

AFRICAN AMERICAN POLITICAL PARTICIPATION IN NORTH CAROLINA: AN ILLUSION OR POLITICAL PROGRESS?

IRVING JOYNER†

I. INTRODUCTION¹

Since the beginning of the American democracy, Africans—both free and slave—have often encountered prohibitions in voting.² Even when officially recognized as citizens after the Civil War,³ African Americans continued to encounter limitations when they sought to exercise their right to vote and have been locked in an ongoing battle with segments of the white community to gain, maintain, utilize, and maximize political power.⁴ The ability to exercise political power is directly dependent upon the right to vote in a participatory democracy. African Americans' struggle to vote has certainly been defined by the history in North Carolina.⁵

This ongoing political battle has been directed toward a nebulous, poorly defined, and often fleeting notion of the right to vote, which the North Carolina and federal constitutions presumably guarantee.⁶ Instead, this right has been regularly

† Professor of Law at North Carolina Central University School of Law. The author would like to thank his research assistant, Serenity Hargrove, for her research and editing, as well as the staff of the *Wake Forest Journal of Law & Policy* for their expert assistance.

1. For this discussion, the term “Africans” is used to refer to those people of color—free and slave—who were in the United States before 1865 and were not legally considered to be citizens, while the term “African Americans” is used to refer to people of color after the enactment of the Thirteenth and Fourteenth Amendments to the federal Constitution. “African American” is used throughout this discussion instead of “Black” or another descriptor.

2. Steven I. Friedland, *African Americans and Sustained Voting Rights Inequality*, 31 DUQ. L. REV. 685, 686 (1993).

3. U.S. CONST. amend. XIV, § 2; *id.* at 698–99.

4. Friedland, *supra* note 2, at 700–03 (describing cases addressing voting restrictions and the disenfranchisement of African Americans).

5. *See infra* Part II & III.

6. Joshua A. Douglas, *The Right to Vote Under State Constitutions*, 67 VAND. L. REV. 89, 95–103 (2014).

challenged and diminished by the active political opposition and trickery of elected officials in this state.⁷ In this constitutional democracy, whether and how to vote is a power reserved to the state.⁸ The Fourteenth Amendment to the federal Constitution provides that the right to vote, as determined by the state, cannot be denied on the basis of race.⁹

For African Americans, it has always been understood that the right to vote is the fundamental protector of every other right people possess.¹⁰ Without this right, any other purported protection is illusory since it can, and will, be taken away at the whim and caprice of the majority. This article will discuss the convoluted journey that African Americans in North Carolina have been forced to navigate through in order to vote and how political forces have regularly conspired to eliminate or limit the exercise of that right. This article will also discuss how effectively African Americans have been able to utilize this right.

II. AFRICAN AMERICAN VOTING PARTICIPATION IN NORTH CAROLINA DURING SLAVERY

Even before the Civil War, free Africans in North Carolina who were landowners were able to vote.¹¹ In the eastern portion of North Carolina, free Africans constituted as much as fifteen percent of the population in several counties.¹² During the period of legal slavery in North Carolina, the African population equaled or exceeded that of whites in several eastern North Carolina counties where the vast majority of Africans, slave or free, lived.¹³ Among free Africans in North Carolina were educators like Reverend John Chavis,¹⁴ craftsmen like Thomas Day,¹⁵ business

7. See William A. Mabry, "White Supremacy" and the North Carolina Suffrage Amendment, 30 N.C. HIST. REV. 1, 5 (1936) (discussing two senators' attempts to exempt descendants of white voters from literacy tests).

8. Douglas, *supra* note 6, at 101.

9. U.S. CONST. amend. XIV, § 2.

10. W.E.B. DUBOIS, THE SOULS OF BLACK FOLK 37 (Hayes Barton Press 2005).

11. See, e.g., JOHN HOPE FRANKLIN, THE FREE NEGRO IN NORTH CAROLINA 1790-1860, at 105-06 (1943) (discussing the notion that the qualification for voting was not based on race after 1743).

12. JEFFREY J. CROW ET AL., A HISTORY OF AFRICAN AMERICANS IN NORTH CAROLINA 9 (2d rev. ed. 2011).

13. See FRANKLIN, *supra* note 11, at 18.

14. *Id.* at 169-70.

owners, farmers, and laborers.¹⁶ In 1850, North Carolina had a white population of 553,028, a free African population of 27,463, and a slave population of 288,548.¹⁷ By 1860, those populations had increased to 631,100 for whites, 30,463 for free Africans, and 331,059 slaves.¹⁸

In these eastern counties, many of these free individuals were able to vote and politicians eagerly sought their participation.¹⁹ Dr. John Hope Franklin, the renowned historian, reports that the 1776 state constitution did not discriminate—on the basis of race—against people of color so long as they were property-owners, lived in the county, and were of the appropriate age.²⁰ “Enfranchisement was looked upon as a right of all free men, and for a time the law enforcement officials failed to show that they saw any difference between free white men and free Negroes.”²¹ In many instances the votes of these free Africans constituted the balance of power in eastern North Carolina counties.²² “Before their disfranchisement, free [Africans] voted in North Carolina from the Revolution until 1835.”²³

The ability and right of free Africans to vote was regularly challenged by disgruntled whites who campaigned for legislative action to disfranchise this population.²⁴ As small as the free African population was, many whites deemed them to be a threat to their political future.²⁵ During the 1835 legislative debate regarding the disfranchisement of free Africans, it was noted that North Carolina was the only southern state that allowed free Africans to vote.²⁶ Central to this debate were comments made by Representative Wilson of Perquimans County; he warned his fellow legislators: “There are already 300 colored voters in Halifax, 150 in Hertford, 50 in Chowan, 75 in Pasquotank, etc., and if we

15. *Id.* at 142.

16. *Id.* at 134–35.

17. *Id.* at 18.

18. *Id.*

19. *Id.* at 106.

20. *Id.* at 12.

21. *Id.* at 105–06.

22. *Id.* at 106.

23. CROW ET AL., *supra* note 12, at 9.

24. FRANKLIN, *supra* note 11, at 111.

25. *Id.* at 108.

26. *Id.* at 111.

foster and raise them up, they will soon become a majority—and we shall have Negro justices, Negro sheriffs, etc.”²⁷ Thus, as early as 1835, when the vast majority of Africans in North Carolina were slaves, white politicians used the fear of “Black domination” as a reason to prevent African Americans from voting.²⁸ It is interesting that, at the time, the historical record did not evidence that any free African had been elected or appointed to public office.²⁹

The notion that only white property owners should enjoy the political franchise was not novel and had already been adopted in most southern states.³⁰ On this point, Representative James W. Bryan of Carteret County stated, “North Carolina is the only Southern State . . . that has permitted them to enjoy this privilege; and so far as my experience and observation extends, her interests have not been promoted by the concession of the privilege.”³¹ This same point was echoed further during the legislative debates by the president of the Convention, Representative Nathaniel Macon, who argued, “free Negroes never were considered as citizens and no one had the privilege of voting but citizens.”³² This political reality was judicially determined to be the “law of the land” in the infamous United States Supreme Court decision *Dred Scott v. Sandford*,³³ in which Chief Justice Robert Taney decreed that the founders and drafters of the original United States Constitution did not contemplate that Africans, slave or free, could be citizens of this country.³⁴

The disfranchisement of free Africans in North Carolina did not occur without significant opposition in the legislature.³⁵ The debate on this legislation occurred over a two-day period, and the final vote was sixty-six to sixty-one.³⁶ During this debate, many legislators—all white—spoke forcefully in support of allowing free Africans to vote.³⁷ Before the final passage of this legislation and in

27. *Id.*

28. *Id.* at 108.

29. *Id.*

30. *Id.* at 116.

31. *Id.* at 110–11.

32. FRANKLIN, *supra* note 11, at 111.

33. *Dred Scott v. Sandford*, 60 U.S. 393, 407 (1857).

34. *Id.*

35. FRANKLIN, *supra* note 11, at 112–13.

36. *Id.*

37. *Id.* at 110–12.

a last ditch plea, Judge Gaston of Craven County reminded the legislators that:

the majority of free Negroes in North Carolina were the offspring of white women and were “therefore entitled to all the rights of free men” He contended that disfranchisement would be forcing free Negroes “down yet lower in the scale of degradation, and encouraging ill-disposed white men to trample upon and abuse them as beings without a political existence and scarcely different from slaves.”³⁸

Despite the passionate pleas of a large number of white legislators, the disfranchisement was finalized on July 6, 1835.³⁹

For the next thirty years, free African men, no matter their pedigree—including those who were property owners and qualified to vote—were unable to vote in North Carolina merely because they were not legally classified as citizens under the state and federal constitutions.⁴⁰ As a matter of law, this issue was judicially finalized in North Carolina and elsewhere in this country with the *Dred Scott v. Sandford* decree.⁴¹ Although the *Dred Scott* litigation began as an action to determine the freedom of a particular slave, it resulted in a pronouncement of the political rights of every African, free or slave, in the United States.⁴²

The loss of the right to vote did not deter the free African community from its involvement in political affairs.⁴³ Led by Reverend John Chavis of Granville County, who was widely acknowledged as the leading educator of white children during that time period, free Africans continued to advise white politicians who they were close to and continued to raise the issue of suffrage.⁴⁴

38. *Id.* at 114–15.

39. *Id.* at 115.

40. N.C. CONST. of 1835, art. 1, § 3.

41. *Dred Scott v. Sandford*, 60 U.S. 393, 393–94 (1857).

42. *Id.* at 407.

43. FRANKLIN, *supra* note 11, at 116–20.

44. *Id.* at 107.

III. AFRICAN AMERICAN POLITICAL PARTICIPATION DURING RECONSTRUCTION

In 1860, more than one million people lived in North Carolina.⁴⁵ Of this number, more than 330,000 were slaves and 30,000 were free Africans.⁴⁶ At the conclusion of the Civil War in 1865, the leadership of the free African and former slave communities convened in Raleigh as a part of the North Carolina Freedmen Convention to discuss and chart strategies to advocate for and protect the interests of African people in the state.⁴⁷ Convention organizers included able leaders like Abraham Galloway, a former run-away slave from New Bern;⁴⁸ James Harris, a carpenter, teacher, minister, and barber from Raleigh;⁴⁹ Bishop John Hood, the presiding bishop of the African Methodist Episcopal Church;⁵⁰ Isham Swett;⁵¹ Henry Cherry;⁵² and Parker David Robbins.⁵³ The Convention brought together 117 delegates from forty-two North Carolina counties who debated and ultimately determined the specific provisions which they would demand to be included in the new North Carolina constitution.⁵⁴

The Convention lasted for three days and, at its conclusion, the delegates issued an agenda which demanded universal suffrage, free education, civil liberties, labor rights, prohibition against peonage, equality within the court system, women's rights, and care for the infirm, orphans, and disabled.⁵⁵ As they met, delegates were keenly aware not only of the oppressive history and impact of slavery, but also of the sliver of voter empowerment that free Africans had experienced before the 1835 disfranchisement

45. Earl Ijames, *Constitutional Convention, 1868: Black Caucus* (Jan. 1, 2008), NCPEDIA, <http://ncpedia.org/history/cw-1900/black-caucus>.

46. CROW ET AL., *supra* note 12, at 51–52.

47. *Id.* at 77.

48. *Id.*

49. *Id.*

50. Ijames, *supra* note 45.

51. CROW ET AL., *supra* note 12, at 85.

52. Ijames, *supra* note 45.

53. *Id.*

54. CROW ET AL., *supra* note 12, at 77.

55. *Id.* at 77–79.

legislation.⁵⁶ The latter produced a hope that the newly emancipated Africans could become a productive part of the American-style democracy and its theoretical promises.

This Freedmen's Agenda was ignored by white political leaders who sought to draft a new constitution that would return them to power and keep the newly freed slaves in a position of servitude.⁵⁷ When presented to Congress, this Constitution was initially rejected because the participation of newly enfranchised African Americans was not included and guaranteed.⁵⁸ In Congress, northern representatives rebelled against President Andrew Johnson's efforts to pardon and allow former Confederate officials to resume political control of the southern states.⁵⁹ In North Carolina, these leaders sought to enact a constitution and laws that would return these newly-freed African Americans to conditions of servitude and dependence.⁶⁰ As a result, northern congressional representatives intervened and drafted new conditions that controlled how and when the southern states would be re-admitted to the union.⁶¹ Those conditions demanded the forming of new governments which extended to and guaranteed freed African Americans the right to vote and to participate fully in politics.⁶² In addition, the Reconstruction Act of 1867 restored federal military control in North Carolina to ensure that violence and physical intimidation would not be used to prevent political participation.⁶³

As a result of the rejection of the initial constitution, a Constitutional Convention was convened in January 1868 with newly enfranchised African Americans in attendance.⁶⁴ This convention lasted for three months.⁶⁵ Understanding the power of lawmakers to extinguish the right to vote at any time and the

56. See CATHERINE W. BISHOP, *CRAFTING LIVES: AFRICAN AMERICAN ARTISANS IN NEW BERN, NORTH CAROLINA, 1770–1900*, at 178–81 (Univ. N.C. Press 2014) (discussing the mindset of delegates to the Freedmen's Convention).

57. CROW ET AL., *supra* note 12, at 79–80.

58. *Id.* at 83–84.

59. *Id.* at 83.

60. *Id.* at 79–80.

61. *Id.* at 83–84.

62. *Id.*

63. David P. Currie, *The Reconstruction Congress*, 75 U. CHI. L. REV. 383, 409 (2008).

64. Henry G. Connor & Joseph B. Cheshire, Jr., *Introduction*, in *THE CONSTITUTION OF THE STATE OF NORTH CAROLINA ANNOTATED*, xxxiii–xxxv (1911).

65. *Id.* at xxxiii.

necessity of gaining support from white constituents, African American leaders eagerly organized political coalitions with like-minded whites under the Republican Party banner.⁶⁶ These leaders were well aware of the disfranchisement vote in 1835 and the ongoing efforts by former slave-owners and confederate officials to exclude African Americans from political participation.⁶⁷ The organization of the multi-racial Republican Party was a critical achievement and resulted in the party winning 107 of the 120 seats in the Constitutional Convention; fifteen of those delegates were African Americans.⁶⁸

IV. CONSTITUTIONAL GUARANTEES

For African Americans, the key to political power and governmental participation has always depended upon how the federal courts and the United States Congress have chosen to enforce and protect this fundamental right, even though the state constitution guarantees the right to vote, rather than the federal Constitution.⁶⁹ In North Carolina, that expanded concept was made a part of the state constitution in 1868 as a result of the political influence of African American delegates to the 1868 Constitutional Convention.⁷⁰ That provision, Section 1 of Article VI, provides:

Every male person born in the United States, and every male person who has been naturalized, twenty-one years old or upward, who shall have resided in this State twelve months next preceding

66. Arch T. Allen, *A Study in Separation of Powers: Executive Power in North Carolina*, 77 N.C. L. REV. 2049, 2056 (1999) (relaying that at the 1868 convention, the Republican Party was comprised of “former Whigs, carpetbaggers, and newly emancipated and enfranchised black citizens”).

67. CROW ET AL., *supra* note 12, at 85 (stating that many of the newly elected African American legislators participated in the Freedmen’s Convention).

68. *Id.* at 84.

69. See Douglas, *supra* note 6, at 95–96 (stating that the federal Constitution imposes limits on distributing voting rights, but delegates to the states the ability to affirmatively grant voting rights).

70. See Joseph A. Ranney, *A Fool’s Errand? Legal Legacies of Reconstruction in Two Southern States*, 9 TEX. WESLEYAN L. REV. 1, 26 (2002) (citing the exclusion of African American suffrage as a reason that the 1865 North Carolina Constitution failed to pass).

the election, and thirty days in the country in which he offers to vote, shall be deemed an elector.⁷¹

This provision of the state constitution was enacted two years before the Fourteenth Amendment to the federal Constitution in 1870.⁷²

African Americans—led by Abraham Galloway and Bishop John Hood—who served as the chairs or co-chairs of many powerful legislative committees, enacted a number of legislative reforms that allowed for the education, growth, and development of the interests of their communities.⁷³ These enactments also greatly benefitted a large number of whites who were not wealthy landowners, were not able to attend schools, and could not vote or participate in the political franchise, or enjoy the economic success of the state.⁷⁴ Although small in number, these African American legislators, in conjunction with white colleagues with similar views, were able to promote progressive legislation that advanced the rights and power of the larger African American community.⁷⁵

Drawing upon the demands, adopted during the 1865 Freedman's Convention, the African American delegates aggressively fought for and won the inclusion of revolutionary provisions into the North Carolina constitution.⁷⁶ In the constitution's preamble, the drafters articulated a new political reality in which African Americans were included in the phrase "We the people."⁷⁷ The preamble also established the authority under which the constitution was established.⁷⁸ The preamble

71. N.C. CONST. of 1868, art. VI, § 1.

72. Richard L. Aynes, *The 39th Congress (1865–1867) and the 14th Amendment: Some Preliminary Perspectives*, 42 AKRON L. REV. 1019, 1045 (2009).

73. See BISHOP, *supra* note 56, at 215–16 (2014) (detailing the efforts of African American political leaders to advance their communities during Reconstruction).

74. See John V. Orth, *North Carolina Constitutional History*, 79 N.C. L. REV. 1759, 1779 (1992) (describing the 1868 constitution as precluding the formation of a society erected on wealth, race, and property because "a Reconstruction convention dominated by Union loyalists, carpetbaggers and blacks could hardly be expected to do otherwise").

75. See *id.* at 1777–82 (outlining in detail the progressive reforms the fifteen African American delegates to the 1868 constitutional convention helped introduce).

76. CROW ET AL., *supra* note 12, at 84.

77. N.C. CONST. of 1868, pmbl., art. I, § 1 ("That we hold it to be self-evident that all men are created equal.").

78. *Id.* at pmbl.

conveyed a definite religious tone, but focused on the absolute power of “the people” as the controlling force of the state government.⁷⁹

In Section 1 of Article I, the drafters declared: “We hold it to be selfevident [sic] that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness.”⁸⁰ This provision became a crucial statement in light of the continuing existence of the U.S. Supreme Court’s decision in *Dred Scott v. Sandford*, which declared that the federal declaration of “we the people” was never intended to refer to or include anyone other than white people.⁸¹

With the understanding of who was included in the concept of “people,” Section 2 of Article I boldly proclaimed that “all political power is vested in, and derived from the people; all government of right originates from the people, is founded upon their will only, and is instituted solely for the good of the whole.”⁸² The constitutional provision was designed to support the proposition that popular sovereignty is the basis of North Carolina democracy.⁸³ This provision was followed by Section 3 of Article I, which reaffirmed the state’s right mandate with respect to the internal regulation of state governmental affairs which must follow the law, but recognizes that this right must be exercised consistent with the federal Constitution.⁸⁴

In another bold departure from the decision of state leaders to secede from the United States in 1861, Section 4 of Article I prohibited the state from secession in the future,⁸⁵ and Section 5 provided that “every citizen of this State owes paramount allegiance to the Constitution of the Government of the United States, and that no law or ordinance of the State in contravention or subversion thereof, can have any binding force.”⁸⁶

79. *Id.*

80. *Id.*

81. *Scott v. Sandford*, 60 U.S. 393, 393–94 (1857).

82. N.C. CONST. of 1868, art. I, § 2.

83. *Id.*; accord Carlos E. Gonzalez, *Reinterpreting Statutory Interpretation*, 74 N.C. L. REV. 585, 641 (1996).

84. N.C. CONST. of 1868, art. I, § 3.

85. *Id.* at art. I, § 4.

86. *Id.* at art. I, § 5.

With the intent of keeping the tenure of legislators tied directly to the consent of the people, Section 28 of Article I mandated frequent elections, which allowed citizens to redress their grievances against their legislators and the state and to provide for amending and strengthening the laws.⁸⁷ As a final blow to the exclusive nature of previous governments that restricted who could vote and hold office, Section 22 of Article I prohibited the imposition of property qualifications in order to exercise the right to vote or to hold political office.⁸⁸ With this constitution, African Americans had faith that the North Carolina government would finally recognize and protect their rights and interests.⁸⁹

Once the powers and rights of the people were defined, the framers identified the qualifications of who had a right to vote. Article VI, Section 1 provided that:

Every male person born in the United States, and every male person who has been naturalized, twenty-one years old or upward, who shall have resided in this State twelve months next preceeding [sic] election, and thirty days in the country, in which he offers to vote, shall me deemed an elector.⁹⁰

In Article VI, Section 1, the Constitution decreed a one-year residency in the state and thirty-day residence within the election district in order for a person to qualify to vote.⁹¹ These are the only constitutional qualifications that must be satisfied before a person can vote. The state, through Section 2 of Article VI, is allowed to require qualified voters to register, but registration is not a constitutional qualification to vote.⁹² Federal law voided a prior requirement—the literacy test—that required a person demonstrate that they are able to read and write any section of the constitution before they can vote;⁹³ nevertheless, the

87. *Id.* at art. I, § 28.

88. *Id.* at art. I, § 22.

89. Orth, *supra* note 74, at 1776–77.

90. N.C. CONST. of 1868, art VI, § 1.

91. *Id.*

92. *Id.* at art. VI, § 2.

93. 42 U.S.C. § 1971(2)(C) (2012); *Gaston Cty. v. United States*, 395 U.S. 285, 285, 297 (1969).

provision remains in the state constitution.⁹⁴ Before the enactment of the Fourteenth and Fifteenth Amendments to the United States Constitution, North Carolina had already guaranteed the right to vote and provided for equal rights and due process protections in the federal Constitution.⁹⁵

V. IMPACT OF CONSTITUTIONAL ENACTMENTS

African Americans were finally in a position to exert political influence—and they did. Led by Galloway, Harris and Hood, the new constitution enacted the reforms that the 1865 Freedmen’s Convention demanded.⁹⁶ For the first time in history, universal suffrage—which enfranchised former slaves and whites who did not own real property—was guaranteed.⁹⁷ In addition, the new constitution abolished the property qualification for holding political office, provided for the election of judges, mandated a free public education system, and created elected county commissions to govern each county.⁹⁸

Elected as a part of the first General Assembly under North Carolina’s 1868 Constitution were seventeen African Americans in the House of Representatives and three in the Senate.⁹⁹ Many of these representatives were leaders and participants in the 1865 Freedmen’s Convention.¹⁰⁰ Most of them had been slaves, but several were free Africans before the war. Among this group was: Bishop James Walker Hood was a free African who had been captured by slave patrols and sold into slavery.¹⁰¹ Bishop Hood escaped this captivity, became a minister, and served as chairman of the Freedmen’s Convention.¹⁰² Hood later served as the

94. N.C. CONST. art. VI, § 4.

95. U.S. CONST. amend. XIV (having been ratified in July of 1868); U.S. CONST. amend. XV (having been ratified in January of 1870); N.C. CONST. of 1868, art. VI, § 1 (providing that “[e]very male person born in the United States, and every male person who has been naturalized . . . shall be deemed an elector” upon its adoption in April 1868); N.C. CONST. of 1868, art. I, § 1 (having been adopted in April of 1868 and providing that “we hold it to be selfevident [sic] that all men are created equal”).

96. CROW ET AL., *supra* note 12, at 84.

97. *Id.*

98. *Id.* at 85–86.

99. *Id.* at 85.

100. *Id.*

101. *Id.* at 105.

102. *Id.*

assistant superintendent of the State Board of Education and founded Livingstone College in Rowan County and Fayetteville State University in Cumberland County.¹⁰³

Parker David Robbins was a free African from the Winton community who was part Chowanoke Indian and part mulatto.¹⁰⁴ Robbins was a member of the U.S. Colored Troops in the Second Colored Calvary during the Civil War.¹⁰⁵ Robbins was also an inventor who built the first modern saw mills, constructed houses, and piloted a Cape Fear River steamboat.¹⁰⁶

Clinton D. Pierson was a free African who represented the prosperous, free African communities of James City and New Bern.¹⁰⁷

Henry C. Cherry was born a slave, but was trained to be a carpenter who could read and write.¹⁰⁸ He worked on the construction of the finest antebellum homes in Tarboro and became one of the wealthiest citizens in Edgecombe County.¹⁰⁹

Cuffie Mayo was a free African from Virginia who moved to Granville County where he worked as a blacksmith and painter. Mayo became one of the richest citizens in the county.

Henry Eppes was born a slave in Halifax County, but learned to read. He later became a minister and worked as a brick mason and plasterer.¹¹⁰

John Adam Hyman was born a slave in New Hanover County. After serving four terms in the General Assembly, he became North Carolina's first Congressional representative during the 1875 and 1876 terms.¹¹¹

Abraham Galloway was born a mulatto slave in Wilmington, but escaped and organized the escape of other slaves before the Civil War.¹¹² Galloway also recruited slaves to join the Union Army as soldiers.¹¹³ While a slave, he hired himself out to whites as a

103. James, *supra* note 45, at 24–25.

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.* at 24–25.

113. *Id.* at 24.

brick mason and paid his owner \$15.00 per month for this privilege.¹¹⁴ By every account, he was the most radical and daring of the African Americans elected to serve in the General Assembly.¹¹⁵ Galloway was never seen without his guns and constantly demanded that whites treat African Americans in a civil and respectful manner.¹¹⁶ He was a strong advocate for women's rights and for using the state's taxing authority to split up large land holdings in order for former slaves to buy land.¹¹⁷

Also elected to political office during this first reconstruction period were African Americans who served in the U.S. Congress. Those elected included John Hyman (1875–1877), James E. O'Hara (1883–1887), Henry Cheatham (1889–1893), and George H. White (1896–1900), all of whom served from the "Black Second" Congressional District located in eastern North Carolina. Congressmen Cheatham and White married the two daughters of Representative Henry C. Cherry who were proclaimed to be the most beautiful women of their day.¹¹⁸

After the Civil War, African American communities were heavily invested in the successful development of the democratic political franchise.¹¹⁹ While some newly freed slaves chose to emigrate out of the country, the vast majority chose to stay. They recognized that they had built the southern economy and, because of the lengthy estrangement and separation from the African homeland, they did not have any other place to go. Some travelled north, but most remained in North Carolina and other southern states in order to receive a return on the investment which they and their ancestors had already made to this country's development.

North Carolina was unique in many respects. There was a large cadre of free Africans¹²⁰ who had developed an economy base,¹²¹ acquired significant land holdings,¹²² and possessed

114. *Id.*

115. *Id.* at 24.

116. Timothy B. Tyson, *The Ghosts of 1898*, NEWS & OBSERVER, Nov. 17, 2006, at 5H, <http://media2.newsobserver.com/content/media/2010/5/3/ghostsof1898.pdf>.

117. Ijames, *supra* note 45, at 24–25.

118. *Id.*

119. *Id.*

120. FRANKLIN, *supra* note 11, at 6.

121. *Id.* at 141.

122. *Id.* at 228.

“nation-building” skills.¹²³ In addition, many slaves were educated as well as or better than most whites. Although it was illegal to educate slaves, many of them were educated even when many whites were unable to afford an education.¹²⁴ Many free Africans and slaves learned and possessed essential and relevant skills, and their labor became a significant force in any economic development that North Carolina was to experience.¹²⁵

The African American leaders and white Populists were determined to make this democracy work.¹²⁶ Being able to join with like-minded and similarly positioned whites, this community saw a hope that this experiment would work. This faith was evidenced by the fact that African Americans eagerly and faithfully participated in the total life of the state. Even though Democrats engaged in systematic campaigns of violence, terror, and intimidation in an effort to undermine the African American vote, ninety percent of eligible African Americans participated in the voting process between 1868 and 1896.¹²⁷ Throughout North Carolina, most African Americans participated in educational programs and were active partners in the economic progress that was experienced.¹²⁸

VI. POLITICAL PARTICIPATION DURING RECONSTRUCTION

Despite the plain meaning of the constitutional mandates, political leaders within North Carolina have not fully and eagerly protected this right for African Americans and have regularly engaged in “patterns and practices” which sought to deny or abridge that right.¹²⁹ After its enactment in 1868, the ability of African Americans to fully participate in the political franchise was

123. *Id.* at 149.

124. *Id.*

125. *Id.*

126. CROW ET. AL., *supra* note 12, at 107–109 (discussing African American involvement in North Carolina Politics and its importance to the future of the black community).

127. HEATHER ANDREA WILLIAMS, SELF TAUGHT: AFRICAN AMERICAN EDUCATION IN SLAVERY AND FREEDOM, 15–18 (Waldo E. Martin, Jr. & Patricia Sullivan, eds. 2005) (discussing the illegality of educating slaves and slave initiative to circumvent the system to educate themselves).

128. FRANKLIN, *supra* note 11, at 129–30.

129. Tyson, *supra* note 116, at 5H.

only made possible by the passage of federal laws which governed the re-admission of North Carolina into the Union and the use of federal troops to protect the exercise of that right during what has been entitled “The First Reconstruction.”¹³⁰ During that period, which lasted from 1868 to 1898, African Americans were able to successfully compete and participate in every area and venue of life in North Carolina.¹³¹

The protections of constitutional rights became more challenging after the removal of federal troops from the South. As a result of the infamous Hayes-Tilden Compromise in 1877, political leaders in Congress agreed to compromise with white southern legislators in order to secure the election of Rutherford Hayes as president of the United States.¹³² The deal agreed upon required Hayes to remove all federal troops from the southern states in exchange for the votes of southern members of the Electoral College.¹³³ When the troops were removed, the bulk of police authority that protected African Americans totally disappeared.¹³⁴ Despite the loss of these troops, African Americans in North Carolina were able to maintain political influence and participation until the 1898 Wilmington Coup D’état.¹³⁵ From 1868 to 1898, at least 111 African Americans served in the General Assembly.¹³⁶ Between 1877 and 1890, forty-three African Americans were elected to serve in the state house of representatives and eleven became state senators.¹³⁷ Of the total number of 113, ninety-seven served in the house and sixteen served in the senate.¹³⁸ African Americans were also elected or

130. *Id.*

131. HEATHER A. WILLIAMS, SELF TAUGHT: AFRICAN AMERICAN EDUCATION IN SLAVERY AND FREEDOM 36 (2005).

132. ERIC FONER, RECONSTRUCTION: AMERICA’S UNFINISHED REVOLUTION 1863–1877, at 582 (1988).

133. *Id.* at 581–82; CROW ET AL., *supra* note 12, at 95–118 (discussing African American progress in a variety of facets of North Carolina life).

134. FONER, *supra* note 132, at 582.

135. Tyson, *supra* note 116, at 5H.

136. S. J. Res. 133, 2013 Gen. Assemb., Reg. Sess. (N.C. 2013).

137. CROW ET AL., *supra* note 12, at 109.

138. *Id.*; see also, Milton C. Jordan, *Black Legislators: Political Novelty to Political Force*, N.C. INSIGHT, Dec. 1989, at 58, http://www.nccppr.org/drupal/sites/default/files/protected/insight_article/pdf/Black_Legislators-From_Political_Novelty_to_Political_Force.pdf.

appointed as magistrates, sheriffs, local school board members, town council members, and on county commissions.¹³⁹

The coalition of African Americans and white Populists, operating under the banner of the Republican Party, dominated North Carolina politics from 1868 through 1876.¹⁴⁰ Beginning in 1865, “Ku Klux Klan terrorism swept the south,” and North Carolina was swept up in it.¹⁴¹ As the power of the federal government eroded following the Hayes-Tilden Compromise and federal troops were removed from the South, the Democratic Party, which consisted of wealthy, working class, and rural whites, gained control of the state and local governments.¹⁴² During this period, Democrats actively sought to diminish the votes of African Americans.¹⁴³ This coalition imploded in 1894 due to an emerging depression, which produced a revolt among the white agrarian sector because Democratic policies heavily favored the wealthy banking and railroad interests.¹⁴⁴ “As the ruling order discredited itself through its inability to meet human needs, many of the economic dissidents became racial dissidents, too.”¹⁴⁵ As a result, white Populists, white Republicans, and African Americans were, once again, able to form an alliance that swept the Republicans back into political power.¹⁴⁶ “In the 1894 and 1896 elections, the Fusion movement won every statewide office, swept the legislature and elected its most prominent white leader, Daniel Russell, to the governorship.”¹⁴⁷ During these elections, eighty-seven percent of eligible African Americans voted, even though African American leaders had initially supported other candidates.¹⁴⁸

Even though a Fusionist coalition was formed, it was not one of equals as the white Populists and Republicans refused to give African Americans a fair share of the political offices or power.¹⁴⁹ Despite the fact that African Americans voted with and

139. Tyson, *supra* note 116, at 3H.

140. Tyson, *supra* note 116, at 5H.

141. *Id.*

142. *Id.*

143. CROW ET AL., *supra* note 12, at 113–114.

144. *See id.* at 108.

145. *Id.*

146. *Id.* at 108–109.

147. *Id.*

148. *Id.* at 113.

149. *Id.* at 108–110.

for Republican candidates, they had many complaints about the neglect that they experienced from the party's leaders.¹⁵⁰

Most [African American] leaders had substantial complaints against Republicans. Because [African American] voters had no alternative, they stayed with the Republican Party, but they resented the way the party treated them. Republicans relied upon the votes of [African Americans] but offered [African American] leaders few nominations for office, even to minor positions.¹⁵¹

In urban areas and in eastern North Carolina where large African American populations resided, more political positions were won, but the power that these elected officials were able to exercise was minor.¹⁵² For example, in the General Assembly, those African Americans who were elected after 1876 were vastly outnumbered and faced significant hostility from their white counter-part; these legislators could not independently pass many bills, but they could—and did—speak up and fight for the interests of African Americans.¹⁵³

Despite misgivings about the inequalities, African Americans enjoyed more political success in the North Carolina democracy than ever before in history.¹⁵⁴ They eagerly participated in subsequent elections for local and state offices and enjoyed political success as they joined with whites to elect African American and white candidates to legislative positions from 1894 through 1898.¹⁵⁵ This eager political participation regularly produced election turnouts of more than ninety percent of eligible African Americans who voted in elections and actively participated as candidates, where possible.¹⁵⁶ During this period, thousands of African Americans were elected to local governing positions, hundreds were elected to the state house and senate,

150. *Id.*

151. *Id.*

152. *Id.*

153. *Id.*

154. *Id.*

155. *Id.*

156. *Id.*

and four were elected to the United States Congress.¹⁵⁷ Despite political success, African Americans continued to regularly resist efforts by white Republicans and Democrats to undermine their right to vote and further their participation in the political franchise.¹⁵⁸

During this period, African Americans and their Populist allies were instrumental in reforming the state's election laws, which sought to guarantee full and fair access to the political franchise for all citizens.¹⁵⁹ Legislation was enacted which allowed elected local clerks of court to create precincts in local communities, which allowed for citizens to vote closer to their homes, and to appoint local precinct officials from both political parties, who would administer and supervise the voting process.¹⁶⁰ Legislation also criminalized efforts by employers and others to intimidate, harass, or punish voters for exercising the right to vote and required employers to allow workers to leave work in order to vote without penalty or repercussions.¹⁶¹ The effort to expand the franchise also included legislation to make special provision for illiterate voters and desired to vote, which was a very progressive idea in the 1890s.¹⁶²

VII. THE DESTRUCTION OF THE DEMOCRACY IN NORTH CAROLINA

“But [African Americans] also provoked many poor whites, who competed against them [for political office] and wealthy whites, who persistently encouraged animosity between poor whites and [African Americans] in a divide-and-conquer strategy.”¹⁶³ Despite their economic progress, educational advancement, and political involvement, African Americans were the victims of “exclusion, harassment, discrimination and a range of violence that included the horrors of lynching.”¹⁶⁴

157. Tyson, *supra* note 116, at 4H.

158. CROW ET AL., *supra* note 12, at 86–88.

159. Tyson, *supra* note 116, at 1A.

160. *Id.*

161. Testimony of Dr. James L. Leloudis at 18, N.C. Conference of the NAACP v. McCrory, Civil Case No. 1:13-CV-658 (2015).

162. CROW ET AL., *supra* note 12, at 113–116.

163. Tyson, *supra* note 116, at 4H.

164. *Id.*

Across North Carolina, the Democratic Party was engaged in an active campaign to demonize African Americans and to destroy the shaky political coalition that had elevated Republicans into power.¹⁶⁵ This white supremacy campaign was engineered by Furnifold Simmons, the state chairman of the Democratic Party; Josephus Daniels, the owner and publisher of the Raleigh's *News and Observer*; and Charles Aycock, a wealthy Goldsboro lawyer who would become Governor in 1900.¹⁶⁶ These men and others, orchestrated the statewide campaign of racial antagonism and division. They developed a race-based political campaign which had the "redemption of North Carolina from Negro domination" as its theme going into the 1898 political campaign.¹⁶⁷

The goal of this campaign was to disenfranchise African Americans and justify it by creating an image across the state that African American men were controlling the state and sought widespread sexual relations with white women.¹⁶⁸ Thus, the term "Negro Domination" was widely used and repeated throughout every discussion and news article that was circulated around the state.¹⁶⁹ Josephus Daniels, joined by other white newspapers, "spearheaded a propaganda effort that made white partisans angry enough to commit electoral fraud and mass murder."¹⁷⁰ Daniels described Furnifold Simmons's strategy of racial violence and intimidation against African Americans as:

a genius in putting everybody to work—men who could write, men who could speak, and men who could ride—the last by no means the least important. By "ride," Daniels employed a euphemism for vigilante terror. [African Americans] had to be kept away from the polls by any means necessary.¹⁷¹

165. *Id.* at 6H.

166. *Id.*

167. *Id.*

168. *Id.* at 7.

169. *Id.*

170. *Id.* at 1A.

171. *Id.* at 6H (internal quotations omitted).

Led by the *News and Observer*, front page headlines constantly proclaimed and decried “the dreaded specter of Negro rule hung over North Carolina and no white man or woman was safe from insult or humiliation at the hands of ignorant, degraded, half savage [African Americans].”¹⁷²

The notion of “African American Domination of Whites” was debunked by Dr. Helen Edmonds, historian and scholar from North Carolina Central University, who described the political success of African Americans in North Carolina during 1898.¹⁷³

An examination of [the concept of] “Negro Domination” in North Carolina revealed that one Negro was elected to Congress; ten to the state legislature; four aldermen were elected in Wilmington, two in New Bern, two in Greenville, one or two in Raleigh, one county treasurer and one county coroner in New Hanover; one register of deeds in Craven; one Negro jailer in Wilmington; and one county commissioner in Warren and one in Craven.¹⁷⁴

To the race conscious and hate hurling Democratic Party leadership, having some African Americans elected to office was described as “Domination;” this myth was promoted and hyped-up in the minds of gullible whites in order to justify the use of physical terror to destroy and remove African Americans’ right to vote.¹⁷⁵

Outside of the use of terror, intimidation, and physical violence—such as lynching—the Democrats mounted a massive program “of fraud, intimidation, and violence” to assure their victory in the 1898 general election.¹⁷⁶ Thousands of votes were stolen through ballot box stuffing and the destruction of African American votes.¹⁷⁷ Some of the main perpetrators of this violence

172. CROW ET AL., *supra* note 12, at 115.

173. HELEN EDMONDS, *THE NEGRO AND FUSION POLITICS IN NORTH CAROLINA, 1894–1901* (1951) (researching and presenting the first scholarly discussion of the Wilmington Coup D’état in her book).

174. *Id.* at 219.

175. *Id.* at 220.

176. *Id.*

177. CROW ET AL., *supra* note 12, at 115.

were the Red Shirts, a group composed of prosperous white men and former confederate officers devoted to the Democratic Party who appeared throughout the state, mounted on horses and well-armed.¹⁷⁸ Their red clothing called attention to their presence and determination that the Democratic Party would prevail.¹⁷⁹

This campaign of racial vilification featured a series of offensive caricatures of African Americans drawn by *News and Observer* cartoonist Norman Jennett that were reproduced on the front pages of newspapers across the state.¹⁸⁰

Jennett's masterpiece was a depiction of a huge vampire bat with "Negro rule" inscribed on its wings, and white women beneath its claws, with the caption "The Vampire That Hovers Over North Carolina." Other images included a large Negro foot with a white man pinned under it. The caption: "How Long Will This Last?"¹⁸¹

Other newspapers in the state followed the lead of the *News and Observer*, while other Democratic Party operatives crisscrossed the state making inflammatory racist speeches to fire-up the crowds.¹⁸² During this campaign, "[t]he king of oratory, however, was Charles B. Aycock," who often mesmerized standing-room only crowds of whites by "pounding the podium for white supremacy and the protection of white womanhood."¹⁸³ It was Charles Aycock who described Wilmington as the "storm center of the white supremacy movement" because it was the largest city in the state, had a majority African American population, had an African American daily newspaper, and several African Americans elected as aldermen and other elected or appointed positions.¹⁸⁴ "Wilmington represented the heart of the Fusionists' threat, therefore, it became the focus of the Democrats' campaign."¹⁸⁵

178. *Id.*

179. *Id.*; see Tyson, *supra* note 116, at 7H.

180. Tyson, *supra* note 116, at 7H.

181. *Id.*

182. *Id.*

183. *Id.*

184. *Id.*

185. *Id.*

VIII. THE WILMINGTON COUP D'ÉTAT¹⁸⁶

The area of the state in which African Americans more aggressively embraced the ideals of the Republican and Populist return to power was Wilmington, where a bi-racial coalition won a majority of the seats on that town's Board of Aldermen in 1896.¹⁸⁷ Despite Wilmington majority African American population, the new Board of Aldermen consisted of only four African Americans and six whites.¹⁸⁸ As successful as the bi-racial coalition was in electing its members to office, there were continuing racial issues that developed among party members and threatened the solidarity of the coalition.¹⁸⁹

In 1898, Wilmington was the port city with a vibrant and bustling economy.¹⁹⁰ At that time, Wilmington's population consisted of 11,324 African Americans and 8731 whites.¹⁹¹ At the time, it was the most prosperous town in North Carolina and was a symbol for African American progress in the South.¹⁹² Unlike other portions of North Carolina, there were electric lights and streetcars in Wilmington.¹⁹³ The town's prosperity was amply supported by strong African American businesses. The city boasted of having the only African American daily newspaper in the country, the *Daily Record*, which was owned and edited by Alexander Manley, the mixed race grandson of former North Carolina Governor Charles Manley.¹⁹⁴ The African American literacy rate in Wilmington was higher than that of whites.¹⁹⁵

186. For a more detailed account and description of the Wilmington Coup D'état, see generally HELEN EDMONDS, *THE NEGRO AND FUSION POLITICS IN NORTH CAROLINA, 1894–1901* (1951); H. LEON PRATHER, *WE HAVE TAKEN A CITY: WILMINGTON RACIAL MASSACRE AND COUP OF 1898* (1984); TIM TYSON & DAVID CECELSKI, *DEMOCRACY BETRAYED: THE WILMINGTON RACE RIOT OF 1898 AND ITS LEGACY* (1998); LERAE S. UMFLEET, *1898 WILMINGTON RACE RIOT REPORT*, NORTH CAROLINA DEPARTMENT OF CULTURAL RESOURCES (2006).

187. Tyson, *supra* note 116, at 5H.

188. *Id.*

189. *Id.* at 5–6H.

190. *Id.* at 4H.

191. *Id.* at 4H.

192. *Id.*

193. *Id.*

194. *Id.* at 4H.

195. *Id.* at 1A.

The organization of the Wilmington Coup D'état and mass killing was left to Alfred Moore Waddell, an unemployed lawyer and newspaper publisher.¹⁹⁶ Waddell had been a lieutenant colonel in the Confederate cavalry and served three terms in congress before being defeated by Daniel Russell.¹⁹⁷ Waddell worked under the direction of the "Secret Nine," a collection of white businessmen who wanted to immediately change the multi-racial Republican Board of Aldermen.¹⁹⁸ Under Waddell's direction, an armed militia was organized to take control of the streets, and a list of African American and white Fusionists was made with the order to banish or kill them.¹⁹⁹

The "overthrow" organizing campaign became heated after Alexander Manley printed a vocal response in the *Daily Record* to a white woman's speech delivered in Georgia about the need to lynch African American men for raping white women.²⁰⁰ In the response article, Manley denounced the call for lynching. He argued that there were white men and women who willingly engaged in sexual acts with African Americans and that the claim that African American men were dedicated to sexual acts with white women was hypocrisy.²⁰¹ On November 10, 1898, an organized mob of armed whites marched to the *Daily Record's* office, broke into it, destroyed its printing presses, and burned the building down.²⁰²

In a Goldsboro political rally that preceded the overthrow, Waddell promised a rabid crowd of 8000 whites that he would "throw enough [African American] bodies into the Cape Fear River to block its passage to the sea."²⁰³ In preparation for the 1898 statewide elections, Waddell told a white crowd in Wilmington:

196. *Id.*

197. *Id.*

198. *Id.* at 9H (listing the "Secret Nine" as J. Alan Taylor, Hardy L. Fennell, W.A. Johnson, L.B. Sasser, William Gilchrist, P.B. Manning, E.S. Lathrop, Walter L. Parsley, and Hugh MacRae).

199. *Id.* at 8H-9H.

200. *Id.*

201. *Id.*

202. *Id.* at 3H, 10H.

203. *Id.*

[Y]ou are Anglo-Saxons. You are armed and prepared, and you will do your duty. If you find the [African American] out voting, tell him to leave the polls, and if he refuses, kill him, shoot him down in his tracks. We will win tomorrow if we have to do it with guns.²⁰⁴

On November 8, 1898, Election Day, many African Americans refused to go to the polls to vote; those who went were met by armed Red Shirts stationed on every block that surrounded each polling site in the city.²⁰⁵ To ensure the victory for the Democratic Party, officials stuffed the ballot boxes with bogus votes.²⁰⁶ Votes in other areas of the state followed a similar pattern, and the Democrats regained control of the legislature.²⁰⁷ Prior to the election, Red Shirts members roamed the state to disrupt meetings of African Americans and patrolled the streets of Wilmington, intimidating and attacking African Americans.²⁰⁸

On November 9, 1898, the “Secret Nine” presented to its organizers and supporters a “White Declaration of Independence” that declared, among other things: “never again would white men of New Hanover County permit [African American] political participation.”²⁰⁹ After the Declaration was officially adopted, Waddell, per instruction from his membership, called a meeting of thirty-two prominent African Americans at the courthouse and told them that they had twelve hours to accept their demands.²¹⁰ Backed by armed members of the Red Shirts, Waddell

firmly explained the white conservatives insistence that [African Americans] stop antagonizing [their] interests in every way, especially by the ballot, and that the city give to white men a large part of the

204. *Id.*

205. *Id.*

206. *Id.* at 10H.

207. *Id.* at 9H–10H.

208. *Id.*

209. *Id.* at 10.

210. *Id.*

employment heretofore given to [African Americans].²¹¹

He also demanded that the *Daily Record* stop publication and its editor leave the city.²¹²

On November 10, 1898, a heavily armed group of military-trained Red Shirts, Klu Klux Klan, and local militia members marched into the African American section of town—known as Brooklyn—where the *Daily Record* newspaper was located and burned its offices down.²¹³ They then began to indiscriminately shoot African Americans who they found in the streets.²¹⁴ The Red Shirts forcefully entered the homes of elected and appointed officials and escorted them down to City Hall.²¹⁵ One by one, these officials were marched into the auditorium and became surrounded by over five hundred armed whites who gave them an option to resign their position or be shot.²¹⁶ As each official resigned, Waddell appointed a replacement.²¹⁷ The officials were taken to the train station, placed on a train, and driven out of town with a promise that they would be killed if they returned to Wilmington for any reason.²¹⁸

During the invasion, the African American community in Wilmington was virtually defenseless.²¹⁹ Federal troops, which had been a defender of that community, had been removed from North Carolina.²²⁰ In the face of this massive military assault, North Carolina's Populist Republican Governor, David Russell, dispatched members of the Wilmington Light Infantry ("WLI"), the local state militia, to intervene in the uprising; however, this directive was given at 11:00 a.m. and the rebellion began at 8:00 a.m. After being dispatched, WLI members did more to support the rebellion than they did to protect African Americans or curtail

211. *Id.*

212. *Id.*

213. *Id.*; see also UMFLEET, *supra* note 186, at 127.

214. PRATHER, *supra* note 186.

215. *Id.* at 11.

216. UMFLEET, *supra* note 186, at 123.

217. Tyson, *supra* note 116, at 11.

218. *Id.*

219. *Id.*

220. PRATHER, *supra* note, 186.

the rebellion.²²¹ African Americans did not have military training and were not heavily armed.²²² They were confronted by a superiorly trained and armed military that entered the community with the intent of killing as many people as possible.²²³ Some African Americans fought back but were overwhelmed.²²⁴ The number of African Americans killed has never been determined, but estimates range from nine to over one hundred.²²⁵

At the end on that day, every elected African American, Republican and Populist, had been forced to resign from office under the threat of death.²²⁶ As each resignation was recorded, a white person, who the Secret Nine had chosen, was appointed to the vacated position and Alfred Waddell was anointed as the new mayor.²²⁷ This Coup D'état ignited a reign of terror across North Carolina. After this rebellion by whites, no African American was elected to a local political office until 1947 or to the North Carolina General Assembly until 1968.²²⁸ The overthrow of the legally elected Wilmington municipal government was part and parcel of an orchestrated political war by the Democratic Party to seize control over every level of North Carolina state government to send a message that this was a "white only" state.²²⁹

The right of African Americans to participate in the political franchise was violently taken away when the all-white Democratic Party led the statewide campaign to destroy that right.²³⁰ The campaign used terror and military might as the tools to suppress the exercise of the political franchise in 1898, and continued its use to ensure its successes.²³¹ In 1900, the Democratic Party enacted a constitutional amendment that basically abolished the right of African Americans to vote by imposing literacy tests, poll taxes, and creating a grandfather

221. Tyson, *supra* note 116, at 10; *see also*, UMFLEET, *supra* note 186, at 130–152.

222. UMFLEET, *supra* note 186, at 132.

223. *Id.* at 123–24, 131–32.

224. *Id.* at 143.

225. Tyson, *supra* note 116, at 10.

226. *Id.* at 11; *see* UMFLEET, *supra* note 186, at 154.

227. UMFLEET, *supra* note 186, at 154.

228. Leloudis, *supra* note 161, at 18.

229. UMFLEET, *supra* note 186, at 224; CROW ET AL., *supra* note 12, at 115.

230. Tyson, *supra* note 116, at 12.

231. *Id.* at 13; *see* UMFLEET, *supra* note 186, at 212.

clause that exempted whites from having to satisfy the literacy tests requirements.²³²

The loss of the right to vote reduced African Americans to the status of second-class citizens and supported the legal—but immoral—racial segregation and discrimination that was imposed, as a matter of law and social convention, for over seventy years.²³³ This suppression controlled North Carolina politics until after the passage of the 1965 Voting Rights Act when African American were finally able to use this federal law and federal courts to regain the right to vote and to more fully participate in the governance of the state and country.²³⁴ This new period of political participation has been described as “The Second Reconstruction.”²³⁵

The white supremacy campaign, which resulted in the overthrow of a legally elected city government and the forced removal of state governmental officials, was justified as necessary for whites to “take back their state.”²³⁶ This mentality was legally supported by the forty-three year old mandate that the U.S. Supreme Court announced in its *Dred Scott v. Sandford* decision that proclaimed that the United States was created for whites and its founders never intended that Africans should or could be citizens protected by its laws.²³⁷ This exercise of military force was sanctioned by the Democratic Party—the intended beneficiary of this assertion of lawlessness—and was condoned by elected Republican and federal officials who allowed it to occur by failing to utilize legitimate state power to redress these illegal acts.²³⁸ At the same time, this campaign successfully cemented in the minds and hearts of whites that African American lives did not matter and could be extinguished at will.

232. CROW ET AL., *supra* note 12, at 115–116; Tyson, *supra* note 116, at 12.

233. Tyson, *supra* note 116, at 12; UMFLEET, *supra* note 186, at 212.

234. Leloudis, *supra* note 161, at 18.

235. See MANNING MARABLE, RACE, REFORM, AND REBELLION: THE SECOND RECONSTRUCTION IN BLACK AMERICA, 1945–1990, at 3 (1991) (explaining how Reconstruction and the “Second Reconstruction” signaled the demise of rigid racial caste structures used to oppress African Americans for decades).

236. Tyson, *supra* note 116, at 6H.

237. *Dred Scott v. Sandford*, 60 U.S. 393, 404 (1856), *overruled by* U.S. CONST. amend XIV.

238. Michael Kent Curtis, *Race as a Tool in the Struggle for Political Master: North Carolina’s “Redemption” Revisited 1870–1905 and 2011–2013*, 33 LAW & INEQ. 53, 81 (2015).

IX. THE CONSEQUENCES OF THE BETRAYAL OF DEMOCRACY

Beginning in 1899, the state government enacted a series of repressive legislation that was intended to—and did—remove African Americans from political participation at the local, state, and national level.²³⁹ By legislation, the new Democratic Party ordered an entirely new registration that applied to all voters.²⁴⁰ They also required literacy tests, poll taxes, and other devices that were introduced into North Carolina law for the sole purpose of removing African Americans from any political participation.²⁴¹ Among these provisions was the one enacted to assist illiterate citizens with voting.²⁴²

Other “Jim Crow” laws were enacted that intentionally stripped African Americans of the ability and legal protections to participate, on an equal basis, in social, business, educational, and housing areas by legalizing segregation and reduced African Americans to second-class citizens.²⁴³ Efforts in court to overturn these legislative enactments were unsuccessful until 1954 when the United States Supreme Court issued the *Brown v. Board of Education* decision.²⁴⁴ This decision overturned the infamous *Plessy v. Ferguson*²⁴⁵ doctrine of “separate but equal.” The *Plessy v. Ferguson* decision held that while political rights of African Americans were required to be provided by the state, any social benefits and protections were outside of the intent and scope of the Equal Protection Clause of the Fourteenth Amendment.²⁴⁶ Thus, this decision sanctioned the legal ability of the states and its citizens to deny African Americans any legal protections or benefits as citizens and further embedded the myth of the inferiority of African Americans into the law and social acceptance.²⁴⁷

239. *Id.* at 86; see also 1899 N.C. Sess. Laws 106, ch. 16, § 1.

240. Leloudis, *supra* note 161, at 18.

241. *Id.* at 17–18.

242. *Id.*

243. *Id.* at 20–21.

244. *Brown v. Board of Ed.*, 347 U.S. 483, 495 (1954).

245. *Id.* at 494–95; *Plessy v. Ferguson*, 163 U.S. 537, 550–51 (1896).

246. *Plessy*, 163 U.S. at 551.

247. *Id.* at 563–64 (Harlan, J., dissenting).

The North Carolina political leadership and many whites eagerly adopted *Plessy's* permission to discriminate.²⁴⁸ Immediately after gaining control of the General Assembly, the Democrats amended the state constitution to mandate a literacy test for voters:

Every person presenting himself for registration shall be able to read and write any section of the Constitution in the English language [But] no male person who was on January 1, eighteen hundred and sixty-seven, or at any time prior thereto entitled to vote under the laws of any state in the United States wherein he then resided, and no lineal descendant of any such person, shall be denied the right to register and vote at any election in this state by reason of his failure to possess the educational qualifications herein prescribed: *Provided*, he shall have registered in accordance with the terms of this section prior to December 1, nineteen hundred and eight. The General Assembly shall provide for a permanent record of all persons who register under this section on or before November first, nineteen hundred and eight: and all such persons shall be entitled to vote in all elections by the people in this state. . . .²⁴⁹

At the same time, the General Assembly enacted a “grandfather clause” as an escape valve that permitted white individuals to register to vote without passing the literacy test or paying the poll tax if their father or grandfather was registered to vote before 1867.²⁵⁰ This enactment was buttressed by a statewide campaign of economic and military terrorism conducted by members of the Red Shirts and former confederate soldiers against African Americans who sought to register to vote.²⁵¹ In an

248. See, e.g., N.C. CONST. of 1868, art. VI § 4; N.C. CONST. of 1868 amend. XXVI (1875); N.C. CONST. of 1868, amend. XXX (1875) (instituting literacy requirements for voting, a poll tax, and a ban on interracial marriage).

249. N.C. CONST. of 1868, art. VI, §4, 5.

250. *Id.*

251. Tyson, *supra* note 116, at 9H.

enactment directed primarily against African American congressmen like George H. White, the General Assembly created new political boundaries for the election of federal and state legislative offices.²⁵² As a result, Congressman White left office in 1900 due to the gerrymandering of his congressional district; he was the last African American to represent North Carolina in U.S. Congress until 1992.²⁵³

In order to legally cement its efforts to destroy the political status and humanity of African Americans, the General Assembly enacted a constitutional mandate that compelled the separation of the races in public education and every other area of life.²⁵⁴ This enactment was consistent with the permissive *Plessy v. Ferguson* decision.²⁵⁵ In response to this legislation, which imposed state-sponsored and societal endorsed racial segregation, African Americans retreated from the political spectrum to develop and maintain separate—yet successful, parallel institutions across the state.²⁵⁶ Compelled to be segregated, African Americans banded together to create economic, social, and religious institutions that sought to provide protections and opportunities to obtain the educational and social skills that would allow for the growth and development of young African Americans to escape the racial oppression present in North Carolina.²⁵⁷

The path chosen by African Americans to enhance growth and development and to escape the imposed racial oppression was obtaining of quality education.²⁵⁸ This goal was moved to the top of the African American political agenda. As a result of the state's "separate but equal" mandate, African Americans were given

252. CROW ET AL., *supra* note 12, at 115–116.

253. CROW ET AL., *supra* note 12, at 109; *see also* *George Henry White 1852–1918*, HIST., ART & ARCHIVES, <http://history.house.gov/People/Detail?id=23657> (last visited Nov. 19, 2015).

254. N.C. CONST. of 1868, amends. XXVI, XXX (1875). Amendment XXVI required the separation of races in schools. *Id.* Amendment XXX prohibited "forever" the marriage "between a white person and a negro, or between a white person and a person of negro descent to the third generation." *Id.*

255. *See, e.g.*, *Plessy v. Ferguson*, 163 U.S. 537, 550–51 (1896) (finding separate but equal facilities constitutional).

256. Tyson, *supra* note 116, at 13.

257. *Id.*

258. Irving Joyner, *Pimping Brown v. Board of Education: The Destruction of African American Schools and the Mis-Education of African American Students*, 35 N.C. CENT. L. REV. 160, 170 (2013).

resources and authority to educate their own children.²⁵⁹ During the 1898 school year, the per-student funding and facilities for educational purposes for African Americans and whites were nearly similar.²⁶⁰ For example, in Wilmington, African American received approximately \$500 per student and white schools received \$850.²⁶¹ In 1899, African American schools received \$400 and white schools received \$900.²⁶² By 1903, the amount for African Americans was decreased to \$350 per student, while the amount for white school increased to \$1,600.²⁶³

As the underfunding of the schools continued through 1935, the NAACP legally challenged the equalization portion of “separate but equal” schools, which eventually led the General Assembly to dramatically increase the salaries of African Americans teachers and principals and to improve the facilities in which classes were conducted.²⁶⁴ In addition, African American schools received additional funding from the Rosenwald Foundation²⁶⁵ and several religious denominations. Individual African American communities regularly engaged in fund raising efforts in order to supplement the funds that the state provided.²⁶⁶

Students in these schools—although the schools were severely underfunded by the state—received an excellent education.²⁶⁷ These students were taught by a dedicated cadre of highly trained African American teachers who provided them with sufficient technical skills and academic knowledge that prepared them to confront and participate in the existing job market and to pursue additional education.²⁶⁸ After graduation from high school, the vast majority of these students joined the “Great Black Migration,” leaving North Carolina in order to escape the oppressive living conditions and racial bias that existed in this

259. *Id.*

260. UMFLEET, *supra* note 186, at 215–16.

261. *Id.*

262. *Id.*

263. *Id.*

264. For an in-depth discussion of the benefits of segregated African American schools, see Joyner, *supra* note 258, at 168–70.

265. *Id.* at 164. Julius Rosenwald, CEO of Sears, Roebuck & Co., was responsible for the opening of more than five thousand schools across the South that were established to educate African American children. *Id.*

266. *Id.* at 165.

267. *Id.* at 167.

268. *Id.*

state.²⁶⁹ This migration of talented minds deprived the state and the African American community of the political, economic, educational, and social contributions that could have improved the state's economic and social development.²⁷⁰ Because of the brutality of Jim Crow laws and practices, young graduates were encouraged to leave the state.²⁷¹

After Democrats seized total political control, African Americans were forced to live under Jim Crow laws, social conventions, and segregation practices that permanently retarded the ability to grow and develop on the same level as whites for the next seventy years.²⁷² When African Americans achieved a modicum of political success, the controlling political forces would enact new legislation to thwart that effort and prevent this apparent success from being repeated.²⁷³ An example was the election of Reverend Kenneth Williams in 1947 to a city council position in Winston-Salem; this was the first time that an African American had successfully challenged a white opponent in the South.²⁷⁴ This victory resulted in a single member political district in which a large concentration of African Americans lived and voted.²⁷⁵ As result, the North Carolina General Assembly created multi-member legislative districts in all areas of the state that contained large African American populations.²⁷⁶ These multi-member political districts had the intent and effect of merging or subsuming large African American populations who voted in a particular electoral district into a larger district that contained two or more political districts populated mainly by whites.²⁷⁷

The development of multi-member political districts resulted in African Americans using a "single-shot" voting tactic in which the voter would only cast a ballot for an African American candidate and leave the other positions blank.²⁷⁸ After this tactic proved successful, the General Assembly outlawed "single-shot"

269. *Id.*

270. *Id.* at 179.

271. *Id.* at 167, 179.

272. *Id.* at 202; Leloudis, *supra* note 161, at 18–20.

273. Leloudis, *supra* note 161, at 24.

274. CROW ET AL., *supra* note 12, at 153; Leloudis, *supra* note 161, at 22.

275. CROW ET AL., *supra* note 12, at 153; Leloudis, *supra* note 161, at 24.

276. CROW ET AL., *supra* note 12, at 153; Leloudis, *supra* note 161, at 27.

277. CROW ET AL., *supra* note 12, at 153; Leloudis, *supra* note 161, at 24.

278. *Id.*

voting.²⁷⁹ Despite this anti-single-shot legislation, African Americans were successful in several town and city council races.²⁸⁰

By 1954, another ten [African American] politicians had won election to local offices: [Fred] J. Carnage, Raleigh school board, 1949; William R. Crawford, Winston-Salem city council, 1961; Dr. [William] Devane, Fayetteville city council, 1951; Dr. William M. Hampton, Greensboro city council, 1951; Nathaniel Barber, Gastonia city council, 1951; Dr. G. K. Butterfield, Wilson city council, 1953; Nicholas Rencher Harris, Durham city council, 1953; Hubert Robertson, Chapel Hill board of alderman, 1953; and Dr. David Jones, Greensboro school board, 1954.²⁸¹

Along the way, African Americans launched legal challenges to their total exclusion from participation in the political franchise. For example, in *Lassiter v. Northampton*,²⁸² the constitutionality of the literacy test requirement was challenged. As a result of this challenge, the United States Supreme Court, in an opinion authored by liberal Associate Justice William O. Douglas, determined that the literacy test was constitutional because it was race neutral and did not violate the Equal Protection Clause of the Fourteenth Amendment.²⁸³ Justice Douglas reasoned that although literacy and intelligence are not synonymous, a state might constitutionally require that “only those who are literate should exercise the franchise.”²⁸⁴ In a 1961 case, *Bazemore v. Bertie County Board of Election*,²⁸⁵ the North Carolina Supreme Court declared that the literacy test required “nothing

279. CROW ET AL., *supra* note 12, at 153; Leloudis, *supra* note 161, at 22.

280. Leloudis, *supra* note 161, at 22 n.66.

281. *Id.* at 22 n.46.

282. *Lassiter v. Northampton Cty. Bd. of Elections*, 360 U.S. 45, 45 (1959) (stating that “a Negro citizen of North Carolina sued to have the literacy test for voters declared unconstitutional and void”).

283. *Id.* at 53–54.

284. *Id.* at 52.

285. *Bazemore v. Bertie Cty. Bd. of Elections*, 119 S.E.2d 637 (N.C. 1961).

more than the mere ability to read and write any section of the State Constitution in the English language.”²⁸⁶

The state’s poll tax requirement was declared to be constitutional in *Breedlove v. Suttles*²⁸⁷ on the ground that the Equal Protection Clause did not require absolute equality—another legal endorsement and reaffirmation of white supremacy.²⁸⁸ This determination, however, was later reversed in *Harper v. Virginia Board of Elections*,²⁸⁹ when the Court determined that a state could not condition the right to vote on the affluence or the ability of the voter to pay any fee as an electoral standard.²⁹⁰ Despite this decision, the Court never retreated from the notion that equal protection did not require absolute equality.²⁹¹

In the face of these legislative enactments that attempted to suppress the registration of African Americans, some communities organized and engaged in efforts to fight back and, where possible, to seek political concessions. Such was the case with the Durham Committee on Negro Affairs,²⁹² which was organized in 1935 by Charles Clinton “C.C.” Spaulding, a founder of the N.C. Mutual Life Insurance Company, and Dr. James E. Shephard, the founder of North Carolina College.²⁹³ The Durham Committee immediately became a powerful political force in a city that had a strong economic base of independent African

286. *Id.* at 642.

287. *Breedlove v. Suttles*, 302 U.S. 277, 283–84 (1937).

288. *Id.* at 281 (“The equal protection clause does not require absolute equality.”); see also Ronald Turner, *The Plessification of the Equal Protection Clause*, RACE, RACISM & LAW (Winter 2009), http://racism.org/index.php?option=com_content&view=article&id=1850:the-plessification-of-the-equal-protection-clause&catid=8&Itemid=140.

289. *Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 666 (1966) (“We conclude that a state violates the Equal Protection Clause of the Fourteenth Amendment whenever it makes the affluence of the voter or payment of any fee an electoral standard.”).

290. *Id.*

291. *Id.* at 669 (“Notions of what constitutes equal treatment for purposes of the Equal Protection Clause do change. This Court in 1896 held that laws providing for separate public facilities for white and Negro citizens did not deprive the latter of the equal protection and treatment that the Fourteenth Amendment commands.”).

292. Later, the name of the organization was changed to the Durham Committee of the Affairs of Black People. *Durham Committee on Negro Affairs*, AND JUSTICE FOR ALL, http://andjusticeforall.dconc.gov/gallery_images/durham-committee-on-negro-affairs (last visited Nov. 29, 2015).

293. See *Oral History Interview with Conrad Odell Pearson*, DOCUMENTING AM. SOUTH, <http://docsouth.unc.edu/sohp/H-0218/menu.html> (last visited Dec. 10, 2015). North Carolina College was later re-named North Carolina Central University. *Durham Committee on Negro Affairs*, *supra* note 292.

American businesses. It was heavily unionized with a large African American labor force tied into the tobacco industry and possessed a large, highly educated and professional class of African Americans connected to North Carolina College.²⁹⁴ The strength of the Durham Committee and its ability to participate effectively in city politics made it the most powerful African American political and civic organization in the state.²⁹⁵ The Durham Committee also served as the prototype for other large, urban communities to replicate in their efforts to improve the position and condition of their communities.²⁹⁶ The Durham Committee always involved itself in voter registration and was successful in securing the election of Rencher Nicholas Harris as the first African American city council member in 1953, and effectively influenced the election of more moderate white politicians.²⁹⁷

When the 1965 Voting Rights Act was enacted, only twenty-one percent of North Carolina's African Americans were registered to vote.²⁹⁸ This percentage did not quickly increase because many African Americans—particularly those in rural areas who were more economically dependent on white farmers and landowners—were fearful of registering to vote, and others did not have a history of political participation.²⁹⁹ In an effort to increase voter registration and political participation of African Americans, Dr. Reginald Hawkins, a noted Charlotte dentist, ran

294. See *Durham Black History*, DURHAM N.C. MAPS & INFO, <http://www.durhamnc.com/maps-info/black-history> (last visited Dec. 10, 2015); Karina Hernandez, *Durham's Tobacco District: A Smoky Contribution*, N.C. HISTORY, <http://nchistory.web.unc.edu/durham%E2%80%99s-tobacco-district-a-smoky-contribution> (last visited Nov. 29, 2015); *History*, AM. TOBACCO, <https://americantobaccocampus.com/about/1>; see also *North Carolina Central University*, N.C. CENTRAL U., http://www.nccu.edu/formsdocs/proxy.cfm?file_id=351 (last visited Dec. 10, 2015).

295. Samiha Khanna, *Lavonia Allison's Reign Ends*, INDY WEEK (Dec. 7, 2011), <http://www.indyweek.com/indyweek/lavonia-allisons-reign-ends/Content?oid=2719979>.

296. Samiha Khanna, *Financial Questions at the Durham Committee on the Affairs of Black People May Erode Allison's Power*, INDY WEEK (Mar. 2, 2011), <http://www.indyweek.com/indyweek/financial-questions-at-the-durham-committee-on-the-affairs-of-black-people-may-erode-allisons-power/Content?oid=2099282>.

297. *Biography of R.N. Harris*, R.N. HARRIS INTEGRATED ARTS/CORE KNOWLEDGE MAGNET SCH., http://www.edlinesites.net/pages/R_N_Harris/About_Us/Biography_of_R_N_Harris (last visited Oct. 3, 2015).

298. *Id.*

299. Barbara Reynolds, *We Won Voting Rights in 1965, But We Didn't Beat Racism*, NEWSDAY (Mar. 10, 2015), <http://www.newsday.com/opinion/oped/we-won-voting-rights-in-1965-but-we-didn-t-beat-racism-1.10037535>.

for Governor of North Carolina in the Democratic Party primary in 1968, while Eva Clayton, a civil right activist from Warrenton, sought a congressional seat from the “Old Black Second” district.³⁰⁰ These campaigns focused mainly on voter registration and increased political participation because of the realization that gaining political power in North Carolina was impossible if African Americans did not register and vote.³⁰¹ Joining this campaign were Mickey Michaux in Durham, Fred Alexander in Charlotte, and Henry Frye in Greensboro.³⁰² It was clear to these leaders that the lingering impact of past and ongoing racial harassment, intimidation, and economic coercion would continue to plague African American communities as long as African Americans were politically impotent.³⁰³ Soon after these campaigns concluded, the homes of Hawkins, Alexander, and Civil Rights icon Julius Chambers were bombed in Charlotte.³⁰⁴

The Voting Rights Act was designed to outlaw various practices that were recognized to negatively impact voter registration and political participation by African Americans.³⁰⁵ It became illegal, under Section 2 of the Act, to engage in any conduct or activities intended to prevent qualified racial minorities from participating in the political franchise.³⁰⁶ It also created a mechanism, under Section 5, which identified specific states that had previously engaged in preventing minorities from political participation and required those states to obtain pre-clearance from the U.S. Department of Justice or a special three-judge panel in the U.S. Court of Appeals for the District of Columbia.³⁰⁷ This pre-clearance mechanism required a review of every proposed change in a voting practice in order to determine

300. See Eva M. Clayton, HIST., ART & ARCHIVES, <http://history.house.gov/People/Detail?id=11065> (last visited Nov. 29, 2015); *Reginald Hawkins (1923–2007)*, N.C. HISTORY PROJECT, <http://www.northcarolinahistory.org/encyclopedia/300/entry> (last visited Nov. 29, 2015); see also *Looking Back at the 1963 Voting Rights Project in Rural North Carolina*, AM. FRIENDS SERV. COMM. (Sept. 12, 2015), <https://www.afsc.org/story/looking-back-1963-voting-rights-project-rural-north-carolina>.

301. Hawkins, *supra* note 300.

302. Jordan, *supra* note 138, at 50.

303. *Id.* at 41–44.

304. DAVISON M. DOUGLAS, *READING, WRITING, AND RACE: THE DESEGREGATION OF THE CHARLOTTE SCHOOLS* 120 (1995).

305. Voting Rights Act of 1965, Pub. L. No. 89-110 (1965).

306. *Id.* at § 2.

307. *Id.* at § 5.

if the change would have a racially discriminatory impact.³⁰⁸ This protection was critical at the time of its passage, but proved to be insufficient in spurring greater minority voting participation.³⁰⁹ While the focus of the Voting Rights Act was preventive, the quest to obtain, use, and maintain political power was left to the people.³¹⁰ The slow growth in registering African Americans to vote in North Carolina was an example of this.³¹¹

In 1968, seventy years after the 1898 Wilmington Coup D'état, Henry Frye—who later became the first African American to serve as Chief Justice of the North Carolina Supreme Court³¹²—was elected to the North Carolina General Assembly.³¹³ In 1970, Reverend Joy Johnson won election to the General Assembly from the tri-racial communities of Roberson County as the result of a coalition that was formed between African Americans and Lumbee Indians.³¹⁴ Efforts to elect an African American from Durham finally succeeded when attorney Mickey Michaux was elected in 1972.³¹⁵ Fred Alexander was elected to the state Senate in 1972 from Mecklenburg County.³¹⁶

These early legislators recognized the burden that they carried in the General Assembly as more than making a presence. Each of them wanted to have an impact and knew that they had to create allies in order to make a difference with the legislative process. “‘When I went there’ [said] Henry Frye, North Carolina’s first [African American] legislator in this century, ‘I knew I wouldn’t get very far with allegations. So I never charged anyone with anything. I always spoke of the problems we faced as third-party entities.’”³¹⁷ When Reverend Joy Johnson, a Baptist minister

308. *Id.*

309. BERNARD GROFMAN, LISA HANDLEY & RICHARD G. NIEMI, MINORITY REPRESENTATION AND THE QUEST FOR VOTING EQUALITY 23–26 (1992).

310. Voting Rights Act of 1965, Pub. L. No. 89-110 (1965).

311. GROFMAN ET AL., *supra* note 309, at 23–26.

312. OTIS L. HAIRSTON, JR., BLACK AMERICA SERIES: GREENSBORO, NORTH CAROLINA 9 (2003).

313. Jordan, *supra* note 138, at 41.

314. Ronald Smothers, *Steps Taken to Ease Tension in Carolina County*, N.Y. TIMES, Apr. 10, 1988, at 27.

315. Jordan, *supra* note 138, at 50. Michaux had been an unsuccessful candidate in 1968 and 1970. KENNETH ROBERT JANKEN, THE WILMINGTON TEN: VIOLENCE, INJUSTICE, AND THE RISE OF BLACK POLITICS IN THE 1970S, at 111 (2015).

316. *Id.* at 50.

317. *Id.* at 41.

from Roberson County and the second-elected African American legislator, entered the General Assembly, Frye explained that “their tactics expanded. ‘Joy could preach to our colleagues,’ Frye [recalled] ‘and he would fire them up with his oratory, and then [Frye] would sit and negotiate with them.’”³¹⁸ Frye’s strategy worked as he convinced enough legislators to place the literacy test on the ballot for a referendum during his first term in office.³¹⁹ Although the referendum was defeated by a fifty-six percent to forty-four percent statewide vote, Frye established his political savvy by his success in placing a racially sensitive issue on the ballot that challenged the six-decade-old literacy test as a provision in the North Carolina constitution.³²⁰ The 1965 Voting Rights Act declared literacy tests unlawful,³²¹ and the U.S. Supreme Court upheld the ban of its use in *Gaston County v. United States*.³²² Although it cannot be enforced, the literacy test provision remains in the North Carolina Constitution.³²³

The first group of African American legislators understood that they were elected to make a difference, but the fact that there were only a few of them required that they form a coalition with other legislators in order to have their legislation enacted. As their numbers increased, Frye said that they “could target more of [their] colleagues to work with.”³²⁴ In subsequent years, the numbers and influence of African American legislators did increase.³²⁵ This increase was aided considerably by the *Thornburg v. Gingles*³²⁶ decision and the political influence that they were able to utilize increased due to the political savvy they exhibited.

318. *Id.*

319. *Id.*

320. *Id.* After graduating from law school and returning to his hometown of Ellerbe, Frye sought to register to vote and was denied because he did not recite a provision of the constitution to the satisfaction of the county’s election registrar. HOWARD E. COVINGTON, JR., HENRY FRYE: NORTH CAROLINA’S FIRST AFRICAN AMERICAN CHIEF JUSTICE 50 (2013).

321. Voting Rights Act of 1965, Pub. L. No. 89-110 (1965).

322. *Gaston Cty. v. United States*, 395 U.S. 285, 285–86 (1969).

323. N.C. CONST. art. VI, § 4.

324. Jordan, *supra* note 138, at 41.

325. *Id.* at 40, 42.

326. *Thornburg v. Gingles*, 478 U.S. 30, 80 (1986) (affirming the district court’s rejection of North Carolina’s multimember electoral structure that caused African Americans to have less of an opportunity to elect representatives of their choice than white voters). The Supreme Court in *Thornburg* helped increase the number of African American legislators in North Carolina. *Id.*

In 1981, the number of African Americans elected to serve in the General Assembly had increased to three of the 120 members of the House and one of the fifty members of the Senate.³²⁷ The ability to elect representatives of their choice, as promised by the Voting Rights Act, did not result in a significant change in the number of African Americans who were actually elected. The number of African American legislators did not significantly change until after the *Thornburg v. Gingles* litigation in which the Supreme Court declared that North Carolina's use of multi-member political districts constituted a violation of Section 2 of the 1965 Voting Rights Act.³²⁸ In 1982, when *Thornburg v. Gingles* was filed, only fifty-two percent of African Americans were registered to vote;³²⁹ by 1986, when the case was decided, fifty-seven percent were registered to vote.³³⁰

In *Thornburg v. Gingles*, the United States Supreme Court issued its first interpretation of the amended Voting Rights Act.³³¹ In this case, the Court examined whether North Carolina's use of multi-member political districts, which submerged substantial African American populations into a few white districts, violated Section 2 of the Voting Rights Act.³³² The use of multi-member districts was used to dilute the voting strength of several African American communities and relied upon "racially polarized" voting by whites to prevent the election of African American candidates.³³³ Multi-member political districts were widely situated in the eastern portion of North Carolina where the largest population of African Americans lived.³³⁴

327. Jordan, *supra* note 138, at 42.

328. *Thornburg*, 478 U.S. at 30; Jordan, *supra* note 138, at 42.

329. *Thornburg*, 478 U.S. at 30; Anita S. Earls, Emily Wynes & Lee Anne Quatrucci, *Voting Rights in North Carolina: 1982–2006*, 17 S. CAL. REV. L. & SOC. JUST. 577, 580 (Spring 2008).

330. Earls et al., *supra* note 329, at 580.

331. *Thornburg*, 478 U.S. at 30. The Voting Rights Act was amended in June 1982 in order to address a Supreme Court opinion in *Mobile v. Bolden*, 446 U.S. 55 (1980), which declared that a plaintiff was required to establish an intent to discriminate in order to prove a violation of Section 2 of the Act. The amended language substituted an "effects test" as the standard which had to be established in order to prove a Section 2 claim. *Id.*

332. *Id.* at 31.

333. *Id.* at 31–32.

334. Richard H. Pildes & Richard G. Niemi, *Expressive Harms, "Bizarre Districts," and Voting Rights: Evaluating Election-District Appearances After Shaw v. Reno*, 92 MICH. L. REV. 483, 489–490; Jennifer L. Gilg, *Back to the Drawing Board: Equal Protection Clashes with the Voting Rights Act in Shaw v. Reno*, 113 S. Ct. 2816 (1993), 73 NEB. L. REV. 383, 394 (1994).

Utilizing a totality of the circumstances test, the Court determined that North Carolina had discriminated against African Americans from 1900 to 1970 with respect to the exercise of the voting franchise “by employing at different times a poll tax, a literacy test, a prohibition against bullet (single-shot) voting and designated seat plans for multi-member districts.”³³⁵ The Court also determined that the low registration rate of 52.7% was directly traceable to the long history of official discrimination by the state against African Americans.³³⁶ The Court also concluded “historical discrimination in education, housing, employment and health services had resulted in a lower socioeconomic status for North Carolina’s [African Americans] as a group than for whites.”³³⁷ This historical discrimination, the Court concluded, created special group interests and hindered the ability of African Americans to “participate effectively in the political process and to elect representatives of their choice.”³³⁸

As previously discussed in this article, the Court determined that “white candidates in North Carolina [had] encouraged voting along color lines by appealing to racial prejudice” and identified specific blatant, subtle, and furtive racial appeals which had occurred in North Carolina from the 1890s up through the 1984 U.S. Senate race.³³⁹

The Court determined that the use of racial appeals in political campaigns in North Carolina persist[ed] to the present day and that its current effect [was] to lessen to some degree the opportunity of [African Americans] to participate effectively in the political processes and to elect candidates of their choice.³⁴⁰

In line with this conclusion, the Court found that racially polarized voting existed in each of the multi-member districts that

335. *Thornburg*, 478 U.S. at 39.

336. *Id.*

337. *Id.*

338. *Id.* at 40.

339. *Id.*

340. *Id.* at 42.

had been challenged.³⁴¹ The racist oriented conduct described by the Court in *Thornburg v. Gingles* was not materially different than that used by the Democratic Party in 1898.³⁴²

The Court's decision in *Thornburg v. Gingles* dismantled the multi-member districts and severely disrupted the Democratic Party's long-standing, successful discriminatory device used to retard political participation by African Americans.³⁴³ As a direct result, the number of African American legislators leaped from four to sixteen.³⁴⁴ Thus, the dismantling of this device finally served as a serious setback to discriminatory results stemming from the 1898 betrayal of democracy which was led by Charles Aycock, Furnifold Simmons, Josephus Daniels, and Alfred Waddell.³⁴⁵

By 1986, the percentage of African Americans who were registered to vote increased to fifty-three percent of age-qualified African Americans, while sixty-seven percent of whites were registered.³⁴⁶ In 1965, when the Voting Rights Act was enacted, only twenty-two percent of African Americans had been registered to vote.³⁴⁷ This voter registration increase occurred over a seventeen year period. Although the registration numbers increased—a necessary first step—there was not a notable increase in voter-turnout; in 1982, the turnout rate in the non-presidential election was only thirty percent.³⁴⁸

In 1981, Representative Kenneth Spaulding led an effort to create single member political districts during the pendency of the *Thornburg v. Gingles* litigation.³⁴⁹ African American legislators also created an alliance that changed the method of nominating and

341. *Id.*

342. *Id.* at 30; *see also* Tyson, *supra* note 116, at 6H.

343. *Id.* at 46–51.

344. Jordan, *supra* note 138, at 51–52.

345. CROWET AL., *supra* note 12, at 115–117.

346. Richard Williamson, *The 1982 Amendments to the Voting Rights Act: A Statutory Analysis of the Revised Bailout Provisions*, 62 WASH. U.L.Q. 1, 10 n.51 (1984).

347. Barbra Arnwine & Marcia Johnson-Blanco, *Voting Rights at a Crossroads: The Supreme Court Decision in Shelby is the Latest Challenge in the 'Unfinished March' to Full Access to the Ballot*, ECON. POL'Y INST. (Oct. 25, 2013), <http://www.epi.org/publication/voting-right-s-crossroads-supreme-court-decision>.

348. Michael Crowell, *Coates' Canons Blog: Do Election Laws Affect Voter Turnout?*, COATES' CANONS: N.C. LOCAL GOV'T LAW (Mar. 7, 2014), <http://canons.sog.unc.edu/?p=7557>.

349. Jordan, *supra* note 138, at 40.

electing superior court judges in the state.³⁵⁰ Prior to this legislation, only two African Americans, Clifton Johnson and Terry Sherrill, had been elected as a superior court judges,³⁵¹ after this legislation was enacted, eleven were elected in the very next election.³⁵² In 1987, the African American legislators led a successful campaign to have Dr. Martin Luther King's birthday declared as a paid state holiday for state workers.³⁵³

Through the legislative efforts of Representative Mickey Michaux, legislation was enacted in 1986 that allowed for a cadre of "floating" voter registrars who would go into African American communities in order to register people to vote.³⁵⁴ Previously, voter registrars worked in their offices and would not come into African American communities to register potential voters.³⁵⁵ This restricted registration pattern retarded the ability and opportunities for African Americans, mainly hourly workers, to register and vote.³⁵⁶ As a direct result of the presence and participation of floating registrars, the registration of African American voters increased.³⁵⁷

During these early days, African Americans were able to secure more than \$6 million in an appropriation to improve and expand the North Carolina Central University School of Law.³⁵⁸ This sum represented more than the law school had received in total appropriations in the thirty-nine years of its existence.³⁵⁹ Earlier in 1976, these same legislators successfully defended the existence of the law school when white legislators sought to close it.³⁶⁰

350. WILLIAM R. KEECH & MICHAEL P. SISTROM, *QUIET REVOLUTION IN THE SOUTH: THE IMPACT OF THE VOTING RIGHTS ACT 166* (Chandler Davidson & Bernard Grofman eds., 1994).

351. *Id.* at 165.

352. *Id.* at 166.

353. Jordan, *supra* note 138, at 42.

354. *NAACP v. McCrory*, 997 F. Supp. 2d 322, Trial Tr. 17 (M.D.N.C. 2014).

355. *Id.* at 16–18.

356. *Id.* at 17 (explaining that by having the open registrations and extending the voting times, African Americans could vote without putting their jobs and wages in jeopardy).

357. *Id.* at 19.

358. Jordan, *supra* note 138, at 42.

359. *Id.*

360. *Id.*

In 1989, African American legislators led a re-write of a seventy-four year old run-off primary law that required a candidates for political office to receive more than fifty percent of the primary votes in order to represent the party in the general election.³⁶¹ This rule had been responsible for the defeat of Representative Mickey Michaux when he ran for election in the second congressional district.³⁶² Michaux received the most votes in the primary—forty-four percent of the votes cast—but was forced into a run-off against a white, conservative candidate who only received thirty-three percent.³⁶³ Michaux lost the run-off in a controversial campaign that was heavily laden with racially polarized voting.³⁶⁴

Despite the victories, there were notable and frustrating losses. Chief among these were failure to increase appropriations for the historically underfunded Historically Black Colleges and Universities (“HBCUs”) in the state and efforts to make voting easier and more convenient.³⁶⁵ Representative Michaux had introduced a bill in 1989 to provide for same day voter registration, but the House Judiciary Committee refused to endorse it.³⁶⁶ There was also the failure of Representative Sidney Locke and Senator Ralph Hunt to pass anti-discrimination and ethnic intimidation legislation in 1989.³⁶⁷ There were other failures, but it was clear that the African American legislators were in an ongoing fight to improve the condition and positions of African Americans—a sign that their presence was needed and beneficial.³⁶⁸

A sad reminder of the continuing impact of racial discrimination was the fact that from 1968 to 1989, only thirty African Americans had been elected to the modern-day General Assembly, while more than 113 had been elected to similar

361. *Id.* at 43.

362. *Id.* at 43.

363. A. Leon Higginbotham, Jr. et al., *Shaw v. Reno: A Mirage of Good Intentions with Devastating Racial Consequences*, in 3 RACE, VOTING, REDISTRICTING AND THE CONSTITUTION 1593, 1615 (Marsha J. Tyson Darling ed., Routledge 2001).

364. *Id.*

365. *Id.* at 49, 54.

366. *Id.* at 54, 58.

367. *Id.* at 54.

368. *Id.* at 58.

positions during 1868 through 1900—the First Reconstruction.³⁶⁹ Nevertheless, the legislators who were elected proved that they were as savvy and efficient as those elected during the First Reconstruction. In both periods, coalition politics, which demanded the ability to attract support from like-minded white legislators from either party, was a necessary strategy.

The racist nature of the political process continued to be as pervasive in 1990 as it had been in 1898. For example, in the bitterly and racially divisive United States Senate campaign between Harvey Gantt, an African American and former two-term mayor of Charlotte, and Senator Jesse Helms, the arch segregationist who switched his Democratic Party registration to Republican Party in 1960, the racial antagonistic tactics of 1898 were widely replicated.³⁷⁰ After Gantt's Democratic Party primary campaign victory, Helms launched an aggressive campaign to mobilize white voters by warning them about the dangers of electing an African American.³⁷¹ The Helms campaign used racial code words in his campaign and fund-raising materials.³⁷² In the closing days of the campaign, with Helms trailing in the polls, he released the infamous "white hands" advertisement in which whites were warned that, if elected, Gantt would widely employ and support affirmative action programs, which would deny jobs and other benefits to whites.³⁷³ The commercial showed a pair of white hands which held a rejection slip for a job as the narrator stated that:

You needed that job and you were the best qualified. But they had to give it to a minority because of a racial quota. Is that really fair? Harvey Gantt says it is. You'll vote on this issue next

369. *Id.* at 58.

370. Terry Smith, *Race and Money in Politics*, 79 N.C. L. REV. 1469, 1482–1483 (2001).

371. See, e.g., Robin Toner, *In North Carolina's Senate Race, A Divisive TV Fight Over 'Values'*, N.Y. TIMES, Sept. 23, 1990, at 32 (describing a television commercial Helms used against Gantt).

372. *Id.*

373. Carol M. Swain, *Affirmative Action: Legislative History, Judicial Interpretations, Public Consensus*, in 1 AMERICA BECOMING: RACIAL TRENDS AND THEIR CONSEQUENCES 318, 329 (Neil Smelser et al. eds. 2001).

Tuesday. For racial quotas, Harvey Gantt. Against racial quotas, Jesse Helms.³⁷⁴

In those closing days, the Helms campaign, through the Republican Party, also sent more than 125,000 mailers to registered African American voters that lied and told them that if they had moved from their residence within thirty days of the election, it would be illegal for them to vote, and if they attempted to vote, they would be prosecuted.³⁷⁵

At the time, the Gantt-Helms race became the most expensive political campaign in history.³⁷⁶ Trailing by eight points in the polls on October 20, 1990, before the “white hands” ad was shown on statewide television, Helms won the election with fifty-three percent of the vote.³⁷⁷ In the Gantt race, Helms demonstrated his willingness and inclination to continue to play the “race card” in order to stimulate his supporters.³⁷⁸ Jesse Helms’s political races, as did his ideological rants as United States Senator, regularly invoked his racist ideology and strident opposition to issues and concerns that would benefit African Americans.³⁷⁹

African Americans were able to use the racist tactics employed by politicians like Jesse Helms as a part of efforts to motivate African Americans to register and vote.³⁸⁰ On election night in November 1990, lawyers who monitored the polling sites for Gantt were forced to seek court orders in order to keep many

374. *Snakes on a Blog, Jesse Helms “Hands” Ad*, YOUTUBE (Oct. 16, 2006), <https://www.youtube.com/watch?v=KlyewCdXMzk>; see also KATHLEEN HALL JAMIESON, *DIRTY POLITICS: DECEPTION, DISTRACTION AND DEMOCRACY* 97 (1992) (providing a transcript of the political advertisement aired on television).

375. Earls et al., *supra* note 333, at 636.

376. Dave Leshner, *Senate Race Sets Record at \$27 Million and Rising: Campaign: Huffington has Outspent Feinstein Nearly 2 to 1 in Costliest Congressional Contest, Records Show*, L.A. TIMES (Oct. 18, 1994), http://articles.latimes.com/1994-10-18/news/mn-51656_1_senate-race-sets-record.

377. Charles L. Prysby, *THE 1990 U.S. SENATE ELECTION IN NORTH CAROLINA*, in *RACE, POLITICS, AND GOVERNANCE IN THE UNITED STATES* 29 (Huey L. Perry ed. 1996); *Poll Shows Gantt Leads Helms by 8 Percentage Points in N.C. Race*, BALTIMORE SUN (Oct. 20, 1990), http://articles.baltimoresun.com/1990-10-20/news/1990293074_1_helms-sun-poll-gantt.

378. Prysby, *supra* note 377, at 34–35.

379. BRYAN HARDIN THRIFT, *CONSERVATIVE BIAS: HOW JESSE HELMS PIONEERED THE RISE OF RIGHT-WING MEDIA AND REALIGNED THE REPUBLICAN PARTY* 2 (2014).

380. Peter Applebome, *Blacks and the Election: What was the Message?: Harvey Gantt Brought Turnout, but so did Jesse Helms?*, N.Y. TIMES, Nov. 18, 1990, at 30L.

polling sites open to accommodate the large number of African Americans who had turned out to vote, many of them crowding polling sites after they left work for the day.³⁸¹ During the Gantt-Helms race, it became obvious to many African Americans that the voting rights struggle had moved past the contours of the 1965 Voting Rights Act and now needed to develop additional opportunities for African Americans to register and vote.³⁸² The relatively high African American voter participation in the Gantt-Helms race resulted from an increase in the voter registration which now stood at sixty-three percent, but only resulted in a forty-one percent turnout among African Americans.³⁸³

Expanding upon the political successes that resulted from the enactment of the Voting Rights Act, African Americans engineered another phase of the “Second Reconstruction” as it expanded the participation of African Americans to record-breaking numbers in local, county, and state elections. By this time, nineteen African Americans served in the General Assembly and hundreds more had been elected locally.³⁸⁴ The political savvy of this group was never more apparent than when they joined with white allies in 1991 to elect Representative Dan Blue as the Speaker of the House, the first such victory of an African American in North Carolina or in any southern state.³⁸⁵ Blue’s victory resulted from a coalition effort between African American and white Democratic legislators.³⁸⁶

The election of Blue as Speaker of the House was viewed as a major breakthrough in North Carolina politics. During Blue’s tenure, some progressive legislation was enacted in the General Assembly.³⁸⁷ His chief accomplishment was the congressional redistricting, which resulted in the election of two African

381. Kenneth Cooper, *Helms Defeats Gantt; Poll Hours Disputed*, WASH. POST, Nov. 7, 1990, at A27.

382. See Prysby, *supra* note 377, at 44–45 (concluding that not only are African Americans turning out to vote, but that African American candidates can be elected as statewide officers, and lose for many of the same reasons as white candidates).

383. Leloudis, *supra* note 161, at 31; KEECH, *supra* note 345, at 161; Earls et al., *supra* note 329, at 580.

384. Leloudis, *supra* note 161, at 29; Earls et al., *supra* note 329, at 581.

385. Jason Zengerle, *Code Blue*, NEW REPUBLIC (Apr. 1, 2002), <http://www.newrepublic.com/article/code-blue>.

386. *Id.*

387. Bob Geary, *True Blue*, INDYWEEK (Jan. 23, 2002), <http://www.indyweek.com/indyweek/true-blue/Content?oid=1185558>.

Americans to Congress.³⁸⁸ Eva Clayton was elected as the congressional representative in the revised “Black Second,” the same district from which George H. White was elected in 1896.³⁸⁹ Clayton was the first African American elected to Congress from North Carolina since White’s tenure ended in 1901.³⁹⁰

Soon after the Clayton campaign concluded, Mel Watt was chosen as the congressional representative in the newly drawn district, which resulted from an increase in North Carolina’s population.³⁹¹ The Twelfth Congressional District was initially drawn as a majority-minority district, but was the subject of extensive litigation that resulted in the African American presence in the district being reduced.³⁹² Notwithstanding this reduction in the number of African American voters in this district, Watt was repeatedly elected until he accepted a cabinet position with President Obama in 2014.³⁹³

As Speaker, Blue became the most powerful African American ever to serve in the General Assembly and wielded “real power.”³⁹⁴ Blue’s election symbolized what was expected from the Democratic coalition; the Democratic Party had come to depend heavily on the African American vote in order for the party to remain in office.³⁹⁵ In order to become Speaker, Blue “had to win the votes of rural white legislators who, although Democrats, represented districts that routinely voted for Jesse Helms.”³⁹⁶ Instead of Blue’s election serving as a stepping-stone for African American politicians in state politics, it became a “glass ceiling” that inhibited rather than escalated the acquisition of power.³⁹⁷ It was expected by African Americans that the Democratic coalition would produce white voters in support of the rise of African American leaders, but instead, the party could not deliver white

388. OFF. HIST. & PRES., BLACK AMERICANS IN CONGRESS 1870–2007, at 598 (2008).

389. *Id.* at 596–98.

390. *Id.* at 598.

391. *Blacks Make Inroads in Various State Elections*, JET, June 22, 1992, at 6.

392. *See Shaw v. Reno*, 509 U.S. 630, 657–58, app’x (1993).

393. *President Obama Names Rep. Mel Watt FHFA Director*, MORTGAGE COMPLIANCE (Jan. 10, 2014), <http://www.mortgagecompliancemagazine.com/featured/president-oba-ma-names-rep-mel-watt-fhfa-director>.

394. Zengerle, *supra* note 385.

395. *Id.*

396. *Id.*

397. *Id.* at 18.

voters in the same way that African Americans were able to deliver their voters.³⁹⁸ In many instances, those white Democratic voters abandoned the party and became Republicans rather than cast their votes for African Americans,³⁹⁹ similar to what the white Populists and Republicans did to African Americans in 1898.⁴⁰⁰

X. CONGRESSIONAL REDISTRICTING CHALLENGED

The redistricting of the state's newest congressional districts did not advance without legal challenges. In an oddly induced legal challenge, the United States Supreme Court ultimately affirmed the redistricting for District 1 (the old "Black Second"), but concluded that the drawing of boundaries for District 12 was unconstitutional.⁴⁰¹

Under the leadership of Speaker Dan Blue, the General Assembly initially developed a redistricting map, that included only one minority-majority district.⁴⁰² When this redistricting plan was submitted to the Republican controlled Department of Justice for pre-clearance, it was rejected.⁴⁰³ At the insistence of the Republican controlled Department of Justice, the state was required to submit a new plan that contained two minority-majority districts.⁴⁰⁴ This mandate resulted from the department's adoption of a "Black Max" strategy, which was to govern all congressional redistricting around the country.⁴⁰⁵ This plan was devised based on the voting history of African Americans who normally voted for Democratic candidates and provided the margin of victory in contests with Republicans.⁴⁰⁶ The Black Max strategy was designed to pack African Americans into congressional districts that were already majority-minority and

398. *Id.*

399. Richard H. Pildes, *Is Voting-Rights Law Now at War with Itself? Social Science and Voting Rights in the 2000s*, 80 N.C. L. REV. 1517, 1529 (2002).

400. *Id.* (harkening back to the Coup D'état of Wilmington in 1898, many White voters left the Republican Party or did not prevent the rise of the Democrats).

401. *Shaw v. Hunt*, 517 U.S. 899, 911 (1996).

402. *Shaw v. Reno (Shaw I)*, 509 U.S. 630, 634 (1993).

403. *Id.* at 634–35.

404. *Id.* at 635.

405. *See Miller v. Johnson*, 515 U.S. 900, 922 ("The District Court found that the Justice Department had adopted a black-maximization policy . . .").

406. *A Deep Dive into Party Affiliation*, PEW RES. CENTER (Apr. 7, 2015), <http://www.pew-opie-press.org/2015/04/07/a-deep-dive-into-party-affiliation>.

remove them as influences in other surrounding congressional districts.⁴⁰⁷

The second redistricting plan created by the General Assembly included two districts with very irregular shapes which were majority-minority.⁴⁰⁸ District 1 was described by the Court as being “hook shaped” and covered most of the northeastern section of the state. District 12 had a “snakelike” shape that covered more than one-hundred and sixty miles and extended from the urban areas of Durham County through five rural counties into the urban area of Charlotte and ended in the African American section of Gastonia.⁴⁰⁹ “It [wound] in snakelike fashion through tobacco country, financial centers and manufacturing areas until it gobbles in enough enclaves of Black neighborhoods.”⁴¹⁰ At significant points, the district boundaries were no wider than Interstate 85.⁴¹¹ In the initial drawing of District 12, African Americans constituted over sixty percent of that district’s population.⁴¹²

The mandate to create two minority-majority districts originated with the Republican controlled Justice Department.⁴¹³ Once enacted, although in a different area of the state than was suggested by the Justice Department, the plan was attacked by five white Republicans and the state Republican Party.⁴¹⁴ The principle objectives of the Justice Department were to maximize the number of African Americans who were packed into the fewest number of districts, remove them from mostly white area because they tended to vote for Democrats, and to increase the number of Republican Congressional Districts.⁴¹⁵ This process is called “stacking and packing” and was designed to significantly reduce the number of African Americans who could vote for the white Democratic Party candidates in opposition with Republicans in the remaining majority white areas of the state.⁴¹⁶

407. *Shaw I*, 509 U.S. at 667, n.6 (White, J., dissenting).

408. *Id.* at 633–34 (majority opinion).

409. *Id.* at 635–36.

410. *Id.*

411. *Id.* at 635.

412. Curtis, *supra* note 238, at 57–58.

413. *Shaw I*, 509 US at 635; *id.* at 115.

414. *Shaw I*, 509 U.S. at 630.

415. *Id.* at 670 (White, J., dissenting).

416. *Id.*

It was clearly presented to the Court that the essential purpose of the districts was to create two minority-majority districts from which African Americans would be able to elect representatives of their choice.⁴¹⁷ The Court concluded that the application of traditional equal protection principles in the voting rights context required the Court to declare that this redistricting plan was unconstitutional.⁴¹⁸ “After a detailed account of the process that led to the enactment of the challenged plan, the District Court found that the General Assembly of North Carolina deliberately drew District 12 so that it would have an effective voting majority of [African American] citizens.”⁴¹⁹

The Court dismissed the challenge to District 1 because it was “ameliorative, having created the first majority-[B]lack district in recent history.”⁴²⁰ The General Assembly’s initial explanation for only creating one minority-majority district was:

to keep precincts whole, to avoid dividing counties into more than two districts, and to give [B]lack voters a fair amount of influence by creating at least one district that was majority [B]lack in voter registration and by creating a substantial number of other districts in which [B]lack voters would exercise a significant influence over the choice of congressmen.⁴²¹

The Court determined that this explanation satisfied the Constitution and the Section 2 requirements.⁴²²

As for District 12, however, the Court concluded that the same justification did not apply and its composition was not supported by traditional districting principles.⁴²³ At the same time, the Court rebuked the Justice Department for insisting upon the maximizing of the number of African American majority districts

417. *Id.* at 666.

418. *Id.* at 649 (majority opinion).

419. *Id.* at 905 (quoting *Shaw v. Hunt*, 517 U.S. 899, 899–900 (1996)).

420. *Shaw*, 517 U.S. at 912.

421. *Id.* at 912.

422. *Id.* at 902.

423. *Id.* at 907.

that could be drawn in a particular state.⁴²⁴ The Court also explained: “In utilizing [Section] 5 to require States to create majority-minority districts wherever possible, the Department of Justice expanded its authority under the [Voting Rights Act] beyond what Congress intended and we have upheld.”⁴²⁵ Additionally, a failure to maximize the creation of African American districts cannot be the measure for a Section 2 violation.⁴²⁶

In a very real sense, *Shaw v. Hunt* was merely another effort by the Republican Party to undermine the growing influence of African American voters.⁴²⁷ This decision resulted in a re-drawing of the state’s congressional map and a decrease in the number of African Americans placed in that particular congressional district.⁴²⁸ In 1992, prior to the *Shaw v. Hunt* decision, African Americans constituted fifty-six percent of District 12;⁴²⁹ after the redrawing of the district following this decision, the percentage decreased to forty-six percent.⁴³⁰ By the time that this decision was issued in 1996, Congressman Watt had been re-elected three times and never encountered serious opposition to re-election, even without an African American majority.⁴³¹ Before he resigned to

424. *Id.* at 913.

425. *Id.* at 913 (quoting *Miller v. Johnson*, 515 U.S. 900, 925 (1995)).

426. *Id.* at 912 (quoting *Johnson v. De Grandy*, 512 U.S. 997, at 1017 (1993)).

427. *See, e.g.*, *Bush v. Vera*, 517 U.S. 953 (1995) (mirroring the court’s decision in *Shaw v. Hunt* with regard to southern states being forced to re-draw their congressional districts utilizing the Department of Justice’s African American maximization plan); *Miller v. Johnson*, 515 U.S. 900 (1994); *United States v. Hays*, 515 U.S. 737 (1994); *De Grandy*, 512 U.S. at 997.

428. *See generally* Richard H. Pildes, *Is Voting-Rights Law Now At War With Itself? Social Science and Voting Rights in the 2000s*, 80 N.C. L. REV. 1517 (2002) (discussing the effects of the 1990s cases involving the use of majority-minority districting practices).

429. Charles Guy-Uriel & Luis Fuentes-Rohwer, *Challenges to Racial Redistricting in the New Millennium: Hunt v. Cromartie as a Case Study*, 58 WASH. & LEE L. REV. 227, 258 (2001).

430. *Id.* at 264.

431. For election data, see Clerk of the House of Representatives, *Statistics of The Presidential and Congressional Election of November 3, 1992*, at 56 (1993), http://clerk.house.gov/member_info/electionInfo/1992election.pdf; Clerk of the House of Representatives, *Statistics of The Presidential and Congressional Election of November 8, 1994*, at 31 (1995), http://clerk.house.gov/member_info/electionInfo/1994election.pdf; Clerk of the House of Representatives, *Statistics of The Presidential and Congressional Election of November 5, 1996*, at 48 (1997), http://clerk.house.gov/member_info/electionInfo/1996election.pdf; Clerk of the House of Representatives, *Statistics of The Presidential and Congressional Election of November 3, 1998*, at 33 (1999), http://clerk.house.gov/member_info/electionInfo/1998

join the Obama Administration, Watt won the election ten times with overwhelming support in each campaign that ranged from a low of around fifty-five percent to a high of about seventy-six percent.⁴³²

XI. LEGISLATIVE SUCCESSES UNDER BLUE'S SPEAKERSHIP

Under Blue's leadership, the General Assembly awarded significant appropriations to the five North Carolina HBCU campuses that were used to construct and repair buildings and infrastructure.⁴³³ This special appropriation was deemed to be "make-up" money for some of the historic underfunding of these campuses.⁴³⁴ In the previous legislative session, the General Assembly had provided significant funds for the majority white

election.pdf; Clerk of the House of Representatives, *Statistics of The Presidential and Congressional Election of November 7, 2000*, at 48 (2001), http://clerk.house.gov/member_info/electionInfo/2000election.pdf; Clerk of the House of Representatives, *Statistics of The Presidential and Congressional Election of November 5, 2002*, at 35 (2003), http://clerk.house.gov/member_info/electionInfo/2002election.pdf; Clerk of the House of Representatives, *Statistics of The Presidential and Congressional Election of November 2, 2004* (2005), http://clerk.house.gov/member_info/electionInfo/2004election.pdf; Clerk of the House of Representatives, *Statistics of The Presidential and Congressional Election of November 7, 2006*, at 34 (2007), http://clerk.house.gov/member_info/electionInfo/2006election.pdf; Clerk of the House of Representatives, *Statistics of The Presidential and Congressional Election of November 4, 2008*, at 49 (2009), http://clerk.house.gov/member_info/electionInfo/2008election.pdf; Clerk of the House of Representatives, *Statistics of The Presidential and Congressional Election of November 2, 2010*, at 37 (2011), http://clerk.house.gov/member_info/electionInfo/2010election.pdf; Clerk of the House of Representatives, *Statistics of The Presidential and Congressional Election of November 6, 2012*, at 46 (2013), http://clerk.house.gov/member_info/electionInfo/2012election.pdf.

432. *Id.*

433. *See, e.g.*, An Act to Authorize the Construction and the Financing, Without Appropriations From the General Fund, of a Capital Improvements Project at Winston-Salem State University, ch. 589, 1991 N.C. Sess. Law 1282; *see also* An Act to Authorize the Construction and the Financing, Without Appropriations from the General Fund, of Certain Capital Improvements Projects of the Constituent Institutions of the University of North Carolina and the University of North Carolina Hospitals at Chapel Hill, ch. 657, 1991 N.C. Sess. Laws 1585; *see also* An Act to Authorize the Construction and the Financing, Without Appropriations from the General Fund, of Certain Capital Improvements Projects of the Constituent Institutions of the University of North Carolina and the University of North Carolina Hospitals at Chapel Hill, ch. 451, 1993 N.C. Sess. Laws 1665 (creating special appropriations for new projects at historically black universities in North Carolina during Dan Blue's tenure as speaker of the N.C. House of Representatives).

434. Donald Mitchell, Jr., *Funding U.S. Historically Black Colleges and Universities: A Policy Recommendation*, EJOURNAL OF ED. POL'Y (Fall 2013), https://nau.edu/COE/eJournal/_Forms/Fall2013/Mitchell.

campuses, and African American legislators had vigorously objected to the inequitable nature of that earlier funding.⁴³⁵ In the 1989 legislative session, appropriations for the historic white campuses were considerably higher than was the paltry \$10 million that was allocated to the HBCU campuses; in addition to other funding, North Carolina State received \$2 million for a new basketball palace.⁴³⁶ Blue and other African American legislators—most of whom had graduated from one of the state’s HBCUs—targeted increased funding for the HBCUs as one of its top priorities.⁴³⁷ In a separate agreement, Michaux was unsuccessful in obtaining an appropriation for additional HBCU funding as part of a proposal to support a constitutional amendment that would give veto power to the governor.⁴³⁸

XII. PARTICIPATION AFTER VOTING RIGHTS ACT OF 1965

Understanding the limits and impotency of the 1965 Voting Rights Act to cure all voting related ills, African Americans were successful in pushing for a mandate for the State Board of Elections to conduct statewide voter registration drives in 1992.⁴³⁹

435. *See, e.g.*, An Act to Make Appropriations to Provide Capital Improvements for State Departments, Institutions, and Agencies, Except for Aid to Certain Governmental and Nongovernmental Entities, ch. 754, 1989 N.C. Sess. Laws 2560, at 2564–68 (containing appropriations for North Carolina’s public universities for 1989–1991); *see also* Jordan, *supra* note 134, at 49–53.

436. *See, e.g.*, An Act to Make Appropriations to Provide Capital Improvements for State Departments, Institutions, and Agencies, Except for Aid to Certain Governmental and Nongovernmental Entities, ch. 754, 1989 N.C. Sess. Laws 2560, 2564–68 (containing appropriations for North Carolina’s public universities for 1989–1991); *see also* Jordan, *supra* note 134, at 49.

437. *See* An Act to Authorize the Construction and the Financing, Without Appropriations from the General Fund, of Certain Capital Improvements Projects of the Constituent Institutions of the University of North Carolina and the University of North Carolina Hospitals at Chapel Hill, ch. 451, 1993 N.C. Sess. Laws 1665 (allocating special project funds to Winston-Salem State University and North Carolina A&T University); An Act to Authorize the Construction and the Financing, Without Appropriations From the General Fund, of a Capital Improvements Project at Winston-Salem State University, ch. 589, 1991 N.C. Sess. Law 1282; An Act to Authorize the Construction and the Financing, Without Appropriations from the General Fund, of Certain Capital Improvements Projects of the Constituent Institutions of the University of North Carolina and the University of North Carolina Hospitals at Chapel Hill, ch. 657, 1991 N.C. Sess. Laws 1585; *see also* Jordan, *supra* note 134, at 44.

438. Jordan, *supra* 138, 53–54.

439. An Act to Rewrite the Voter Registration Laws of North Carolina and to Make Other Election-Law Changes, ch. 762, sec. 2, § 163-82.25, 1994 N.C. Sess. Laws 663, 679-

In addition, through the legislative efforts of Representative Mickey Michaux, legislation was enacted in 1983 that allowed for floating voter registrars who could go into African American communities in order to register people to vote.⁴⁴⁰ Previously, voter registrars worked in their offices from 9:00 a.m. to 5:00 p.m. and would not come into African American communities to register potential voters.⁴⁴¹ This restricted registration pattern retarded the ability and opportunities for African Americans, mainly hourly workers, to register and vote.⁴⁴² As mentioned earlier, the presence and participation of “floating Registrars,” increased African American voter registration.⁴⁴³

Despite the apparent successes, African Americans continued to experience significant problems at polling places. Even with the Voting Rights Act in place, “it [was] still difficult for [African American] citizens to register, vote and elect candidates of their choice. In North Carolina, African American voters also report[ed] voter intimidation at an alarming rate. Voter intimidation is not a relic of the past, but rather a strategy used with disturbing frequency in recent years.”⁴⁴⁴

In 1995, the newly reconstituted Republican Party gained control of the state house of representatives, ousted Blue, and installed Harold Brubaker as its new Speaker.⁴⁴⁵ During the First Reconstruction from 1868 through 1898, African Americans were active members of the Republican Party.⁴⁴⁶ During the Great Depression of 1930, African Americans began to turn away from the Republican Party due to the enticing promises of President

680; *see also* H.B. 1776 Journal H.R. of the 1993 Gen. Assemb. of the State of N.C., Extra Sess., at 57, 243, 266; and 370 (1994) (recording black legislature’s efforts to institute mandated voter registration drives in North Carolina).

440. An Act to Clarify that Judges of Election, Like Other Precinct Officials, May Register Voters Anywhere in the County, ch. 553, sec. 1, §163-67(a), 1983 N.C. Sess. Laws 468.

441. 1993 N.C. Sess. Laws 663, c. 762 (repealed).

442. James Thomas Tucker, *The Power of Observation: The Role of Federal Observers Under the Voting Rights Act*, 13 MICH. J. RACE & L. 238 (2007).

443. 1983 N.C. Sess. Laws 1058; Jack Betts, *Voting in North Carolina: Can We Make it Easier?* 13 N.C. INSIGHT 20, 32–35 (1991).

444. Earls et al., *supra* note 329, at 589.

445. Danny Lineberry, *In the Legislature: the 1995 Legislature in Retrospect—Republican Lawmakers Work to Deliver on Their Contract*, 16 N.C. INSIGHT 102 (1996).

446. Flora Bryant Brown, *African American Civil Rights in North Carolina*, TAR HEEL JUNIOR HISTORIAN 3–7 (Fall 2004).

Franklin Roosevelt and his New Deal policies.⁴⁴⁷ As the Republican Party became more dismissive of issues concerning racial equality and was tied to racial violence by white supremacist groups, this political switch became more evident during the 1936 presidential election.⁴⁴⁸ As more African Americans joined the Democratic Party and increased their participation in it, whites following the lead of former Senator Jesse Helms, began to gravitate to the Republican Party beginning in the 1960s.⁴⁴⁹ That transformation is largely responsible for the upsurge in the membership and power base of the present-day Republican Party.⁴⁵⁰

For two election cycles, Republicans controlled the state house, but Democrats maintained control of the state senate.⁴⁵¹ Despite the advances of the Republican Party, African Americans were able to form some bi-partisan agreements in order to advance legislation that they sought to enact. In 1999, Democrats regained control of the state house, but an effort to form a bi-partisan coalition to re-elect Dan Blue as Speaker of the House failed in a hotly contested campaign because two African American legislators defected from the Pro-Blue coalition.⁴⁵²

Armed with additional African American legislators and supportive white legislators from both parties, a successful effort was undertaken to enact an Early Voting provision, which proved to be of significant benefit in increasing the opportunities for

447. *Id.*

448. *Id.*

449. ARI BERMAN, GIVE US THE BALLOT: THE MODERN STRUGGLE FOR VOTING RIGHTS IN AMERICA 74–75 (2015).

450. Brown, *supra* note 446. In modern history, African American Republicans have also been elected or appointed to the North Carolina General Assembly. *Id.* In 1977, Howard Clement, a Republican from Durham, was appointed to replace Mickey Michaux who had been appointed as the U.S. Attorney for the Middle District of North Carolina. *Dr. John R. Larkins Presides at Capitol Building Ceremony*, CAROLINA TIMES, Aug. 13, 1977, at 1. In 1994, Henry McCoy of Raleigh and Larry Linney of Asheville, both Republicans, were elected to House seats in their respective districts. John Boyle, *He's at it Again: Larry Linney Files for U.S. Senate Run*, CITIZEN-TIMES (Mar. 2, 2010, 1:29 PM), <http://www.citizen-times.com/article/20100302/NEWS01/100302028>.

451. MEBANE RASH WHITMAN, ARTICLE II: A GUIDE TO THE 1995–96 NORTH CAROLINA LEGISLATURE 11, 71 (1995); *see also* MEBANE RASH WHITMAN, ARTICLE II: A GUIDE TO THE 1997–98 NORTH CAROLINA LEGISLATURE 11, 67 (1997).

452. John Hood, *From the Right: Black & Blue Fight Creates Wounds: Legislature's Color Scheme Changes After Battle for N.C. Speaker of the House*, TRIANGLE BUSINESS J. (Feb 8, 1999), <http://www.bizjournals.com/triangle/stories/1999/02/08/editorial2.html?s=print>.

African Americans to vote.⁴⁵³ Strongly supported by African American legislators, civil rights and community groups, this legislation was generally enacted with strong bi partisan support.⁴⁵⁴

In 1996, North Carolina ranked forty-third in the nation for voter turnout during a presidential election.⁴⁵⁵ African American legislators convinced some white legislators that improvements in this turn out rate needed to occur. In the 1995 legislative session, Representative Michaux, along with a Republican co-sponsor, introduced legislation to rewrite the absentee ballot law by removing the excuse provision from both one-stop and mail absentee voting requirements.⁴⁵⁶ This legislation also would have allowed local boards of election to designate multiple early voting sites.⁴⁵⁷ This legislation failed, but had the effect of focusing more legislative attention on this issue.⁴⁵⁸ In 1999, Senator Ellie Kinnaird introduced legislation to establish “no excuse” early voting in the general elections in even numbered years, which authorized the local boards of election to create multiple election sites around the county.⁴⁵⁹ This bill was successful.⁴⁶⁰ The basic focus of this legislation was to make voting easier especially for those voters who encountered barriers in voting on the traditional Election Day.⁴⁶¹

The effort to make voting more convenient continued in 2001 when the General Assembly passed a law that provided for seventeen days of early voting, authorized early voting on weekends, and required counties to offer early voting on the last

453. J. MORGAN KOUSSER, WHEN AFRICAN AMERICANS WERE REPUBLICANS IN NORTH CAROLINA, THE TARGET OF SUPPRESSIVE LAWS WAS BLACK REPUBLICANS. NOW THAT THEY ARE DEMOCRATS, THE TARGET IS BLACK DEMOCRATS. THE CONSTANT IS RACE 25–27 (https://www.aclu.org/sites/default/files/assets/lwv_expert_report_-_m_kousser.pdf (last visited Nov. 29, 2015)).

454. *Id.*

455. *National Rankings in Voter Turnout, Presidential Elections, 1988–2012*, N.C. CTR. FOR PUB. POL'Y RES. (July 25, 2013), http://www.nccppr.org/drupal/sites/default/files/file_attachments/accomplishments/nc_voter_turnout.pdf.

456. Absentee Voting Revision, H.B. 27, N.C. Gen. Assemb., Reg. Sess. 1–2, 8–14 (1995) (an un-enacted bill proposal), <http://www.ncleg.net/sessions/1995/bills/house/pdf/h27v1.pdf> (last visited Nov. 29, 2015).

457. *Id.* at 3.

458. KOUSSER, *supra* note 453, at 24–25.

459. S. JOURNAL, 1st Sess., at 217221 (N.C. 1999); 1999 N.C. Sess. Laws 1846.

460. N.C. GEN. STAT. § 163-227.2 (2000).

461. *Id.*

Saturday before the election.⁴⁶² In 2003, the General Assembly authorized out-of-precinct voting during the early voting period, which made voting considerably easier.⁴⁶³ This legislation was reaffirmed in 2005 to clarify that out-of-precinct voting could be cast outside of the voters' precinct on Election Day.⁴⁶⁴ In reaffirming this provision, the General Assembly noted that out of precinct votes were cast at a disproportionately high rate by African Americans.⁴⁶⁵

While making it easier for all voters to participate in elections, these legislative enactments had a profound impact on African American voter participation as participation rates increased dramatically between 2000 and 2004.⁴⁶⁶ In an escalation of the right to vote, the General Assembly authorized same day registration in 2007, which allowed a voter to register and vote on the same day during the early voting period.⁴⁶⁷ Then, in 2009, the General Assembly passed legislation that allowed sixteen- and seventeen-year-olds to pre-register to vote, which rolled over into full, registered status automatically when the voter turned eighteen.⁴⁶⁸

As a result of these voter-friendly legislation enactments, North Carolina voter participation rate rose from forty-third to eleventh in the nation.⁴⁶⁹ Of the 1.46 million voters added to North Carolina voter roll between 2000 and 2012, thirty-five percent were African American, even though African-Americans only constituted twenty percent of the voting-age population in

462. N.C. GEN. STAT. §163-227.2 (2001).

463. N.C. GEN. STAT. § 163-166.11 (2003).

464. N.C. GEN. STAT. § 163-166.11 (2005).

465. *Id.*

466. Curtis, *supra* note 238, at 99.

467. Act of Jul. 20, 2007, No. 253, 2007 N.C. Sess. Laws 406, 407, *repealed by* Act of Sept. 1, 2013, No. 381, § 16.1, 2013 N.C. Sess. Laws 1505, 1535 (codified as amended at N.C. GEN. STAT. § 163-82.6A (2014)).

468. Act of Aug. 11, 2009, No. 541, § 7(a), 2009 N.C. Sess. Laws 1463, 1466, *repealed by* Act of Sept. 1, 2013, No. 381, § 12.1, 2013 N.C. Sess. Laws 1505, 1531 (codified as amended at N.C. GEN. STAT. § 163-82.1 (2014)).

469. U.S. CENSUS BUREAU, REPORTED VOTING AND REGISTRATION FOR TOTAL AND CITIZEN VOTING-AGE POPULATION BY STATE: PRESIDENTIAL ELECTIONS 1972 TO 2012, <http://www.census.gov/hhes/www/socdemo/voting/publications/historical/A5a.xls> (comparing the percentage of the voting-age population in every state and the District of Columbia who registered and voted in the 2004 presidential election to the percentage who voted in 2012 presidential election).

2000.⁴⁷⁰ By 2008, African American registration rates rose to a level similar to whites with 94.9 percent of the voting age population registered as compared with 90.7 percent of the white voting age population.⁴⁷¹ In 2012, this figure stood at 95.3 percent of African Americans and 87.8 percent of whites.⁴⁷² With respect to turnout, the turnout rate for African Americans—for the first time in modern history—exceeded that of whites.⁴⁷³

Of particular importance, voter registration and participation rose to the highest level that it had been during the modern era.⁴⁷⁴ In 2008, the tremendous increase in voter registration and participation by African American voters resulted in the election of twenty-five members of the House and ten members in the Senate.⁴⁷⁵ In 2008 and 2012, the participation rates of African American voters, aided by Barack Obama's campaign for President, surpassed the participation rates of white voters.⁴⁷⁶

XIII. POLITICAL SUCCESS UNDER ATTACK

As has regularly occurred in North Carolina, the success of African Americans in the political arena has drawn challenges. This latest challenge results from the election in 2010 through which a conservative band of Republicans evidenced an intention to undermine the political strength and past successes of African Americans.⁴⁷⁷ The first salvo came when the Republicans authored redistricting plans for the state and congressional districts that “stacked and packed” African Americans into a few political districts in an attempt to prevent African American voters from supporting white, Democratic candidates.⁴⁷⁸

470. Exhibits to the Deposition of Charles Haines Stewart, III at 29, N.C. Conference of NAACP v. McCrory, 997 F. Supp. 2d 322 (M.D.N.C. 2014) (No. 1:13-cv-00658-TDS-JEP).

471. *Id.*

472. *Id.*

473. *Id.* at 22.

474. U.S. CENSUS BUREAU, *supra* note 469, Table A-5.

475. N.C. STATE BD. OF ELECTIONS, OFFICIAL RESULTS (2008).

476. Exhibits to the Deposition of Charles Haines Stewart, III, *supra* note 470, at 22.

477. Curtis, *supra* note 238, at 56-60.

478. *Id.* at 59 (explaining that multi-racial districts which had been electing white candidates had been decimated by redistricting).

In 2010, North Carolina voters, for the first time since 1894, elected a majority of Republicans in the House and Senate of the General Assembly.⁴⁷⁹ Following this election, Republican legislators made it clear that it would pursue a conservative agenda that sought to reverse many of the policies and priorities implemented by the Democrats.⁴⁸⁰ Pursuant to this agenda, the General Assembly enacted new redistricting plans for the congressional districts of North Carolina.⁴⁸¹ The focus of these plans was to “segregate, stack and pack” African Americans into a small number of majority-minority districts, which would allow for the election of African Americans, but would remove them from other white populated districts.⁴⁸² This plan followed the failed “Black Max” scheme that was already attempted at the congressional level in the 1990s,⁴⁸³ but was condemned by the United States Supreme Court in *Thornburg v. Gingles*⁴⁸⁴ and *Miller v. Johnson*.⁴⁸⁵

As a result of the new redistricting plans, the Republican Party won super-majorities at each electoral level—state house, state senate, and U.S. Congress.⁴⁸⁶ North Carolina has thirteen congressional districts, fifty senate districts, and 120 house districts.⁴⁸⁷ Prior to the 2010 redistricting, neither of the two

479. *Id.* at 56; N.C. STATE BD. OF ELECTIONS, OFFICIAL RESULTS (2010).

480. Ari Berman, *How the GOP is Resegregating the South*, NATION (Jan. 31, 2012), <http://www.thenation.com/article/how-gop-resegregating-south>.

481. Act of Jul. 27, 2011, No. 402, 2011 N.C. Sess. Laws 1804 (realigning the N.C. senatorial districts) (amended 2011) (codified as amended at N.C. GEN. STAT. § 120-1 (2014)); Act of Jul. 28, 2011, No. 403, 2011 N.C. Sess. Laws 1905 (realigning the U.S. congressional districts) (amended 2011) (codified as amended at N.C. GEN. STAT. § 163-201 (2014)); Act of Jul. 28, 2011, No. 404, 2011 N.C. Sess. Laws 1936 (realigning the N.C. House of Representatives districts) (amended 2011) (codified as amended at N.C. GEN. STAT. § 120-2 (2014)).

482. Curtis, *supra* note 238, at 59–60.

483. Linda Greenhouse, *Supreme Court Takes Case on Black Voting Districts*, N.Y. TIMES (Jan. 18, 2003), <http://www.nytimes.com/2003/01/18/us/supreme-court-takes-case-on-black-voting-districts.html>.

484. *Thornburg v. Gingles*, 478 U.S. 30, 79 (1986).

485. *Miller v. Johnson*, 515 U.S. 900, 918–20 (1995).

486. Curtis, *supra* note 238, at 57.

487. *N.C. House of Representatives*, N.C. GENERAL ASSEMBLY, <http://www.ncleg.net/House/Use/House.html> (last visited Oct. 10, 2015); *N.C. Senate*, N.C. GENERAL ASSEMBLY, <http://www.ncleg.net/Senate/Senate.html> (last visited Nov. 29, 2015); *NC Congressional Districts*, UNIV. OF N.C. CHAPEL HILL, <http://research.unc.edu/offices/federal-affairs/resources/n-c-congressional-districts> (last visited Oct. 10, 2015).

congressional districts from which an African American was elected were majority-minority, nor were any of the ten senate districts that African Americans represented.⁴⁸⁸ As a result of the “stacking and packing” that the General Assembly engaged in, two congressional districts became majority-minority, as did nine of the ten senate districts and twenty-three House districts.⁴⁸⁹

As of the date of this article, twenty-five African Americans have been elected to serve in the 120 member state house of representative.⁴⁹⁰ Twelve African Americans serve in the fifty member state senate,⁴⁹¹ and two of the thirteen Congressional Representatives are African American.⁴⁹² By increasing the number of African Americans placed into super-large minority districts, support for those white Democrats who competed in majority white districts was eliminated.⁴⁹³ This mix created an environment where Republicans were able to gain a super majority in each level of the legislative process.⁴⁹⁴

With the election of super majorities of Conservative Republicans in the North Carolina house and senate, the ruling party has shown no inclination or need to work with the African

488. Jess Bravin, *Supreme Court Revives Challenge to North Carolina Redistricting; Civil Rights Groups Say Illegally Redrawn Election Map Dilutes Influence of Black Voters*, WALL ST. J. (Apr. 20, 2015), <http://www.wsj.com/articles/supreme-court-revives-challenge-to-north-carolina-redistricting-1429541094>.

489. *Id.*

490. *North Carolina Representatives 2015-2016 Session*, N.C. GENERAL ASSEMBLY, <http://www.ncleg.net/gascripts/members/memberList.pl?sChamber=House> (last visited Nov. 29, 2015).

491. *Id.*

492. *United States Congressional Delegations from North Carolina*, BALLOTPEDIA, http://ballotpedia.org/United_States_congressional_delegations_from_North_Carolina (last visited Nov. 29, 2015).

493. Richard E. Cohen, *Race Politics Hit N.C. Redistricting*, POLITICO (May 4, 2011), <http://www.politico.com/story/2011/05/race-politics-hit-nc-redistricting-054244?o=1>.

494. *See id.* Immediately after the redistricting plans were enacted in 2011, law suits were filed to challenge each one as violations of the U.S. Constitution and the Voting Rights Act. *See NAACP v. McCrory*, 997 F. Supp. 2d 322, 383–84 (M.D.N.C. 2014), *aff'd in part, rev'd in part and remanded sub nom.* League of Women Voters of N.C. v. North Carolina, 769 F.3d 224 (4th Cir. 2014), *cert. denied*, 135 S. Ct. 1735 (2015) (No. 1:13-CV-658). These legal challenges continue, and after hearing oral arguments on August 31, 2015, a decision from the North Carolina Supreme Court to this challenge is expected soon. *See Anne Blythe, NC Supreme Court Sets August Hearing in Challenge to Redistricting*, NEWS & OBSERVER (May 7, 2015), <http://www.newsobserver.com/news/politics-government/state-politics/article20435832.html>.

American or white Democratic legislators.⁴⁹⁵ The net result is an increase in the number of African American legislators, but they now serve with little political power to adequately represent their constituents.⁴⁹⁶

A vivid example of this powerlessness occurred in 2013 after the United States Supreme Court ruled that Section 4 of the Voting Rights Act was unconstitutional.⁴⁹⁷ This decision negated the Section 5 pre-clearance requirement by concluding that Section 4, which identifies jurisdiction with a history of voter discrimination, was outdated and unconstitutional.⁴⁹⁸ Section 5 would have required that changes to election procedure or practices be approved by the Civil Rights Division of the United States Department of Justice or a three-judge panel from the District of Columbia Court of Appeals.⁴⁹⁹ Within days of the issuance of this opinion, the General Assembly passed legislation that repealed or significantly altered each of the progressive voter empowerment provisions enacted between 1999 and 2010.⁵⁰⁰

Today, the political progress that African Americans have made during this “Second Reconstruction” is under a relentless attack. This effort is an attempt to destroy or abridge the political gains that have occurred since 1980, that expanded opportunity for African Americans to register, vote, and compete for political office on an equal basis.⁵⁰¹ In the present environment, the current attack centers on:

1. Institution of a stringent Voter Identification requirement which will disproportionately

495. Gary D. Robertson, *Fate of 2011 Legislative, Congressional Maps Back in Court*, CHARLOTTE OBSERVER (Aug. 30, 2015) <http://www.charlotteobserver.com/news/politics-government/article32825799.html>.

496. *Id.*

497. *Shelby Cty. v. Holder*, 133 S. Ct. 2612, 2631 (2013).

498. *Id.* at 2631.

499. *Id.* at 2620.

500. H.R. 589, 2013 Gen. Assemb., Reg. Sess. (N.C. 2013).

501. See Erik Eckholm, *Sides Dispute Basis of North Carolina Voting Laws as Trial Contesting Them Opens*, N.Y. TIMES (July 13, 2015), http://www.nytimes.com/2015/07/14/us/sides-dispute-basis-of-north-carolina-voting-laws-as-trial-contesting-them-opens.html?_r=0.

- impact African Americans and Hispanics/Latinos.⁵⁰²
2. The Elimination of a week from the Early Voting Period.⁵⁰³
 3. Elimination of Same Day Voting.⁵⁰⁴
 4. Prohibiting of Straight Ticket Voting.⁵⁰⁵
 5. Elimination of Out-Of-Precinct Voting.⁵⁰⁶
 6. Expanding the ability of individuals to challenge voters at polling sites.⁵⁰⁷
 7. Elimination of the early registration of 16 and 17 year olds.⁵⁰⁸

The legislative maneuvering that surrounded the enactment of House Bill 589 is an example of the present political impotency of African American legislators and their colleagues.⁵⁰⁹ House Bill 589 was initially a House-passed bill that mandated a voter ID requirement with moderate provisions.⁵¹⁰ After the bill was approved in the House, it was sent to the Senate for concurrence.⁵¹¹ The Senate delayed consideration of this bill until after the *Shelby v. Holder* opinion, which gutted the Voting Rights Act Section 5 pre-clearance requirement.⁵¹² Within a day, House Bill 589 changed from being a moderate Voter ID bill to an all-inclusive attack on all of the voting provisions that were primarily responsible for the tremendous increase in African American registration and political participation during the previous twenty-five years.⁵¹³ Within two days, the bill passed the Senate and was

502. NAACP v. McCrory, 997 F. Supp. 2d 322, 338–39 (M.D.N.C. 2014), *aff'd in part, rev'd in part and remanded sub nom.* League of Women Voters of N.C. v. North Carolina, 769 F.3d 224 (4th Cir. 2014), *cert. denied*, 135 S. Ct. 1735 (2015) (No. 1:13-CV-658).

503. *Id.*

504. *Id.*

505. *Id.*

506. *Id.*

507. *Id.*

508. *Id.*

509. *See id.* at 335–38.

510. H.B. 589, 2013 Leg. Sess. (N.C. 2013).

511. *Id.*

512. Jim Rutenberg, *Inside the 50-year Campaign to Roll Back the Voting Rights Act*, N.Y. TIMES (Jul. 29, 2015), http://www.nytimes.com/2015/07/29/magazine/voting-rights-act-dream-undone.html?_r=0.

513. Cynthia Gordy, *North Carolina Voting Trial Closing Arguments Make Compelling Case*, ADVANCEMENT PROJECT (Jul. 31, 2015), <http://www.advancementproject.org/new/entry/north-carolina-voting-trial-closing-arguments-make-strong-case>.

sent to the House for a concurrence vote.⁵¹⁴ In the House, the revised House Bill 589 was immediately placed on the floor for a vote—over the strenuous objections of African American legislators who had not seen the bill until it was presented on the floor—and was passed in two hours.⁵¹⁵ Without a hearing or the opportunity to debate these significant amendments to the bill, African American and Democratic Party legislators were simply allowed to make statements of opposition for the record.⁵¹⁶ Immediately after its passage, the House and Senate adjourned the 2013 legislative session.⁵¹⁷

As occurred with race-based redistricting plans, lawsuits have been filed to challenge House Bill 589. A federal judge in the United States District Court for the Middle District of North Carolina began considering evidence presented by the parties in July 2015.⁵¹⁸ The results of this legal challenge will test the court's appreciation for efforts to expand opportunities for African Americans and other racial minorities to fully participate in the political franchise. The provisions targeted by House Bill 589 are not mandated by the 1965 Voting Rights Act,⁵¹⁹ but involve a legal determination of whether a state can purposely repeal legislation that has been utilized by and has become a significant factor in the growth of political participation by racial minority groups.⁵²⁰

XIV. CONCLUSION

As for North Carolina, it is clear that political participation by African Americans has had a rocky and turbulent history. Despite its unstable history, African Americans have successfully fought back from defeat time and time again. From the outset of

514. H.B. 589, 2013 Gen. Assemb. (N.C. 2013); *see also House Bill 589 History*, N.C. GENERAL ASSEMBLY, (Aug. 8, 2013), <http://www.ncleg.net/gascripts/BillLookup/BillLookup.pl?BillID=H589&Session=2013>.

515. *See NAACP v. McCrory*, 997 F. Supp. 2d 322, 338 (M.D.N.C. 2014), *aff'd in part, rev'd in part and remanded sub nom. League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224 (4th Cir. 2014), *cert. denied*, 135 S. Ct. 1735 (2015) (No. 1:13-CV-658).

516. *Id.*

517. *Id.*

518. *Id.* at 333.

519. Freddie Allen, *N.C. Court to Decide the Fate of Voting Rights for Blacks*, NEW AM. MEDIA (Sept. 9, 2015), <http://newamericamedia.org/2015/09/nc-court-to-decide-the-fat-e-of-voting-rights-for-blacks.php>.

520. Gordy, *supra* note 513.

this history, the opposition to political participation by African Americans has been race-based and predicated upon the notions that America is a nation established for whites and African Americans pose a threat to the doctrine of white supremacy.

The doctrine of white supremacy clearly supported the disfranchisement of free Africans in 1835.⁵²¹ Even with strong support from white legislators, the General Assembly revoked a privilege that this group of people exercised.⁵²² At that time in United States history, each state exclusively determined citizenship and its privileges.⁵²³ What became clear in North Carolina was that white supremacists did not support voting rights for Africans who lived and worked in North Carolina. No Africans had been elected or appointed to a political office at that point in history.⁵²⁴ This view of a “white only” citizenship was affirmed by the United States Supreme Court in the infamous *Dred Scott v. Sandford* decision which established that neither the framers of the United States Constitution nor its people ever intended that Africans, free or slave, could be American citizens.⁵²⁵

What is also clear is that, until 1835, the votes of free Africans were sought, valued, and effectively used by those political leaders who needed their electoral support.⁵²⁶ Even in the vote to disfranchise African American voters, there was considerable opposition from some elected legislators to this enactment.⁵²⁷ Even during slavery or before the Civil War, Africans, free and slave, made significant contributions to the growth and development of North Carolina and the United States.⁵²⁸

521. BARTON A. MYERS, EXECUTING DANIEL BRIGHT: RACE, LOYALTY, AND GUERRILLA VIOLENCE IN A COASTAL CAROLINA COMMUNITY 17 (La. St. Univ. Printing Press 2009).

522. *Id.*

523. *Dred Scott v. Sandford*, 60 U.S. 393, 405 (1856).

524. *Alexander Twilight*, BLACK PAST: REMEMBERED & RECLAIMED, <http://www.blackpast.org/aah/twilight-alexander-1795-1857> (last visited Dec. 10, 2015).

525. *Scott*, 393 U.S. at 404.

526. MYERS, *supra* note 521.

527. *See, e.g.*, FRANKLIN, *supra* note 11, 105–06 (discussing opponents to disenfranchisement of free black man, who argued that because they paid taxes, they should receive privileges).

528. *See, e.g.*, Joseph E. Holloway, *African Contributions to American Culture*, SLAVE REBELLION, <http://slaverebellion.org/index.php?page=african-contribution-to-american-culture> (last visited Dec. 10, 2015) (discussing agriculture, music, dance, science, and architecture).

For political purposes, the doctrine of white supremacy prevailed in 1835 and became the law of North Carolina. As a law of the state, it created a doctrine of political inferiority that was promoted and engrained in the hearts of many whites throughout history. The sad part of this history is that, as the white supremacists gained steam and prevailed, white Republican and Populist supporters disappeared from the struggle. In 1856, white supremacy became the law of the nation with the *Dred Scott v. Sandford* decision,⁵²⁹ which controlled the legal landscape until 1954.

The foundation for white supremacy and racism was established in pre-civil war history and politics, but guided the legal ability of African Americans to participate in the legal franchise since that time. In spite of the continuing determination of many whites to memorialize this doctrine, African Americans have made repeated attempts to dismantle it and sustain the promises of an equal, race-neutral path to participate in the American promises of justice and equality.

The constitutional promises of justice and equality for African Americans did not accrue until after the Civil War and the enactments of the Thirteenth and Fourteenth Amendments to the Constitution.⁵³⁰ Since that time, African Americans have waged successful battles to realize the full benefits of these promises. Setbacks in the political arena, propelled and supported by the white supremacy doctrine, have taken place, but have not been fatal to efforts to achieve those goals. Beginning with the gallant efforts of Abraham Galloway, Bishop John Hood, and other patriarchs, African Americans participated in the formation of the 1868 state constitution that created an expectation of legal protections allowing for full and fruitful participation in the American democracy, among these protections was the right to vote.⁵³¹ Years before the enactment of the 1868 constitution, Frederick Douglass warned that without struggle, there is no

529. *Scott*, 60 U.S. 393.

530. Tony Ball, *Promise of Equality and Justice for All*, HOUSATONIC MUSEUM OF ART (Dec. 27, 2001), <http://www.housatonic.edu/artmuseum/exhibits/civilrights/essay.asp>.

531. Earl James, *Constitutional Convention, 1868: Black Caucus*, NCPEDIA, <http://ncpedia.org/history/cw-1900/black-caucus> (last visited Dec. 10, 2015).

progress.⁵³² This prophetic declaration has been true for African Americans in North Carolina.

The struggles by African Americans to succeed during the First Reconstruction period are instructive for later efforts toward obtaining freedom, justice, and equality. Those early leaders were insistent on being a part of the political process and possessed the political savvy necessary to cultivate and develop allies with like-minded whites who understood the commonality of their interests. Because they understood and appreciated the power of the vote, they sought to enshrine that right into the state constitution. From 1868 through 1898, those early leaders experienced the successes available from coalition politics and suffered when this common vision was obstructed and destroyed.⁵³³ Despite the political setback in 1874 when white supremacists grabbed control of the General Assembly, African Americans continued the fight to participate and pursue the protections and opportunities of the constitutional promises.⁵³⁴ This resolve to actively participate and pursue led to the opportunity to re-establish political alliances in 1894 with white Populists to regain a coalition with the ruling political party.⁵³⁵ The political successes of those days expanded the opportunities for African Americans to participate in the breadth of the society as it existed at that time, but by doing so, expanded the constitutional protections and opportunities for whites. That alliance was neither perfect, nor was it without struggles, but it created a functional democracy in which African Americans successfully participated.

Yet when white supremacists incited and used racial animosity, and the racist contrived fear of African American domination to regain and maintain its political control of government and used fraud and military violence to achieve that

532. Frederick Douglass, *If There is No Struggle, There is No Progress*, BLACK PAST: REMEMBERED & RECLAIMED, <http://www.blackpast.org/1857-frederick-douglass-if-there-is-no-struggle-there-is-no-progress> (last visited Dec. 10, 2015).

533. Steven E. Nash, *The Political Commemoration of North Carolina's War Governor*, in NORTH CAROLINA IN THE ERA OF THE CIVIL WAR AND RECONSTRUCTION 269, 285 (Paul D. Escott, ed., 2008); Karin Zipff, *Marriage, Divorce, and Gender in the 1868 Constitutional Convention*, in NORTH CAROLINA IN THE ERA OF THE CIVIL WAR AND RECONSTRUCTION, *supra*, at 193, 194–95.

534. Paul Yandle, *Reconstruction North Carolina, Mutuality, and the Political Roots of Jim Crow, 1872–1875*, in NORTH CAROLINA IN THE ERA OF THE CIVIL WAR AND RECONSTRUCTION, *supra* note 533, at 221, 246.

535. Nash, *supra* note 533, at 269, 285.

goal, those whites who benefitted from the progress abandoned African Americans and, by doing so, further advanced the cause of white supremacy. Through the next eighty-five years, which included the Civil Rights and Black Power movements, the vast majority of whites continued to overtly and covertly support this white supremacy agenda.⁵³⁶ It was not until 1984 that African Americans were finally able to return to meaningful political participation in North Carolina.⁵³⁷

Along the way, African American leaders evidenced the critical understanding that a minority group must find common ground with others—in this case, white voters and political leaders—in order to advance a political agenda and fully participate in the breadth and benefits of this society. A perfect example was of Henry Frye is success in convincing the General Assembly to place a referendum—repealing the literacy test—a device that had been used to suppress the ability of African Americans to register to vote on the 1969 ballot.⁵³⁸ Even though the referendum failed, it evidenced the ability to create common ground with whites on this particular issue, even in a racial hostile environment. African American legislators repeatedly used this political strategy to pursue efforts to protection and benefit their constituents. The high point of that coalition politics strategy resulted in the election of Dan Blue as the first African American to be elected as the speaker of the house anywhere in the South.⁵³⁹

The successes that the General Assembly achieved under and after the Blue's leadership also accrued to benefit whites who were traditionally ignored and under-appreciated. Yet, it is that same group of under-privileged whites who constantly fail to understand the common ground that they share with African Americans and become the strongest supporters of white

536. Davarian L. Baldwin, *The Civil Rights Movement*, N.Y. PUB. LIBR., <http://exhibitio.nypl.org/africanaage/essay-civil-rights.html> (last visited Oct. 13, 2015).

537. JACK D. FLEER, NORTH CAROLINA GOVERNMENT & POLITICS 153 (Univ. of Neb. Press 1994).

538. Jordan, *supra* note 138, at 41.

539. ROB CHRISTENSEN, THE PARADOX OF TAR HEELS POLITICS: THE PERSONALITIES, ELECTIONS, AND EVENTS THAT SHAPED MODERN NORTH CAROLINA, 278 (Univ. of N.C. Press ed., 2008). At that time, only one other African American, Willie Brown, had reached this position of influence in a state when he was elected as Speaker in the California legislature. *In Bold Move, Willie Brown Wins Again*, N.Y. TIMES (Jan. 25, 1995), <http://www.nytimes.com/1995/01/25/us/in-bold-move-willie-brown-wins-again.html?pagewanted=print>.

supremacy. Testimony presented during the voter suppression July 2015 trial in Winston-Salem by expert witnesses for the plaintiffs and defendants affirmed the conclusions that racially polarized voting has controlled North Carolina politics in the past and continues to do so today.⁵⁴⁰ These experts testified that a person's race is a better predictor of how he or she will vote, even more so than party identification.⁵⁴¹ On average, African American voters in North Carolina currently support Democratic candidates—African American or white—at near unanimous levels, while nearly two-thirds of North Carolina white voters support Republican candidates.⁵⁴²

While African Americans eagerly vote for attractive and promising African American political candidates, they also have repeatedly voted for white candidates.⁵⁴³ In most white communities, there is not the same response to or reciprocity with African American candidates.⁵⁴⁴ In previously constructed districting plans, only ten house districts were majority African Americans.⁵⁴⁵ In order for a legislator to win in these majority-coalition districts, candidates also had to win support from white voters.⁵⁴⁶ This requirement made it necessary to campaign in a manner that the successful candidate obtain votes from both racial groups.⁵⁴⁷ This configuration represents coalition politics at its best.

The same situation exists with majority white districts that have a sizeable population of African American voters. In these districts, a successful candidate must offer some appeal to white and African American voters—another form of a coalition

540. Sur-Rebuttal Expert Report of Barry C. Burden, at 4, 7, 23, NAACP v. McCrory, Civil Action No. 1:13-CV-658 (2015); *see also* Leloudis, *supra* note 161, at 1, 3, 4, 7.

541. Burden, *supra* note 540, at 7, 32–33; Testimony of Dr. Allan J. Lichtman at 23, NC Conference of the NAACP v. McCrory, Civil Case No. 1:13-CV-658 (2015).

542. Lichtman, *supra* note 541, at 23.

543. Charles S. Bullock III, Racial Crossover Voting and the Election of Black Officials, 46 J. POL. 238, 238 (1984).

544. *See, e.g.*, Linda F. Williams, *White/Black Perceptions of Electability of Black Political Candidates*, 2 NAT'L POL. SCIENCE REV.: BLACK ELECTORAL POL. 45, 45 (1990) (explaining that “black candidates have been unable to capture more than twenty-five percent of the white vote”).

545. Brief on North Carolina Litigants as Amici Curiae in Support of Appellants at 3, 4, Alabama Democratic Conference v. Alabama, 135 S.Ct. 434 (2014) (No. 12-1138).

546. Leloudis, *supra* note 161, at 27.

547. *Id.*

district.⁵⁴⁸ This is not the case when a district has none or an ineffective few African American voters.⁵⁴⁹ In order to succeed, the winning candidate in these type districts is not required to seek votes from African Americans or be concerned with issues that impact them.⁵⁵⁰ As a result, in these heavily white-only districts, conservative Republicans can resort to racially polarized sentiments, attitudes, and actions.⁵⁵¹ In these districts, candidates can rely upon the absence of African American because they have now segregated African Americans into apartheid-type political districts with the knowledge and understanding that they are better able to exploit and appeal to racial polarized voting. Based upon North Carolina history, many white voters will vote again and again for the white supremacy agenda whenever that choice is presented to them.⁵⁵² It is in this race-conscious environment that apartheid political districts can be devised and voter friendly legislation can be revoked because African Americans have benefitted from being able to participate in the political franchise on an equal footing.

The sad consequence of this type of districting, that presently exists is while African Americans have more elected legislators in the General Assembly today than ever before in history, they possess less realizable power and influence than they possessed when only a few were in office.⁵⁵³ As long as these

548. ZOLTAN L. HAJNAL, *CHANGING WHITE ATTITUDES TOWARD BLACK POLITICAL LEADERSHIP* 6 (Cambridge Univ. Press, 2007).

549. Michael Kent Curtis, *North Carolina: Using Race (Again) as a Tool to Disrupt Multiracial Political Coalitions*, HUFFINGTON POST (Mar. 13, 2014, 12:47 PM), http://www.huffingtonpost.com/michael-kent-curtis/north-carolina-multiracial-political-coalitions_b_4949546.html.

550. *Id.*

551. *Id.*

552. TOM EAMON, *THE MAKING OF A SOUTHERN DEMOCRACY: NORTH CAROLINA POLITICS FROM KERR SCOTT TO PAT MCCRORY* 323, 326 (Univ. of N.C. Press, 2014).

553. *Compare* N.C. GEN. ASSEMBLY, HOUSE OF REP., 2015 DEMOGRAPHICS (Sept. 1, 2015), <http://www.ncleg.net/DocumentSites/HouseDocuments/2015-2016%20Session/2015%20Demographics.pdf> (showing number of African-Americans in the 2015 North Carolina Senate), *and* N.C. GEN. ASSEMBLY, 2015 SENATE DEMOGRAPHICS (Feb. 3, 2015), <http://www.ncleg.net/DocumentSites/SenateDocuments/2015-2016%20Session/Senate%20Demographics%202015.pdf> (showing number of African-Americans in the 2015 North Carolina House of Representatives), *with* MEBANE RASH & RAN COBLE, ARTICLE II: A CITIZEN'S GUIDE TO THE 2013-2014 NORTH CAROLINA LEGISLATURE 238 (N.C. Ctr. for Pub. Pol'y Res. 2013) (displaying North Carolina legislative demographics from 1993 to 2013), *and* *How This Legislature is Different and How That Affects State Policy*, N.C. CTR. FOR PUB. POL'Y RES. (Oct. 10, 2015), <http://www.nccppr.org/drupal/content/news/2013/04>

legislators remain the minority in a legislative body that embodies and emulates the doctrine of white supremacy, the political effectiveness of African Americans is illusory.