register them as voters. Every attempt was met with resistance from Sheriff Clark. In seven weeks, Clark jailed no fewer than 2,000 men, women and children, including King, who dramatized the situation by refusing to make bond for four days.[4]

King called for a protest march from Selma to the state capitol in Montgomery, fifty miles away. The march was scheduled for Sunday afternoon on March 7, 1965. Ignoring an order from Governor Wallace forbidding the march, over 500 blacks and a few whites assembled at the Brown Chapel African Methodist Episcopal Church in Selma. One news story at the time described the scene as follows:

> The day was gray and hazy, and a gusty March wind roiled the muddy waters of the Alabama River as the column of Negroes filed across Edmund Pettus Bridge on the south edge of Selma, Ala. They had set out, 525 strong, to march to the seat of government in Montgomery to petition for a right that in the U.S. is supposed to be beyond debate: the right to vote. But now, just ahead, Gov. George C. Wallace had delivered his answer - a wall of state troopers and sheriff's possemen ranged across U.S. Highway 80 in the line of march.[5]

What followed has been called "... an orgy of police brutality, of clubs and whips and tear gas, of murder, of protests ..."[6] When the marchers came within 200 yards of the troops, a state policeman ordered the troopers to put on their gas masks. At 25 yards, the marchers halted. A policeman yelled through a bullhorn that the marchers had two minutes to disperse. When the marchers failed to move, the policeman gave the order: "Troopers - forward!" By raw force, troopers moved the marchers together and clubbed, whipped and gassed them.[7]

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[3] Id.

[4] See "The Nation: Civil Rights," Time, (March 19, 1965), p. 23

[5] See "An American Tragedy," Newsweek, (March 22, 1965), p. 18

[6] See "The Nation: Civil Rights," Time, (March 19, 1965), p. 23

[7] Id. at p. 24

In the wake of national outrage over the attack on the marchers, King ordered a new march two days later. King called on white ministers throughout the nation to join in the march, and the response was overwhelming. Amid Presidential intervention and negotiation, it was finally agreed that the marchers in this second march could cross the bridge to the previous confrontation point and kneel in the highway to pray. Though the second march proceeded without bloodshed, one of the ministers who participated in the second march was murdered on the following evening by a group of club-wielding whites.[8]

The response from the White House to the events in Selma was swift and forceful. President Johnson delivered one of the toughest civil-rights statements of his Presidency. In a televised press conference, Johnson called the events in Selma "an American tragedy ...[that] cannot and will not be repeated." The President promised to send an immediate message to Congress proposing laws to "strike down all restrictions" against black voting.[9]

Five months later, in the very setting where 104 years earlier Abraham Lincoln signed a bill freeing the slaves who had been pressed into Civil War service by the Confederacy, President Lyndon Johnson signed the Voting Rights Act of 1965 into law. In addressing top government officials and civil rights leaders, the President proclaimed, "Today is a triumph for freedom as huge as any victory won on any battlefield."[10]

QUESTIONS FOR DISCUSSION:

1. Explain how the literacy and government tests was used to keep African Americans from voting.

2. Why did President Johnson call the Voting Rights Act of 1965 "a triumph of freedom"?

3. How might the right to vote preserve freedom?

The Act: Technical provisions, amendments and interpretations.

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[8] Id. at p. 27

[9] See "An American Tragedy," Newsweek, (March 22, 1965), p. 18-19

[10] See "A Barrier Falls: The U.S. Negro Moves to Vote," Newsweek, (August 16, 1965), p. 15

The provisions of the Voting Rights Act are not easily explained without reference to relevant Supreme Court cases. In some instances, major amendments to the Act have been the result of Supreme Court holdings; other times, major Supreme Court holdings have followed amendments to the Act. Since it is easier to understand the Act and its amendments in light of law decided by the courts, this unit will present the Act in sections as it stood after passage in 1965 and continuing through its last amendment in 1982. Each section will contain a brief discussion of the major cases handed down during the specified period of time. Note that the Act is codified as amended at 42 U.S.C. §§ 1971, 1973 et seq. (1982).

A. 1965-1970

The 1960s in the United States were a time of great turmoil and change. Although right-to-vote measures had been passed in 1957 and 1960, such measures have been labeled "well-intentioned failures" because they rested on the painfully slow and tedious process of litigation.[11] Passage of the Voting Rights Act of 1965 signaled the advent of the modern voting rights movement.

The 1965 Act contained some provisions which applied nationwide, including a general prohibition on discrimination in voting. When the Act was originally passed, Section 2 prohibited states from imposing or applying law "to deny or abridge the right of any citizen of the United States to vote on account of race or color."[12]

Some of the most important provisions, however, specifically targeted seven southern states - Alabama, Georgia, Louisiana, Mississippi, South Carolina, Virginia, and portions of North Carolina. The two areas of the Act with the greatest impact on these States had the following effects:

** suspension of the use of "tests" (such as literacy, education, or good character) which denied or abridged the right to vote; and

** prohibition of enactment of any new discriminatory laws for five years by requiring the affected states to preclear all changes in their election practices with federal officials.

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[11] See "A Barrier Falls: The U.S. Negro Moves to Vote," Newsweek, (August 16, 1965), p. 15

[12] Pub. L. No. 89-110, § 2, 79 Stat. 437 (1965)

These Sections were applied to defeat conditions exemplified by Selma in 1965. Registration tests, such as the one in Alabama which required passage of a complicated literacy or knowledge of government exam, were invalidated by the Act. We now know, however, that the Voting Rights Act has more far-reaching effects than application only in vote denial situations. In order to understand the realm of conduct covered by the Act, we must look at Supreme Court activity during the years surrounding the Act's passage.

First, the concept of vote dilution was beginning to evolve out of court cases in the 1960s. Vote dilution is the concept that although minorities may have free access to registration and voting, certain practices in the states may still work to submerge minority voting strength and deny minorities equal and effective participation in the political process.

Though vote dilution may take many forms, the practice of at-large voting or multi-member districting gives rise to the majority of modern vote dilution claims. One commentator has defined the practice of at-large voting as follows:

> Under an at-large scheme all the residents of a town, county, or other jurisdiction vote for all the members of a city council, county commission, or other governmental body. The majority, if it votes as a bloc, can choose all the officeholders, thereby denying a discrete minority an effective opportunity to elect any representatives of its choice.[13]

In 1969, the Supreme Court made it clear that the Voting Rights Act applies not only in instances of denial of the right to vote but also in instances of vote dilution.[14] The Court stated that "[t]he right to vote can be affected by a dilution of voting power as well as by an absolute prohibition on casting a ballot."[15] The Court went on to hold that Section 5 preclearance applies to such changes as the adoption of at-large voting.

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[13]See McDonald, "The Quiet Revolution in Minority Voting Rights," Vanderbilt Law Review 1249, 1257 (May 1989)

[14]Allen v. State Board of Education, 393 US 544 (1969)

[15]Id. at 566-567

B. 1970-1975

The 1970 amendments to the Voting Rights Act had the following effects:

** extended (for five years) and nationalized the suspension of literacy and other tests for voting; and

** increased the number of jurisdictions subject to the preclearance requirement.

During this period, the courts began to grapple with the proof required to show vote dilution in violation of the Act. In 1973, the Supreme Court invalidated multi-seat legislative districts in Dallas and Bexar Counties because the districts diluted black and Mexican-Americans voting strength.[16]

The most important part of the White opinion, however, is not its holding but the Court's analysis of the case. The holding is based upon five factors demonstrated by the plaintiffs:

(1) a history of official discrimination against blacks in Dallas County and Mexican-Americans in Bexar County;
(2) the existence of a white slating group and racial campaign tactics in Dallas County;
(3) cultural and language barriers and depressed voter registration in Bexar County;
(4) a lack of responsiveness by elected officials to the needs of the minority community in Bexar County; and
(5) numbered post and majority vote requirements in both jurisdictions.[17]

For the first time, plaintiffs in vote dilution cases were given an indication of what proof would sustain a finding of violations under the Voting Rights Act.

Soon after the decision in White, the Fifth Circuit elaborated on the White factors in Zimmer v. McKeithen, 485 F2d 1297 (5th Cir. 1973). The Fifth Circuit expanded the criteria to be used in vote dilution cases, and this new criteria became known as the Zimmer criteria.

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[16]White v. Regester, 412 US 755 (1973)

[17]White, 412 US at 766-769

The Zimmer criteria includes the following factors to be considered:

(1) a lack of access to the process of slating candidates;
(2) the unresponsiveness of legislators to the particularized interests of the minority community;
(3) a tenuous state policy underlying the preference for multi-member or at-large districting; and
(4) the existence of past discrimination in general that precluded effective minority participation in the election system.[18]

The Zimmer court also listed some enhancing factors to be considered including (1) the existence of large districts; (2) majority vote requirements; (3) anti-single shot voting provisions; and (4) the lack of provisions for at-large candidates running from particular geographical subdistricts.[19]

C. 1975 - 1982

The 1975 amendments to the Voting Rights Act had the following effects:

** the suspension of the use of literacy and other tests for voting were made permanent;

** preclearance was extended for another seven years;

** the coverage of the act was enlarged to include additional jurisdictions; and

** for the first time, protection was extended to "language minorities."

Thereafter, in 1980, the Supreme Court handed down its landmark opinion in City of Mobile v. Bolden.[20] In Bolden, the Supreme Court established a subjective intent standard for vote dilution claims, requiring plaintiffs to produce evidence that a challenged practice was racially motivated in order to show violation of Section 2 of the Act. The plurality held that proof of the Zimmer factors would be insufficient to show an unconstitutionally discriminatory purpose.[21]

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[18] Zimmer, 485 F.2d at 1305

[19] Id.

[20] 446 US 55 (1980).

[21] Bolden, 446 US at 73

D. 1982 - Present

The 1982 amendments to the Voting Rights Act could be accurately characterized as "The Legislature Strikes Back." The legislature was unhappy with the subjective intent test as articulated by the Supreme Court in Bolden and, as a result, Section 2 of the Act was amended to adopt the "results test." Section 2 now provides that no law may be imposed or applied "in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color ..."[22]

Violations can now be established by showing the discriminatory effect of the challenged practices as contemplated in the White opinion. A showing of racial motivation for a challenged practice is no longer necessary. Section 2(b) also includes a "disclaimer" which provides that Section 2 does not give minorities a right to proportional representation.

The legislative history of the 1982 amendments indicates that Congress was seeking to reinstate an analysis based on the factors set out in the White and Zimmer cases.[23]

The first real opportunity for the Court to construe amended Section 2 came in 1986 with Thornburg v. Gingles.[24] In Gingles, plaintiffs challenged North Carolina's 1981 state legislative redistricting plan. Plaintiffs alleged that the plan diluted minority voting strength by submerging concentrations of black voters within a white majority. In each of the challenged districts, the district court found violations of the plaintiffs' right to participate in the political process on an equal basis.[25] The Supreme Court affirmed the district court in all but one of the challenged districts.

In Gingles, the Supreme Court returned to the White-Zimmer analysis but emphasized some factors over others. The following factors derived from White-Zimmer are given more weight in Gingles:

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[22]42 U.S.C. §§ 1973 (1982) (emphasis added)

[23]See Senate Judiciary Committee Majority Report at 28-29, and Thornburg v. Gingles, 478 US 30, 36-37 (1986)

[24]478 US 30 (1986).

[25]Gingles v. Edmisten, 590 F. Supp. 345 (E.D. N.C. 1984)

(1) a showing that the minority is sufficiently large and geographically compact to constitute a majority in one or more single member districts;
(2) a showing that the minority is politically cohesive, or tends to vote as a bloc;
(3) a showing that the majority votes sufficiently as a bloc usually to defeat the minority's preferred candidate.[26]

Recently, the question has arisen whether the Voting Rights Act applies to the election of state judges. It has been suggested that Section 2 is not applicable in judicial elections because Section 2(b) contains the phrase "to elect representatives of their choice," and judges are not representatives.[27] The Fifth Circuit, however, expressly rejected this argument and held that Section 2 does apply to judicial elections.[28]

A federal district court in Texas recently followed Chisom and held that the at-large system of electing state district judges in nine Texas counties is violative of Section 2 of the Act.[29] The LULAC opinion is currently on appeal before the Fifth Circuit. (League of United Latin American Citizens)

Although the current provisions of the Voting Rights Act may seem confusing at first glance, the following general principles are fairly clear:

** States are not allowed to pass or retain laws regarding voting practices which have a discriminatory effect;

** Under the Act, discriminatory intent is not required to be shown as long as the effect of the practice is discriminatory;

** The Act applies not only to laws which effect outright denials of the right to vote (i.e., literacy tests), but is also directed at laws which submerge minority voting strength (i.e., at-large voting).

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[26] Gingles, 478 US at 48-49

[27] Chisom v. Edwards, 659 F.Supp.. 183, 186 (E.D. La. 1987)

[28] Chisom v. Edwards, 839 F.2d 1056 (5th Cir. 1988), cert. denied sub nom. Roemer v. Chisom, US ___, 109 S.Ct. 390, 102 L.Ed.2d 379 (1988)

[29] League of United Latin American Citizens, Council No. 4434 v. Mattox, No. MO-88-CA-154 (W.D. Tx. November 8, 1989)

** Violations of the Act may be shown from a totality of the circumstances by taking into account the factors which have been set out in caselaw.

QUESTIONS FOR DISCUSSION:

1. What is the difference between vote denial and vote dilution? Give an example of each.

2. In the 1980s, amendments to the Voting Rights Act modified the standard to judge the cases from subjective intent to a results test. Is it now easier or more difficult to prove discrimination?

III. Case Studies On Voting Rights*

A. U.S. Supreme Court

MINOR V. HAPPERSETT (1875)

By the early 1870s, women had begun fighting hard for the right to vote. The president of the Missouri Woman Suffrage Association, Mrs. Virginia Minor, tried to register to vote. The St. Louis registrar, Mr. Reese Happersett, refused to permit her. The Missouri Constitution - like the ones in every other state in the Union at the time - specifically barred women from voting. It said that in Missouri, "Every male citizen of the United States...shall be entitled to vote."

Mrs. Minor attacked this clause in court. She said it violated the Fourteenth Amendment's "Privileges and Immunities Clause" of the U.S. Constitution. As a United States citizen, she argued that she had a right to take part in government. She said this included the right to choose one's representatives. According to the Fourteenth Amendment, no state could violate her privileges as a citizen.

The state of Missouri agreed that Mrs. Minor was a citizen. But citizenship had been granted to women when the nation was founded - long before the adoption of the Fourteenth Amendment. The real question, said the state, was whether the Constitution originally required that citizenship included the right to vote. The Constitution does not expressly say what are included as "privileges and immunities." Even when the Constitution was first adopted, not all citizens had the right to vote. At that time, certain classes of men were denied suffrage - because of property qualifications, skin color, mental unfitness, or criminal records. Therefore, contended Missouri, states were equally within their power to also exclude women from voting. The case eventually came before the U.S. Supreme Court.

(Answers and results of Court Ruling on p. 21)

QUESTIONS FOR DISCUSSION:

1. Do you think that citizenship, by its very nature, implies the right to vote? Explain. Should all citizens in a democracy have the right to vote? Should all citizens in a dictatorship? Explain your answers.

2. Should states be allowed to deny all women the right to vote because certain classes of men were barred from suffrage when the U.S. Constitution was first adopted? Explain.

* These case studies are reprinted from Vital Issues of the Constitution, published by Harcourt Brace Jovanovich.

3. Why do you think all states continued to deny women suffrage even after the adoption of the Fifteenth Amendment?

4. How do you think the Supreme Court ruled in the Minor case? What bearing do you think the Nineteenth Amendment has on the Court's decision? Compare your answer with the Court's ruling.

SMITH V. ALLWRIGHT (1944)

Lonnie Smith was frustrated. He felt he had no real vote in his state of Texas. A citizen of African-American descent of Harris County, Mr. Smith attempted to vote in a Democratic primary election. He was refused. Only Democrats could vote here, and the party had barred blacks from its membership.

In the primary election, the political party nominated candidates for United States Senator, members of the House of Representatives, and the state governor. In theory, these nominees could be opposed by other candidates in the later general election. But because the Democratic Party was the only effective political party in Texas at that time, its nominees - practically speaking - were as good as elected. The real choice among persons to fill each office was made in the primary.

Mr. Smith went to court and attacked this arrangement. He fulfilled all requirements for voting in the general election as spelled out by the Texas Constitution. He argued that his rights under the Fifteenth Amendment were being violated by the Texas "one-party" primary system.

The state of Texas argued that the Democratic Party was a "voluntary association." It was a private group and, as such, it could determine its own membership and policies. Texas contended that such private matters were outside the control of its official power. The case eventually was heard by the U.S. Supreme Court.

QUESTIONS FOR DISCUSSION:

1. In what way, if any, did the Democratic Party's policy affect Mr. Smith's right to vote as long as he could still vote in the general election?

2. To what extent, if any, do you agree with the argument that a political party has the right to choose its own members? Give reasons for your answer.

3. Do you think the Fifteenth Amendment should apply to a political party's primary elections as well as to the general elections? Explain.

4. How would you have ruled in this case? Why? Compare your answer with the U.S. Supreme Court's ruling.

BAKER V. CARR (1962)

Decatur County and Carter County both had the same number of representatives in the Tennessee legislature. Yet Carter County had four times as many people as Decatur did. Such inequalities were common throughout the state. The counties with the fewest representatives in proportion to their population tended to be those with cities in them. Critics said that the over-representation of rural districts created a legislature that tended to ignore urban problems.

Mayor Baker of Nashville filed a suit in court. He argued that this "political discrimination" violated the Equal Protection Clause of the Fourteenth Amendment. The Tennessee Constitution had provided for reapportionment - that is, a readjustment of the number of legislators according to population changes - every ten years. Nevertheless, the state legislature had made no changes since 1901. Baker asked the court to prevent any further elections until districts could be redivided more evenly according to the latest census figures.

The state of Tennessee argued that a balance should be struck in the legislature between urban and rural influence - rather than apportionment based purely on population. Besides, said Tennessee, federal courts had no right to interfere in this matter. Apportionment was a "political question" which had been traditionally left for legislators to decide. The case eventually was heard by the U.S. Supreme Court.

QUESTIONS FOR DISCUSSION:

1. Do you think it is wise for a state legislature to guard against a predominantly "city point-of-view?" Why or why not?

2. In what way, if any, does unequal representation in a state legislature deny some voters equal protection of the laws? Do you agree or disagree with the argument that unequal representation is a form of discrimination? Explain.

3. Do you think reapportionment is a "political question" that ought to be decided by the state legislature - without any interference from federal courts? How successful would under-represented citizens be in getting an unfairly apportioned legislature to reapportion itself? Explain your answers.

4. How would you have ruled in the Baker case? Why? Compare your answer with the U.S. Supreme Court's ruling.

HARPER V. VIRGINIA BOARD OF ELECTIONS (1966)

A poll tax, or annual fee, of $1.50 was required of every Virginia citizen 21 years of age or older to be eligible to vote in state elections. A person had to pay the tax for three years before the year in which he registered to vote. Those who did not pay did not vote.

In 1964, the Twenty-fourth Amendment to the U.S. Constitution was adopted, outlawing the poll tax in federal elections. Many states, however, still had a poll tax for voting in state elections. Virginia was one of them.

A group of Virginia citizens went to court to get the state's poll tax ruled unconstitutional. They argued that the Equal Protection Clause of the Fourteenth Amendment forbids a state from making discriminatory voter qualifications. A person's economic status should not be a qualification for voting, they contended.

The state of Virginia replied that it had the lawful power to collect many different kinds of fees from its citizens. If the state could demand a fee for a driver's license, for example, it could also demand a fee for voting. The case eventually was heard by the U.S. Supreme Court.

QUESTIONS FOR DISCUSSION:

1. How, if at all, do you think the Virginia poll tax was discriminatory? Explain.

2. States frequently deny the vote to insane persons and those convicted of serious crimes. If states constitutionally can do this, should they also be allowed to deny the vote to citizens who refuse to pay a small annual fee? Explain.

3. Should the restrictions of the Twenty-fourth Amendment also apply to elections for state officials? Why or why not?

4. How would you have ruled in the Harper case? Why? Compare your answer with the U.S. Supreme Court's ruling.

SUPREME COURT DECISIONS

MINOR V. HAPPERSETT (1875)

The U.S. Supreme Court ruled against Mrs. Minor and upheld the right of states to exclude women from voting. The opinion was written by Chief Justice Waite. He said the Constitution did not originally confer the right of suffrage upon anyone. It had left to each state the decision as to which of its citizens could vote. For almost a century, said the Court, states had commonly denied suffrage to women. Lacking clear words to the contrary in the Constitution itself or any amendment up to that time, Justice Waite felt the long-settled practice should stand. The role of the Court, he said, "is to decide what the law is, not to declare what it should be."

SMITH V. ALLWRIGHT (1944)

The U.S. Supreme Court ruled in favor of Smith. In an opinion by Justice Reed, it held that primary elections in Texas were an important part of the state machinery for choosing officials. Generally, membership in a political party was no concern of a state. But here, membership was also the essential qualification for voting in a primary - which, in turn, was part of the official election system. Therefore, reasoned the Court, the action of the party amounted to action of the state. The Fifteenth Amendment forbids any state to discriminate against voters "on account of race."

BAKER V. CARR (1962)

The U.S. Supreme Court ruled in favor of Mayor Baker. The opinion was written by Justice Brennan. First, the Court held that the under-represented urban districts had been denied equal protection of the laws. The apportioned number of representatives for the Tennessee legislature was a "crazy quilt without rational basis." There was an "unjustifiable inequality" between counties. And second, the Court tossed out the argument that apportionment was purely a "political question" for the legislature to decide. A citizen's right to relief under the Equal Protection Clause, declared the Court, is not lessened because the discrimination against him involves political rights. Tennessee voters had tried unsuccessfully to get the legislature to reapportion itself more evenly. But the over-represented rural districts, which held the lion's share of power, checked all such moves. Tennessee voters in this case, said the Supreme Court, had no other way to get relief than by going to a federal court.

HARPER V. VIRGINIA BOARD OF ELECTIONS (1966)

The U.S. Supreme Court - in an opinion by Justice Douglas - ruled that the poll tax, even for state elections, was unconstitutional. "A state violates the Equal Protection Clause of the Fourteenth Amendment," said Douglas, "whenever it makes the affluence of the voter or payment of any fee an electoral standard. Voter qualifications have no relation to wealth..." The right to vote is too precious to be burdened in this way. Justice Black wrote a dissenting opinion.

B. Texas Cases

GLOVER V. COBB (1938)[30]

This suit arose when the Tax Assessor and Collector, Sheriff, County Clerk and District Clerk of Dallas County refused to place Ms. Glover's and other women's names in the jury wheel for jury service in Dallas County. Ms. Glover contended that the right to vote which had been granted to women necessarily carried the right for women to serve as jurors. She contended that Article 2133 of the Texas statutes which provided that "All men over 21 years of age are competent jurors ..." took on a new meaning by virtue of women's right to vote, and that the word "men" in the statute should be construed to include women.

The trial court had dismissed the action on the basis that Ms. Glover had failed to state a claim and she appealed that decision.

The appellate court held that the granting of the right for women to vote did not necessarily make women eligible and competent jurors and further that the right to vote and competency for jury service are different subjects, requiring different regulation. The Court examined the constitutional and statutory history of the subject and found that the Legislature repeatedly announced that men only were eligible for jury service and until the Legislature prescribed other qualifications for jurors, only men were eligible. Accordingly, the Appellate Court affirmed the decision of the trial court that Ms. Glover could not maintain this action.

QUESTIONS FOR DISCUSSION:

1. Do you think that the right to vote and competency for jury service are different subjects? In what ways are they similiar? In what ways different? How might different qualifications be justified? Explain.

2. If this case had been heard in federal court, what amendments to the U.S. Constitution would apply?

3. How would you decide this case?

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[30]123 S.W.2d 794 (Tex.App. - Dallas, 1938)

UNITED STATES OF AMERICA V. STATE OF TEXAS, et al,[31]

This case was filed by the United States of America to prohibit a Texas voting registrar from refusing to register college dormitory students unless they established that they intended to remain in the community after graduation. The evidence showed that the registrar routinely registered persons personally known to him or his deputies as being residents of Waller County without any inquiry other than filling out the State form. He also routinely registered persons in the county who were listed on the tax roles as owning property or having an address in the county. All other persons were required to complete an additional questionnaire which asked detailed questions, including whether they were college students and whether they owned any property or had a job in the county. The evidence showed that a very small percentage of the persons who completed the questionnaire were registered as voters and none were dormitory students. The evidence also showed that none of the registrars of the 70 other Texas counties containing institutions of higher learning followed the procedure of requiring an additional questionnaire.

The United States alleged that the registrar improperly denied voter registration to college students and that the questionnaire was used as part of a pattern of conduct to deny students the right to vote.

The Court examined a number of Texas cases relating to residency requirements and found that the registrar's procedure and criteria in dealing with dormitory students was inconsistent with those cases. Thus, the Court ordered that a detailed injunction was appropriate to prohibit the registrar from continuing to apply an erroneous rule of law in determining residency of college students. The Court did not grant any relief to the United States against the County Commissioners, the State of Texas, the Secretary of State of Texas, or the Attorney General, finding that they had taken all practicable steps to encourage the Registrar to apply a correct rule of law and to protect the 14th, 15th and 26th Amendment rights of the dormitory students.

QUESTIONS FOR DISCUSSION:

1. List two arguments for and two against allowing college dormitory students to register to vote in the county of their college.

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[31] 445 F.Supp. 1245 (S.D.Tex. 1978)

2. How would you decide this case? Write a one to two paragraph decision.

UNITED STATES OF AMERICA V. UVALDE CONSOLIDATED INDEPENDENT SCHOOL DISTRICT,[32]

This suit involved a complaint by the Attorney General, brought in the name of the United States under the Voting Rights Act of 1965 as amended, alleging that an at-large system of electing representatives to the Uvalde School Board was implemented with the intent and purpose of injuring Mexican-Americans voters. The trial court dismissed the suit for failure to state a claim. On appeal, the issue was whether any set of facts supported the allegations of the Complaint.

The Appellate Court analyzed previous cases and held that these cases recognized that at-large districting may result in substantial dilution of a minority vote and therefore constitute unconstitutional infringement of the right to vote if a discriminatory purpose is shown. In examining the Legislative history, the Court held that Section 2 of the Voting Rights Act as amended was intended to provide the Attorney General with a means of combatting the use of at-large districting plans to dilute the Mexican-Americans vote. The Voting Rights Act only applies to a state or political subdivision and the School District argued that the Voting Rights Act did not include school districts. The Court concluded that a school board is a political subdivision for Section 2 purposes and reversed and remanded the case for a further hearing.

QUESTIONS FOR DISCUSSION:

1. Explain how it might be argued that an at-large election system dilutes a minority group's vote.

2. Do you agree with the Court that a school board is a political subdivision? Why or why not?

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[32]625 F.2d 547 (5th Cir. 1980)

SIERRA V. EL PASO INDEPENDENT SCHOOL DISTRICT,[33]

The Mexican-Americans voters in the El Paso Independent School District sued the School District alleging that the present system of electing members of the Board of Trustees for the School District violates the 14th and 15th Amendments of the Constitution and the Voting Rights Act. The voters contended that the at-large, by-place, majority runoff system diluted the voting strength of Mexican-Americans.

In order to support a finding of unconstitutional vote dilution under either the 14th or 15th Amendment, it must be shown that there was a discriminatory purpose. The Court held that there was no evidence that the Board of Trustees adopted any feature of the present election system for the purpose of discriminating against any minority or ethnic group. Thus, the Court found no violation of the 14th or 15th Amendments to the Constitution.

In analyzing whether there was a violation of the Voting Rights Act, the Court noted that the voters had to prove that the system in place either was adopted with the intent to discriminate or that the system results in minorities being denied equal access to the political process.

First, the Court found that there were past discriminatory practices, namely the poll tax and the English language ballot, which, although no longer in effect, continued to contribute to lower percentages of Mexican-Americans voting in elections. Additionally, the evidence showed that voting in the school district elections was highly polarized along ethnic lines, and that the present system places Mexican-Americans at a significant disadvantage in electing candidates to the Board of Trustees. Other factors which the court considered were whether there was a candidate slating process and whether Mexican-Americans have been denied access to the slating process, whether Mexican-Americans in the district are discriminated in the areas of health, education and employment, whether campaigns have been characterized by overt or subtle racial appeals, and the extent to which Mexican-Americans have been elected to office in the district. Considering each of these factors, the Court found no violations which had the effect of discriminating against Mexican-Americans.

In considering the totality of circumstances as required by the Voting Rights Act, the Court found that the present at-large by-place, majority runoff nonpartisan election of school board trustees tends to deprive Mexican-Americans of an equal

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[33]591 F.Supp.. 802 (W.D.Tex. 1984)

opportunity to elect candidates of their choice. Thus, the Court ordered that the El Paso Independent School District and its Board of Trustees must submit an apportionment plan dividing the district and that all at-large elections must be enjoined pending approval of a single member district plan.

QUESTIONS FOR DISCUSSION:

1. List the factors that the Court reviewed in deciding the case.

2. Do you think that it is fair to require a discriminatory purpose in order to find unconstructional vote dilution? Is all discrimination done on purpose? Explain your answers.

III. STATE VOTER REGISTRATION

III. STATE VOTER REGISTRATION

The United States has the worst voter turnout of all major democracies in the world. In the 1984 Presidential election, only 53% of eligible Americans cast ballots. Compared to the other 19 world democracies we rank at the bottom on voter turnout. At the local level, even smaller percentages determine the outcome of school board and city council elections generally attracting between 5 to 25 percent of the eligible vote. Yet, voter turnout improves dramatically when considering only registered voters. Eighty-seven percent of those registered voted in 1984, placing the United States in line with the other major world democracies. Once registered, Americans tend to vote.

Not only is overall turnout low, the make-up of the American electorate is skewed in favor of the more affluent and better educated. In 1980, 54% of the poor, defined as those with incomes below $10,000, were registered while 79% of those with incomes over $25,000 were enrolled.

In terms of voting strength, both classes make up approximately the same percentage of the population; however, the poor made up only 17% of the total vote while the more affluent made up 35% of the votes cast. With lower registration and turnout rates, the poor drastically reduce their voting strength.

The traditional school of thought characterizes low voter participation in America as simply voter apathy. According to this theory some sort of political "malaise" has set in, resulting in a lack of motivation to vote. However, this theory fails to explain why the poor, those who have the most to gain from voting, stay home in greater numbers than any other group.

Those on the left regard low participation as a more deliberate act - an unorganized, mass boycott of electoral politics. The argument is that those who vote the least, the poor, stay away because neither political party addresses their needs. Analysts on the left claim voter turnout would increase significantly if our political system were more closely modeled after Western Europe's class-based political system. The poor would be motivated to vote if there were better candidates or campaigns were more issue oriented.

Certainly some voters do stay home because they have little interest in who gets elected and some do not participate because either they do not like the candidates or they do not feel that the candidates are addressing the pertinent issues. A new theory points to another problem, the system of voter registration.

Ever since our present day system of personal registration was instituted in the late 19th and early 20th century, voter turnout has declined.

A. The History of the Requirement to Register to Vote

"Registration began to appear in the separate states not long after the Civil War, coinciding with mounting demands that Blacks, women, and other untouchables be allowed to vote. Along with poll taxes and literacy tests, registration served, often deliberately, sometimes inadvertently, to offset what otherwise have been a new burst of participation."

Senator Alan Cranston, March 1987.

With no provision in the U.S. Constitution for determining the qualifications of voters, states were free to establish their own criteria. Initially, most states restricted the franchise to white land-owning males. Immigrant classes were prohibited from voting by the Naturalization Act, passed late in the 18th century, and most African-Americans could not vote due to their status as non-citizens. Consequently, voter participation was very low. It is estimated that only 3.5% of the adult population participated in the 1788 House of Representatives election.

Slowly, participation began to rise in the 19th century with the elimination of the requirement to own property. Although voting was still restricted primarily to Anglo males, the election of 1824 saw turnout rise to 27% and surge to 80% by 1840. Turnout remained high for the remainder of the century as African-American males were allowed to vote, for the first time, after the Civil War. The extension of the franchise to non-propertied white males and African-Americans contributed heavily to record turnouts which ranged from 69% to 83% in national elections through the end of the century.

The pattern of widescale participation began to change by the late 1800s as states began to use place voting as a mechanism to discourage minority voting. Place voting involved the use of multi-member elections in which a candidate declares for a place on the ballot and all the voters cast their ballots for the candidate in that place.

Other methods to disenfranchise were utilized to discourage minority participation. One example was the "eight-box" law. This voting practice required the voter to put separate ballots in each of eight boxes marked for different candidates making it next to impossible for the less than fully literate to get their votes counted. As a practice, if a ballot was placed in the wrong box it was thrown out, although it may have been marked properly and could have easily been included in official tabulations.

Violence was another common practice inflicted upon those who generally voted against the interests of the powerful financial interests in the community.

Other barriers to voting included poll taxes, literacy tests, lengthy residency requirements, and an annual registry of voters. By 1896, most Southern states had established widespread restrictions to voting.

Northern states got into the act also. With the passage of the Naturalization Act in the late 18th century, northern states adopted what turned out to be a very popular practice - a lengthy residency requirement. This practice proved to be quite effective in keeping newly arriving immigrants from voting. Some jurisdictions went so far as to require a residency stay of 14 years before one could vote.

Passage of laws disenfranchising voters was morally troubling to the proponents. In advocating for their adoption, supporters argued that the changes would serve to "purify" the election process. However, many expressed disappointment that white voters would also be disenfranchised. Recognizing the bad morality of their actions, a number of states went so far as to stipulate that all poll tax revenue be set aside strictly for public education.

The various disenfranchising techniques adopted by the states proved to be surprisingly successful. After the defeat of Populist William Jennings Bryan by industrialist William McKinley in the 1896 Presidential election, restrictions to voting became more and more commonplace. McKinley backers, recognizing the value of a narrower electorate, pushed for widespread adoption of restrictions, especially outside the south.

More and more states adopted registration to vote requirements in the form of poll taxes, literacy tests, and the signing of an annual registry. By the turn of the century, 30% of counties outside the South had voter registration requirements. Increasingly, more and more voters were required to register as a prerequisite to voting and by 1940, 60% of counties outside the south had adopted registration requirements. Corresponding with the new registration requirement was the steady decrease in voter participation overall. During that same forty-year period, voter turnout nationally dropped from 74% to 62%, starting a trend that continued into the 1980s.

As the restrictions were employed with greater and greater frequency, voter participation dropped dramatically, with African-Americans and poor whites literally disappearing from the rolls. In Texas, the African-American vote nearly disappeared. In the 1890s, an estimated 100,000 African-Americans were voting statewide and by 1904 that dropped to 5,000. The same pattern occurred all across the south. African-American participation fell from 80% to 18% in Mississippi between 1884 and 1904, and in Arkansas it declined from 66% to 33% during that same twenty-year

period. The decline was felt nationally as northern states got into the act of limiting participation among immigrants. Between 1896 and 1924, voter participation nationally dropped 30 percentage points.

From the beginning, there was considerable debate over whether the right to vote should be included in the U.S. Constitution. Led by Constitution drafter Ben Franklin, who advocated for a broad franchise, the debates ranged in scope from far-reaching economic discriminators to fighting in the American Revolution as the only criteria. The sometimes bitter debates did not resolve the issue and it was left up to the individual states as to who could and couldn't vote.

Not until the end of the Civil War was there another attempt to establish national voting standards for all citizens. The 15th Amendment, which was ratified in 1870 as a direct result of the Civil War, provided an explicit right:

> "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude."

Fifteen years later, the U.S. Supreme Court struck down a San Francisco city ordinance which was used to discriminate against citizens of Chinese ancestry. The court asserted that voting was "a fundamental political right" accorded to all citizens.

After the turn of the century two more Constitutional amendments were adopted. The 17th Amendment provided for direct election of Senators and the 19th Amendment, ratified in 1920, extended the franchise, for the first time, to women.

Against considerable odds, women all across the country struggled long and hard to win the right to vote. The beginning of what is generally referred to as the "suffrage movement" was in 1848 when the issue was moved to the front of the agenda of a national conference on women's issues. Seventy years later, the hardfought struggle culminated in the adoption of the 19th Amendment to the Constitution.

One heroic story centers around Texas suffrage activist Jane McCallum who, after being challenged by a group of state legislators, organized a drive that registered 389,000 women in 17 days. She worked out of her kitchen without amenities, of course, such as a telephone or car. Similar successes occurred across the country.

The passage of the Voting Rights Act of 1965 eliminated the last vestiges of legal barriers that prevented large blocs of citizens from voting. Although solely a state function, the

federal government has, since the beginning, played a role in helping establish voting rights for all. Today, the 1965 Act serves as the principal weapon in the fight against discriminatory registration and voting practices.

QUESTIONS FOR DISCUSSION:

1. What barriers to voting were set up in the late 19th century and existed until 1965?

2. Why would an individual or group of persons set up barriers to voting?

3. What evidence is there that these barriers did indeed reduce voter turnout?

4. States Rights and Voter Registration Laws Today

"An especially insidious aspect of the burden of registration is the evidence that the burden of State and local registration requirements falls most heavily on the poor, the black, the uneducated, and manual service workers."

Senator Ted Kennedy, October 1971

Today voter registration is solely a function of state government. With few restrictions, states set registration requirements, maintain official registration rosters, and determine who is eligible and the process by which one registers to vote.

Major changes have taken place in the past twenty years at the state level. The Rio Grande Valley is a good example. In the early and mid-1970s virtually every school board, city and county commissioners and most state representative seats were controlled by the Anglo establishment, even though the Valley is 82% Mexican-American. The double hammer of single-member district legislation and aggressive voter registration turned that around so that now the school boards, government commissions, representatives, and judgeships reflect the population of the Valley much more.

After the passage of the Voting Rights Acts of 1965 and 1970 many states had to significantly alter their registration laws to conform to the changes. The 1965 Act did away with poll taxes and other more onerous impediments to registration. And when the Voting Rights Act of 1970 was enacted, many states still required voters to pass a literacy test before registering, which the Act forbade. In addition, the 1970 Act required no longer than a 30-day residency requirement for federal elections, a practice most states adopted for all elections. Up until then, many states had maintained lengthy residency requirements, some of which were months in duration.

Other changes that took place in the 1970s included doing away with the system of personal registration. For example, up until 1976, Texans wishing to vote had to declare their intent by going through a process of signing an annual registry, during a specified time to be considered eligible to vote.

At the federal level, the U.S. Senate was taking up a radically different proposal entitled the Universal Voter Registration Act of 1971, sponsored by Senator Ted Kennedy. Among other things the legislation would have created was a federal Universal Voter Registration Administration responsible for enrolling all eligible voters - a fundamental change from the traditional method of personal registration. The proposed bill would shift the burden of registering to vote away from being solely an individual act. The sponsor pointed out that the U.S. has the lowest voter turnout and a voter registration process that is dramatically different from anywhere else in the world. The legislation did not fare well and was never enacted into law.

Two other significant changes in the 1970s were attempts to increase voter participation by eliminating the registration closing date before elections and increasing access to registration by the establishment of "motor voter" programs. Six states adopted "election day" registration, a provision which allow for voters to register and vote the day of the election. The State of Minnesota has been most successful with election day registration, adopting it in 1972 when 18-year-olds were granted the right to vote.

The other significant change during the 1970s was the adoption of new methods of voter registration, some brought about by the courts. One of the most innovative was the State of Michigan's establishment of a "motor voter" program whereby one can register to vote while obtaining a driver's license. Heralded as a great success, this idea became a major part of the reforms that took place in the 1980s. Also, in response to a court mandate, the State of Texas abolished its requirement for annual registration and adopted the present day system of post-card registration. A number of states adopted a similar post-card registration process, essentially doing away with the requirement for a personal appearance before the registrar.

The decade of the 1980s brought about even more reforms of state voter registration systems. More and more the focus was on the deplorable rate of participation of U.S. voters and the need for major changes in how this country conducts voter registration, including increasing access to the registration process. In the early 1980s two states, Colorado and Arizona, followed Michigan's model and established motor voter programs. For both states, the change was done through citizen initiative rather than legislative directive.

A motor-voter bill was introduced in the Texas House of Representatives in 1989 but was defeated because of arguments that the costs of printing registration cards and postage were too high. Representatives of various South Texas cities have pledged to reintroduce the bill again and to secure its passage.

A number of states took a different tact, using the constitutional authority of the state's chief executive to establish voter registration outreach programs. Governors of the states of Texas, Ohio, and New York took the motor voter idea one step further and ordered all state agencies to register voters as part of their obligation to the public. The significance of these efforts was that the burden of registering was shifted, for the first time, from being solely an individual responsibility to one where the state had an obligation.

By the end of 1989, 23 states and the District of Columbia had initiated either a motor voter program or some form of the expanded version whereby state agencies enroll voters on a routine basis. This "agency-based" registration idea is considered one of the most significant reforms coming out of the 1980s.

Other issues that emerged included adoption of election day registration, enactment of mail-in registration laws where none existed previously, greater use of technology to enhance the democratic process, efforts to increase voter turnout among the young, and constitutional challenges to voter registration and purging practices that many feel are discriminatory.

Although the last two decades brought about some registration changes, most states continue to maintain systems of registration that make it difficult for the average voter to stay on the voting rolls. In 1990, twenty-four states required voters to appear in person to register - usually at a courthouse during working hours. For example, in Louisiana, voters must appear before the parish registrar, a person who is appointed to that position for life, in order to register. No registration can take place outside the registrar's office. The State of Mississippi had a system of dual registration - one for municipal elections and another for all others until 1987 when it was struck down by the courts. The State of Massachusetts maintains a system which requires a personal appearance by the voter in order to register.

Once overcoming the difficulties in registration, voters must face another difficulty - staying on the registration rolls. Forty-three states strike voters from the rolls simply for not voting. Six states cancel a voter's registration for failing to vote in one general election (every two years). This very common practice of purging the voter rolls is justified as a method of keeping the voter rolls accurate. However, there is

little justification for removing a voter from the rolls simply for not voting. One has a constitutional right to "vote with their feet" as the courts have ruled, and register a silent protest by choosing not to participate, if they wish.

Other problems that exist center around the vast amount of discretion granted to local elections officials. Voting rights advocates have filed numerous lawsuits where local clerks failed to deputize volunteers because of such things as their political persuasion.

Such lawsuits, and others in Texas, challenging the election code for its unfair treatment of minorities and the effect it has had of discouraging minority particiation, have produced more liberal registration laws. But some have a deputization requirement, meaning that volunteers conducting registration must take a sworn oath performed by local elections officials before enrolling new voters. In some states restrictions prohibit a deputy from registering a voter outside the county or local governing jurisdiction. In one state - Michigan, there are more than 1,500 registration districts and a deputy can only register voters in the district in which they reside.

Today 70 million Americans are <u>not</u> registered to vote. In Texas, approximately four million eligible Texans are not enrolled at any given time. (See Table 1.5, p. 45) This large pool of nonregistered persons depresses voter turnout. The United States has the lowest voter turnout because approximately one-third of all eligible voters are not enrolled at any given time. As mentioned earlier, this creates the perception that Americans are apathetic about their political process. However, once registered, Americans do tend to vote. Over 80% of registered voters cast ballots in national elections, and this figure has remained unchanged for decades.

The registration system in the United States leaves the burden of registration solely with the individual. There is no government agency or office that registers people, nor are public funds expended to enroll voters. Compare that with our national census. Government canvassers are paid to go out and count each and every family for the official census count. What would happen if everyone had to report in person at a government office in order to be counted?

Every other major democracy has a universal enrollment system whereby voters are automatically enrolled once they are eligible, and relocating does not disrupt one's registration. Canada and Great Britain use a system similar to our census system. In Canada, government paid canvassers go door-to-door enrolling voters before every national election.

The fundamental distinction is that in every other democracy the burden for registering to vote lies with the state, not the individual.

The state initiated registration reforms of the 1970s and 1980s centered primarily around the area of relaxing the restrictions to registering and voting. Results of registration reforms over the past decade are best exemplified by the increase of Spanish-surnamed persons on Texas' registration rolls. In 1976, there were 488,000 Spanish surnames on the registration rolls in the state; in 1986, there were approximately one million. The movement in the 1970s was an attempt to make it easier to register with the adoption of mail-in registration replacing the burdensome requirement of personal appearance. The other significant change was shortening the deadline for registering, or in some cases, actually eliminating the waiting period altogether. Election day registration certainly makes it possible for one to vote even if one hasn't already met the prerequisite of registering. However, altogether these changes don't address the central issue that the burden for registering and staying on the rolls is still left up to the individual.

Texas is a good example of the kind of initiative that states take to enroll voters. Although Texas has a relatively simple registration process (postcard with postage paid by state), there is no systematic method to reach out and enroll voters on a routine, year-round basis. Further, Texas law requires each county to "cleanse" its voter rolls just prior to the November general election. For those who have moved and failed to update their registration, they will most likely find themselves disenfranchised and unable to vote when they go to their polling place on election day. This is typical of how most states' registration systems operate.

To increase voter participation, reforms appear necessary to enroll voters. A federal universal registration system would do away with the quilt-like pattern of different state registration requirements. Such a program could be implemented through the Social Security system, the draft, the IRS, or other federal agencies.

Although a national universal registration system may be preferable, political realities suggest that chances for significant reforms are much greater at the local level. In the interim, state and local governments must take the initiative to enroll the eligible by establishing aggressive voter registration outreach. Educating citizens regarding the right to vote can dramatically increase political participation.

Independent efforts at registration of eligible citizens have had a dramatic impact. The Southwest Voter Registration and Education Project (SVREP), for example, is a nonprofit, nonpartisan organization which was founded and organized in 1974 by voting rights advocate Willie Velasquez to increase the participation of Mexican-Americans and other minority groups in the election process through voter registration campaigns, nonpartisan voter education, voting rights litigation, and

research on voter participation and opinion. Since 1976, as a result of the efforts of the SVREP and other voter rights organizations whose objectives are to increase minority participation in the electoral process, Hispanics have shown consistent increases at the polls and in the election of Hispanic officials. Hispanics are now not only the fastest growing minority in the nation by population, but also in registration and voting. See Tables A-C.

Source: Frances Fox Piven and Richard Cloward, Why Americans Don't Vote, Random House, 1988.

QUESTIONS FOR DISCUSSION:

1. In your opinion, should registering to vote be a responsibility of the state or of the individual?

2. Under what circumstances should a voter's registration be cancelled?

3. What advantages and disadvantages can you predict in a nationalized system of voting if conducted similiar to the census?

TABLE A

Increase in Hispanic Citizen Population
18 Years +
1984 - 1988

	1984	1988	% Increase
White	146,000,000	152,848,000	4.1
Hispanic	6,444,000	8,078,000	25.4
Black	17,809,000	18,962,000	6.5

TABLE B

Statistics show that concurrent with the increase in the number of Hispanics registering to vote there has been an increase in the number of Hispanics actually voting.

Hispanic Registered Voters in U.S.
and 5 Southwestern States
1976 - 1988

	1976	1988	# Increase	% Increase
Arizona	92,500	141,900	49,400	53.4
California	716,600	1,400,000	684,400	95.6
Colorado	81,000	155,000	74,000	91.4
New Mexico	135,200	206,500	71,300	52.7
Texas	488,000	1,100,000	612,000	125.4
Total SW:	1,512,300	3,003,400	1,491,100	98.6
Total US:	2,494,000	4,573,000	2,079,000	83.4

TABLE C

From 1984 through 1988, voter registration of Hispanics was over 10 times that of the nation as a whole. But despite the tremendous increase in Hispanic registration and voting, the Hispanic participation still lags far behind the general population size and growth. In 1988, just in the Southwest—Arizona, California, Colorado, New Mexico and Texas—there were almost 2.5 million Hispanic citizens not registered to vote.

Increases in Hispanic Votes Cast in Five Southwestern States
1976 - 1988

	1976	1988	# Increase	% Increase
Arizona	58,300	96,000	37,700	64.7
California	522,400	673,450	151,050	28.9
Colorado	60,000	113,000	53,000	88.3
New Mexico	97,000	154,900	57,600	59.2
Texas	278,000	597,000	319,000	114.7
Total SW:	1,016,000	1,634,350	618,350	60.9

South West Voter Registration Education Project Legacy, 1989.

B. TEXAS VOTER REGISTRATION

1. The Texas Constitution

The current Texas Constitution was written by 90 delegates to the 1875 Constitutional Convention, who were mostly farmers and lawyers, and some merchants, editors, and physicians. Five or six were African-Americans; and a few, Mexican-Americans. Some delegates were legislators and judges; some had fought in the Civil War armies of the North or the South. Seventy-five were Democrats; and fifteen, Republicans.

Most important, however, was the progressive, pre-Populist impetus brought to the convention by the thirty-seven delegates who were farmers and belonged to the Grange movement which was sweeping through the Southern and Midwestern sections of the country at the time.

The 1875 convention rewrote the Reconstruction Constitution which had been in place since 1869 and which had helped minorities, especially African-Americans, participate more effectively in the Texas political system. For most African-Americans, it was their first experience at voting. Mexican-Americans had been treated somewhat better because of their greater numbers and their role in helping Texas break away from Mexico and become independent.

Interestingly, the new Constitution was not drafted mainly to reject the Reconstruction era, which was very unpopular among the white population. Rather, the new Constitution sought to implement a new view of how government was supposed to relate to its citizens, an almost populist kind of government.

The 1875 convention did not reflect a reaction to Reconstruction as much as it represented a nationwide movement away from strong central governments toward a more restrictive "hands off," even anti-government, approach.

The Grangers wanted to use the Constitution to limit government power and moneyed corporate domination. At the same time, the Republicans sought to prevent the Democrats from dominating the structure of state government. As a result of this "marriage of convenience," the new Constitution actually enhanced protection of individual rights and limited state government.

Voting emerged as a key issue in the 1875 constitutional debate. The debate had three aspects: who would get to vote, which officials would be elected directly by the people, and how would those officials be elected?

For example, after much heated discussion, the delegates decided that the people should elect the judges, who were "charged with high and holy duties."

Suffrage was another sharply contested provision of the new Constitution. The Democratic establishment tried to prevent African-Americans from voting by proposing a variety of electoral impediments, such as a poll tax, literacy tests, registration, and property taxes. Those measures all met defeat. The delegates also rejected multi-member House and judicial districts.

The convention alliances gave Texas one of the broadest suffrage laws in the nation, which continued until the early 20th Century, and an organic law of reform and limitation on government.

The 1876 Texas Constitution allowed non-citizen males to vote if they satisfied the residence requirement (one year in the state, and six months in the county where they "offer to vote") and declared their intention to become citizens. Even after the poll tax was added in 1902, non-citizens could vote until 1919.

Suffrage for women was strongly debated in the 1868 and 1875 conventions and finally realized for primary elections in 1891 (Texas was the first Southern state, and ninth in the nation, to ratify the Nineteenth Amendment, enacted in 1920).

QUESTIONS FOR DISCUSSION:

1. For its time, the 1876 Texas Constitution is said to have guaranteed broad suffrage for Texans in the late 19th Century. List several of these provisions.

2. What evidence is there that Texans in the late 19th Century and early 20th Century were relatively strong proponents of Women's suffrage when compared to other states?

2. The Texas Election Code

A. Introduction

The Texas Election Code extends the right to vote to those persons who are not expressly disqualified or classified ineligible by the law. The right is not an incident of citizenship, nor is it inherent in every individual; one is entitled to vote only when such right has been conferred by the people. Additionally, the Code safeguards the ballot box against error, fraud, mistake, and corruption, so that the will of the people prevails. Its purpose is to secure the fair expression of duly qualified voters.

B. Voter Qualifications

Citizens are not automatically enfranchised with the right to vote. A voter must meet the qualification and registration requirements. To be eligible to vote an individual must be: a qualified voter on the day of voting; a resident of the territory covered by the election; and satisfy all other requirements for that particular election. A "qualified voter" is a person who is: eighteen (18) years or older; a registered voter; a resident of the state and a citizen of the United States. A person finally convicted of a felony is not eligible to vote unless he has been pardoned, had his rights restored by other official action, or unless two years have elapsed from the date of the completion of his sentence, including probation or parole, if any. A person who is mentally incompetent as determined by a final judgment of a court is not eligible to vote.

C. Registration

An eligible individual may register by obtaining an official application from your local post office, public library, or county registrar. The completed application may be mailed, postage-free, to the county registrar of voters. A spouse, parent, or child may complete and sign the voter application on another's behalf if he is authorized to do so either orally or in writing. The person signing on the behalf of another must be a registered voter or must have applied for registration.

Although a person may register at any time, the application must be postmarked at least 30 days before the election in order to vote in that election. If the thirtieth day before an election falls on a Saturday, Sunday, or state or national holiday, an application that is submitted by mail is considered timely if it is postmarked on the next regular business day.

Anyone may apply for a voter's certificate who is at least 17 years and 10 months of age on the date the registration application is submitted to the registrar, but he may not vote until he is eighteen years of age.

D. Voter Registration Certificate

After the registrar receives and approves an application for voter registration, a voter registration certificate will be sent within 30 days. Immediately upon receipt of the certificate, it should be examined closely. If all the information is correct, it should be signed in the space provided. If any information is incorrect, the certificate should be corrected, then signed and promptly return it to the registrar. A revised certificate will be issued.

The voter registration certificate identifies an individual as a registered voter in a precinct and should be presented at the polling place on election day. A current color-coded certificate will be issued every two years.

E. Maintaining the Right to Vote

A registered voter within a county will need to notify the voter registrar in writing of a new residence address by either correcting the information on the current voter registration certificate, signing the back of the certificate, and returning it to the voter registrar; or completing a voter registration change of address form, which is available from the county voter registrar or the Secretary of State. If a person's name changes, a written request to update the certificate should be made. The voter registrar will send a corrected voter registration certificate. An individual remains eligible to vote during the period he is waiting for a new registration certificate and he can vote by affidavit during this period if he sent the voter registration to the Registrar.

When a voter moves to another county, the person must re-register in the county of the new residence by completing a voter registration application and mailing it to the voter registrar of that county. The registration becomes effective 30 days after the registrar receives the application.

F. Lost or Misplaced Certificate

If a certificate is lost or misplaced, the voter registrar should be notified by writing. The Registrar will issue you a replacement certificate. A person may be allowed to vote without presenting a certificate at the polling place. To do so, a voter must sign an affidavit that the person is a registered voter and they do not have the certificate with them.

G. Early Voting By Mail or Personal Appearance

If a qualified voter desires to vote prior to election day, a voter may cast a ballot by mail or by personal appearance during the time prescribed for early voting in an election. The only criteria is the submission of an early absentee ballot application to the registrar. Also, qualified voters who: suffer a disability, are over 65 years of age, are confined in jail, or are forbidden by religious conviction to vote during the time the polls are open, may vote early. When early voting by mail, the early ballot must be returned in the official carrier envelope to be counted.

H. Deputy Registrar

A registered voter may wish to become a volunteer deputy registrar by applying with the voter registrar of his county. For information, call the Texas Secretary of State at 1-800-252-VOTE. Bilingual assistance is available.

QUESTIONS FOR DISCUSSION:

1. List the qualification and registration requirements to vote in Texas.

2. Do you think that it is fair that convicted felons lose their right to vote as outlined in the text? Explain.

3. How many days before an election is an individual allowed to register to vote?

4. May a person be allowed to vote if he has lost or misplaced the voter registration card?

5. When may a registered voter vote early by mail or personal appearance?

IV. THE WOMEN'S SUFFRAGE MOVEMENT

THE WOMEN'S SUFFRAGE MOVEMENT

The first portion of this unit is a timeline of the significant events in the National Women's Suffrage Movement in the United States. Representative speeches, letters, addresses and newspaper articles are included for each entry on the timeline. Following the timeline is a narrative description of the history of women's suffrage in Texas, taken largely from A. Taylor's Citizens at Last, The Women's Suffrage Movement in Texas (1987). Finally, the ideology of the Women's Suffrage Movement is briefly discussed, highlighting the two major themes of equality or justice and expediency or social benefit.

A. National Timeline

1830s - The Grimke sisters (Angelina Grimke Weld and Sarah Grimke Smith) of South Carolina began to organize the abolitionist movement among women. This was the first time women became politically active in the United States.

1840 - Lucretia Mott and Elizabeth Cady Stanton met in London at the meeting of the International Anti-Slavery Society and were denied seats at the meeting because of their sex.

1848 - The Women's Rights Movement in America originated when a convention to protest women's political, economic and social inferiority was led by Ms. Stanton and Ms. Mott in Seneca Falls, New York. A Declaration of Sentiments was adopted by the participants at the Seneca Falls convention.

1850s - National Women's Rights Conventions were held annually beginning in 1851. Women became active in the Temperance Movement, only to be excluded from the World Temperance Convention of 1853 because of their sex. Led by Ms. Stanton and Susan B. Anthony, the Women's Rights Movement pressed for state legislatures to grant property rights to women.

1861-65 - The Civil War intervened. Ms. Stanton and Ms. Anthony founded the Women's National Loyal League committed to support for the 13th Amendment, abolishing slavery, and to the goal of women's suffrage.

1865 - The 13th Amendment abolishing slavery was passed and ratified.

1866 - At the Eleventh National Women's Rights Convention, held in New York City, the American Equal Rights Association (AERA) was formed, with the purpose of pressing for the equal rights of all citizens, regardless of race, color or sex. This was an attempt to bridge the gap between the now-successful Abolitionist Movement and the cause for women's suffrage. In

spite of petitions, joint resolutions, and an Address to Congress adopted by the Eleventh National Convention, the Fourteenth Amendment passed, incorporating into the Constitution the word "male" for the first time.

1869 - The 14th Amendment was ratified and the 15th Amendment was proposed, which would give black men the right to vote. Ms. Anthony proposed that the AERA sponsor an amendment giving women the right to vote, which the abolitionist members of the AERA strongly opposed. This conflict was the end of the AERA. Two women's organizations formed to replace the AERA:

(1) The National Women's Suffrage Association (NWSA) led by Ms. Anthony and Ms. Stanton limited its membership to women. The NWSA was committed to a federal Constitutional amendment granting women's suffrage.

(2) The American Women's Suffrage Association (AWSA) was formed by former AERA members still committed to the Abolitionist Movement and to state-by-state referenda as the means to achieve women's suffrage. Lucy Stone and her husband Henry Blackwell were the leaders of the AWSA.

1872 - The NWSA held its first convention and elected Ms. Anthony as its president. The initial intention was to form a new political party, because neither the Democrats nor the Republicans had supported women's suffrage. Without the right to vote, however, a separate political party had little meaning. Therefore, NWSA sent delegations to the presidential conventions of the existing parties in 1872. The result was a "splinter" in the Republican platform, the first time women had been so recognized in the political arena.

1873 - Susan B. Anthony was convicted of voting in New York's election for the representative to the U.S. Congress and fined $100. Ms. Anthony's purpose for voting in this election was to test whether the Fourteenth Amendment, which declared that "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside," guaranteed to women as citizens the right to vote.

July 4, 1876 - The Declaration of Rights for Women by the NWSA was read by Susan B. Anthony to the crowd in front of Independence Hall, Philadelphia, Pennsylvania, after the reading of the 1776 Declaration of Independence in honor of the Centennial.

1878 - The "Susan B. Anthony Amendment" was proposed by Joint Resolution to Congress, as drafted by NWSA. The AWSA still supported state-by-state reform as the only means of obtaining suffrage for women.

1890 - At the urging of Alice Stone Blackwell, daughter of Lucy Stone and Henry Blackwell, the NWSA and the AWSA merged into the National American Women's Suffrage Association (NAWSA).

1892 - Elizabeth Cady Stanton presented her "Solitude of Self" address to the U.S. Senate Committee on Women's Suffrage.

1900 - Carrie Chapman Catt became the President of NAWSA. Less loyal to ideology than her predecessors, Ms. Stanton and Ms. Anthony, Ms. Catt was devoted to political expediency and organization as the most important means to achieve women's suffrage.

1903 - The NAWSA Convention was held in New Orleans. NAWSA's tolerance for racism to gain support for women's suffrage in the South became evident at this convention. White supremacists in the South had supported literacy requirements for voting as a means to prevent black men from exercising their right to vote. Speakers at the New Orleans NAWSA Convention argued that granting women's suffrage would further this purpose.

1904 - Dr. Anna Howard Shaw became NAWSA's president, replacing Ms. Catt.

1913 - Illinois became the first state east of the Mississippi River to give suffrage to women, although limited to presidential and municipal elections.

- An elaborate suffrage parade was staged on March 3, 1913, the day before President Wilson's inauguration. Alice Paul, Chairwoman of NAWSA's Congressional Committee organized the parade. When the procession reached Pennsylvania Avenue, a mob was waiting. Police did little to contain the mob and many parade participants were injured.

- While still chairwoman of the NAWSA Congressional Committee, Alice Paul formed the Congressional Union (CU) for women's suffrage, as a competing organization to NAWSA. Leaving NAWSA, Ms. Paul led the CU in holding the Democrats as the majority party in Congress responsible for withholding enfranchisement from women. In contrast to NAWSA, the CU campaigned against Democratic candidates directly and employed "militant tactics" to publicize the cause of women's suffrage.

1915 - NAWSA regained prominence under the renewed leadership of Ms. Catt, whose plan was to use the state victories as the impetus for passage of a Federal amendment.

1916 - President Woodrow Wilson addressed the NAWSA convention held in Atlantic City, New Jersey. This speech was viewed as a turning point signalling the inevitability of a Federal amendment granting women's suffrage.

1917 - New York, a key state, extended suffrage to women. The U.S. entered World War I and the Government formed the Women's Committee of the Council of National Defense with Dr. Shaw as its chairwoman. The Committee's purpose was to organize the war effort among the nation's women. CU changed its name to the National Women's Party, still headed by Ms. Paul. Members of the NWP staged demonstrations outside the White House and burned President Wilson's speeches to show that they held the President responsible for women's disenfranchisement. With the U.S. embroiled in World War I, the NWP's demonstrations were not popular, but did bring publicity to the Suffrage Movement.

1918 - World War I ended. The House Committee on Women's Suffrage held a four day hearing on a Joint Suffrage Resolution. Ms. Catt and Dr. Shaw spoke for NAWSA, Ms. Paul for the NWP and former Senator Joseph W. Bailey of Texas spoke for the anti-suffragists. The House passed the Resolution by a single vote.

1919 - Following the end of World War I, the Parliaments of Great Britain and of Canada granted suffrage to women. The Joint Resolution for Women's Suffrage came to a Senate vote, but was defeated. After the 66th Congress took office, President Wilson called them into Special Session and recommended that the Suffrage Amendment be passed. The House and Senate passed the Joint Resolution on June 4, 1919. Ms. Catt formed the League of Women Voters to "finish the fight" for women's suffrage.

1920 - The Nineteenth Amendment giving women the right to vote was finally ratified by the 36th state, Tennessee, 42 years after the Susan B. Anthony Amendment was first presented to Congress and 40 years after the Fifteenth Amendment was ratified.

B. The History of Women's Suffrage in Texas.

The women's suffrage movement in Texas began long before the State's ratification of the Nineteenth Amendment in 1919. As early as the 1868 Texas Constitutional Convention, T.H. Mundine of Burleson County offered a declaration stating that all persons meeting age, residence, and citizenship requirements be deemed qualified electors "without distinction of sex." This declaration was tabled and referred to committee, which subsequently recommended to the Convention that Mundine's declaration be adopted. Journal of the Reconstruction Convention, Which Met at Austin, Texas, Vol. I, p. 245 (Austin 1870). A minority report from the committee, however, urged the rejection of the declaration suggesting that women's influence would not be increased through enfranchisement. The minority report voiced the opinion that voting was "unwomanly" and that a "true woman" would not desire to mingle in the busy noise of election days. The full convention rejected women's suffrage by a vote of 52 to 13.[34] At several later constitutional conventions, resolutions permitting women's suffrage were also rejected.

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[34] Id., Vol. II, 414.

The women's suffrage movement in Texas was relatively stagnant until 1893 when Mrs. Rebecca Henry Hayes of Galveston issued a call for a convention of men and women to meet in Dallas to form a Texas Equal Rights Association. To a large extent, the 1893 call for women's rights was a product of the renewed national women's suffrage movement which was at that time gaining momentum across the nation. At the 1893 convention, the Texas Equal Rights Association was organized and Mrs. Hayes was elected president. Mrs. S.L. Trumble of Dallas was elected as the association's first vice-president. The Texas Equal Rights Association was intended to be an auxiliary of the National American' Women's Suffrage Association (NAWSA), the dominant national women's suffrage organization. In 1893, a women's congress was held at the Texas State Fair at which Mrs. Hayes delivered an address on "Women and the Ballot." In her address, Mrs. Hayes stated: "so long as any constitution of any state in the United States contains the clause 'that all men 21 years of age, not a pauper, criminal or fool are entitled to vote,' then in common justice all women 21 and not a pauper, criminal or fool should be entitled to vote." Dallas Morning News, November 7, 1893.

In the year that followed, the Texas Equal Rights Association continued to expand. By 1894, seven local societies of the association had been formed. Texas women continued to meet periodically to discuss and combat difficulties encountered in the suffrage movement, including difficulty motivating members. Unfortunately, many Texas women did not join the suffrage movement for fear of ridicule. Association leaders urged women to make a strong demand for their rights and that "without equal suffrage, government was not of the people, but of 'one-half of the people.'"[35]

During the time that the women's suffrage movement was gaining momentum in Texas, the majority of men continued to oppose women's suffrage. In 1894, the Dallas Morning News and the San Antonio Express published the opinions of Texas men on women's suffrage, some of which are set forth below:

> J.W. Crayton of Rockwall, ex-floater from the 30th senatorial district, thought that while women's voting might have a good effect upon legislation, it would tend to degrade her to mix and mingle at the polls with men.

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[35]Citizens at Last, the Women's Suffrage Movement in Texas, p. 18 (1897) (quoting Dallas Morning News, June 9, 1894).

> Judge Norman G.K. Kiell's opposition to woman's wielding the ballot was unqualified. His chief reason seemed to be that Negro women would secure enfranchisement.
>
> Bryan Cullaghan - "I believe the home is women's sphere."
>
> Bart J. DeWitt - "Yes, I believe in women's suffrage, and would vote for it. I would give them every privilege accorded to men."
>
> H. Godwin Mitchell - "Yes [I favor women's suffrage] because it would purify the polls. You could not buy a woman's vote."[36]

Undaunted, Texas women approached the various political parties in Texas and asked the parties to place equal suffrage planks in their respective party platforms. Each of the parties, Democratic, Republican, and Populist, declined to support equal suffrage for women as part of the party platform. In 1895, Mr. A. C. Thompkins of Hempstead introduced the first women's suffrage measure in the Texas House of Representatives. Despite its significance, the measure was never reported.

In 1896, the Texas Equal Rights Association ceased to exist primarily because of a split among the association's members. The members were unable to agree on the propriety of allowing Miss Susan B. Anthony to come to Texas and speak on women's suffrage. Some association members believed that the suffrage movement in Texas should be conducted solely by Texas women and not by outsiders. Other members were of the opinion that Miss Anthony would be a great stimulus to the Texas movement. As a result of the split, Mrs. Elizabeth Goode Houston of Dallas was elected president of the Texas Equal Rights Association replacing Mrs. Hayes. In spite of Mrs. Houston's best efforts to stimulate the association's members, the Texas Equal Rights Association, along with the Texas suffrage movement, dwindled until its eventual demise in 1896.

It was not until 1903 that the women's suffrage movement in Texas was revived by the formation of the Texas Women's Suffrage Association. Miss Annette Finnigan was elected president of the association and Mrs. C.H. Moore of Galveston was elected vice-president. Miss Finnigan, along with her sisters, Catherine and Elizabeth, attempted to organize leagues in various localities in Texas but found women unreceptive to the movement. When Annette

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[36]Dallas Morning News, March 20, 1894; San Antonio Express, July 29, 1894.

Finnigan and her sisters later moved from Texas, the suffrage movement once again became dormant. The movement was revived in 1912 by the organization of a women's society in San Antonio. Miss Eleanor Brackenridge was elected president of the society, whose purpose was "to create a public sentiment in favor of votes for women and enlist all progressive women in the cause."[37] As a result of the formation of the San Antonio Society, Texas suffragettes held a state convention in 1913 for the first time since 1904. It was at the 1913 convention that the Texas Suffrage Society pledged its support for the Federal amendment extending the right to vote to women. Previously, a split had developed among Texas suffragists as to federal versus Texas state action on the suffrage issue.

Following the state convention in 1913, the Texas Women's Suffrage Society (later named the Texas Women's Suffrage Association) held annual state conventions and continued to grow in membership. By 1915, twenty-one local societies were formed and the association claimed a membership of 2500. A significant leader of the women's movement in Texas during this time was Minnie Fisher Cunningham. Miss Cunningham was president of the Texas Women's Suffrage Association from 1915 to 1920. Under Miss Cunningham's leadership, the association encouraged the formation of local societies, and courteous and intellectual discussion with anti-suffragists. With the focus of the women's suffrage movement now being organization, women were instructed in public speaking, organizational methods, and campaign techniques. Public speeches, open forums, and mass meetings were frequently sponsored by the association. Additionally, Texas women wrote letters and sent petitions to state legislators and congressmen on the women's suffrage issue.[38] Further, the association circulated literature on the suffrage movement. One such leaflet stated:

> Working women need the ballot to regulate conditions under which they work. Housekeepers need the ballot to regulate the sanitary conditions under which they and their families must live. Mothers need the ballot to regulate the moral conditions under which their children must be brought up. Teachers need the ballot to secure just wages and to influence the management of the public schools. Businesswomen need the ballot to secure for themselves a fair opportunity in their business. Taxpaying women need the ballot to protect their property. All women need the ballot because they are concerned equally with men in good and bad government; and equally responsible for civic

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[37] Citizens at Last, at p. 26.

[38] Citizens at Last at p. 32.

> righteousness. All men need women's help to build a better and juster government and women need men to help them secure their right to fulfill their civic duties.[39]

With the entry of the United States into World War I, the women's suffrage movement in Texas entered a new era. Women actively participated in the effort at home to win the war. This included selling liberty bonds, maintaining Red Cross auxiliaries, entering the labor force, and aiding in any way possible the war effort. By taking an active role in the war effort, particularly in the labor arena, Texas women more than ever believed they should be extended the right to vote. A leaflet which was distributed by the Texas association during this time in the shape of a liberty bell stated, "Women are helping bring democracy to Europe. Will you help ring the liberty bell for Texas women."[40]

In 1915, a branch of the National Women's Party was organized in Texas. The National Women's Party, or the Congressional Union for Women's Suffrage, was coexisting at that time with the National American Women's Suffrage Association. The National Women's Party differed from NAWSA mainly by promoting militant activities to further its cause rather than attempting change through the normal political processes. The affiliate branch of the National Women's Party in Texas never gained significant strongholds in the state of Texas although it did contribute by bringing several prominent speakers to the state. It was also in 1915 that the opponents of women's suffrage finally formed a rival organization, the National Association Opposed to Women's Suffrage. Mrs. James B. Wells of Brownsville was elected as the association's first president. The association never held many organized meetings or conventions; however, the association did distribute anti-suffragist literature. Mrs. Wells, at one point stated as part of her anti-suffragist rhetoric that "she who bears voters has no need to vote." "Women don't want suffrage, Claim of Anti-leader Here; Asserts Best Will Not Vote," Fort Worth Star Telegram, April 6, 1918.

In 1915, Mr. Frank H. Burmeister introduced a resolution in the Texas Legislature "to authorize females to vote." The resolution failed in the House among such rhetoric as "suffrage would 'lower' woman and 'rob her of those modest charms so dear

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[39] Citizens at Last, at p. 32 (quoting "Why Women Want to Vote," from collection of Ms. Jane McCallum, Austin History Center, Public Library).

[40] "Liberty Bell," in the McCallum Collection.

to us Southern men.'"[41] A similar resolution was introduced in the House on January 13, 1917. This resolution, like its predecessor, was never adopted.

Adopting a change in strategy in 1918, Texas suffragists began to campaign for primary suffrage in Texas. Primary suffrage, unlike full suffrage, could be gained by a legislative act instead of a resolution passed by two houses with two-thirds majorities and then ratified by a majority of Texas voters. Under Governor Hobby's leadership, the Texas legislature adopted a bill in 1918 providing for women to vote in Texas primaries. Following the passage of the 1918 primary suffrage bill, the Texas suffrage movement focused its efforts on encouraging women to register to vote. It became extremely important that women exercise the right which was provided to them by the Texas legislature. As a result, Texas women began to participate actively in Texas politics, including attending party conventions.

As could be expected, women were not satisfied with simply primary suffrage and soon began to campaign for full enfranchisement by amendment to the state constitution. While many Texans favored this plan which would entail a resolution being submitted to the voters of Texas for approval in 1919, other suffrage leaders, including Mrs. Cunningham, opposed the Texas plan due to the increasing likelihood that a federal amendment would be passed granting women's suffrage. When the legislature convened in 1919, however, the Senate and House passed a resolution which would submit to the voters of Texas the enfranchisement of women on equal terms with men, as well as the disenfranchisement of aliens. This resulted in an ironic and unfortunate situation for the voters of Texas, particularly Texas women. Under existing law, aliens possessed the right to vote whereas women did not possess the right to vote. Therefore, aliens had the right to vote on a measure which would strip them of their enfranchisement while women did not have the right to vote on a measure which would provide them their enfranchisement. Despite the heavy campaign engaged in by the suffragists, the measure predictably failed. Analysts blamed the alien vote for defeat of the amendment.

Ultimately, in June 1919, the federal women's suffrage amendment was submitted to the states for ratification. The federal amendment received immediate approval from the Texas legislature and Texas thereafter became the ninth state in the Union and the first state in the South to ratify the 19th Amendment. The ratification of the federal amendment signalled

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[41] Citizens at Last, at p. 36 (quoting House Journal, Regular Session, 1915, p. 617).

the end of the women's suffrage movement in Texas. Since that time, many women have taken active roles in the political arena. Mayors such as Kathy Whitmire of Houston, Annette Strauss of Dallas, and Betty Turner of Corpus Christi are just some examples of women leaders in Texas politics. Ann Richards, in 1990, seeks the highest political office in this state. The accomplishments of these women are directly linked to the unceasing efforts of the early leaders of the women's suffrage movement in Texas.

C. Ideology of the Women's Suffrage Movement

What prompted American women to seek the right to vote between 1850 and 1920? Although a myriad of motivations existed among women suffragists, two major themes emerged during the suffrage movement. The first theme or argument in support of suffrage was based on the quest for "justice" by women.[42] The theory of the "justice" argument was that "if all men were created equal and had the inalienable right to consent to the laws by which they were governed, women were created equal to men and had the same inalienable rights to political liberty."[43] Common humanity was the core of the justice argument. Ironically, this was the same argument asserted by the founding fathers in demanding political equality with their English rulers during the birth of America. In 1892, Mrs. Elizabeth Cady Stanton, one of the founders of the women's suffrage movement, attended a congressional committee hearing at which was read her address entitled "The Solitude of Self."

> In discussing the rights of a woman, we are to consider, first, what belongs to her as an individual, in a world of her own, the arbiter of her own destiny, an imaginary Robinson Crusoe, with her woman Friday on a solitary island. Her rights under such circumstances are to use all her faculties for her own safety and happiness.
>
> Secondly, if we consider her as a citizen, she must have the same rights as all other members according to the fundamental principles of our government. Thirdly, viewed as a woman, an equal factor in civilization, her rights and duties are still the same; individual happiness and development.
>
> Fourthly, it is only the incidental relations of life, such as mother, wife, sister, daughter, that may

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[42] The Ideas of the Women's Suffrage Movement, 1890-1920, Eileen S. Kraditor, 1981, p. 44.

[43] Id.

involve some special duties and training ....[44]

At the start of the twentieth century, the major argument in favor of women's suffrage shifted from justice to expediency. "Expediency" encompassed arguments that women's suffrage would benefit society. This is not to say that the justice or natural right argument ever disappeared from the suffrage movement; however, the realities of a changing America dictated a different approach by suffragists. By the end of the century, political liberty was becoming linked with political capacity. Men began to take a critical look at the enfranchisement of "undesirables" such as new immigrants, inhabitants of the islands acquired by the United States, and workers in the cities. Thus, the task of the women's suffrage movement was to demonstrate that women's suffrage would benefit society.

Initially, the argument was advanced under the heading of expediency that women needed the ballot for self-protection. For example, some suffragists criticized light punishment meted out to rapists because male legislators could not comprehend the seriousness of the crime. Further, women began to note that women must have the vote to protect themselves against unique hazards to health and morals attendant in factories in which women worked.[45] One writer has summed up the era of expediency in the following manner:

> Subsequently, the expediency argument was expanded upon by suffragists who stated that the vote would enlarge women's interests and intellect by placing upon her part of the responsibility of running the government; it would make a better mother by enabling her to teach her children from first-hand experience the meaning of citizenship; it would make her a better wife by permitting her to become her husband's equal, thus destroying the warped relationship that bred civility in one spouse and tyranny in the other. In these and other ways, political equality would be good for woman, but woman would also be good for government; the development of this proposition dominated [suffrage] propaganda from about the turn of the century until victory crowned [the suffrage] effort twenty years later.[46]

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[44]Woman's Journal, January 23, 1892 (reprinted from hearings of the Woman's Suffrage Association before the Committee on the Judiciary, Monday, January 18, 1892).

[45]Ideas of the Women's Suffrage Movement, at p. 55.

[46]Id.

The justice and expediency arguments are only two of the many motivations which fueled the women's suffrage movement. Other considerations, such as prohibition and abolition, certainly factored into the movement and its ultimate success culminating with the passage of the federal amendment. One theme, however, remained consistent throughout the entire suffrage movement - the principle that all men and women are created equal and the right to participate in society is directly linked with an effective voice in government obtained ~~only~~ through the right to vote.

QUESTIONS FOR DISCUSSION:

1. List three reasons why men or women in the early 20th Century might argue against women's suffrage.

2. In a manner similiar to Ms. Jane McCallum statement on "Why Women Want to Vote", write a similar statement on "Why Young Women (age 18-24) should vote.

3. In your opinion, is the justice or expediency argument for women's suffrage more persuasive? Why? Explain your reason.

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