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Minority Political Participation in the New Millennium: The New Demographics and the Voting Rights Act

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MINORITY POLITICAL PARTICIPATION IN THE NEW MILLENNIUM: THE NEW DEMOGRAPHICS AND THE VOTING RIGHTS ACT

WALTER C. FARRELL, JR.* & JAMES H. JOHNSON, JR.**

During the thirty-six years since the passage of the Voting Rights Act, ethnic minority participation in the political arena has increased dramatically. The purpose of this Article is to examine three critical challenges that have emerged, and are emerging, as a result of the actual and projected increase of America's ethnic minority groups (principally African Americans, Hispanics, Asians and Pacific Islanders, and, to a lesser extent, Native Americans). These challenges are: (1) tensions between ethnic minority groups as they vie for political power, (2) the establishment of majority-minority congressional districts, and (3) factors/initiatives that serve to reduce voter participation among ethnic minority groups, with a focus on the 2000 presidential election. Our findings suggest that inter-minority and majority-minority conflicts concerning political representation and voting, respectively, loom on the twenty-first century political horizon, and that minority groups must collaborate to advance their political interests.

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INTRODUCTION

It has been nearly four decades since the passage of the Voting Rights Act,¹ and there have been significant improvements in the political participation of America's largest minority groups: African, Hispanic, Asian, and Native American.² During that period, minorities have achieved unprecedented representation and influence in the political process at all levels of government, and they have increasingly become a collective force to be considered in national elections.³ Yet, as we enter the twenty-first century, many new challenges—both internal and external—remain, and several of them

1. Voting Rights Acts of 1965, Pub. L. No. 89-110, 79 Stat. 437 (1965) (codified as amended at 42 U.S.C. §§ 1971-1974e (1994 & Supp. V 1999)).

2. The following terms will be used interchangeably in this essay. African American and Black will be used to refer to Americans of African descent; Latinos and Hispanics will be used to refer to Americans of Spanish heritage; Whites will be used to refer to Americans of European descent; Native Americans will be used to refer to descendants of the original Americans, and Asians will be used to refer to Americans of East and West Asian and Pacific Island heritage. Since all terms are considered formal designations of the groups, each will be capitalized.

3. See Yvette M. Alex-Assensoh, *Introduction: In Search of Black and Multiracial Politics in America*, in *BLACK AND MULTIRACIAL POLITICS IN AMERICA* (Yvette M. Alex-Assensoh & Lawrence J. Hanks eds., 2000) (discussing minority struggles in politics and the emergence of multiracial considerations); *A COMMON DESTINY: BLACKS AND AMERICAN SOCIETY* 14-16 (Gerald D. Jaynes & Robin M. Williams, Jr. eds., 1989) (documenting and commenting on the results of a 1985 study on the changing position of Blacks in America since 1940); PHILLIP A. KLINKER & ROGERS M. SMITH, *THE UNSTEADY MARCH: THE RISE AND DECLINE OF RACIAL EQUALITY IN AMERICA* 319 (1999) (discussing the historical struggle for racial equality in the United States); KEITH REEVES, *VOTING HOPES OR FEARS?: WHITE VOTERS, BLACK CANDIDATES, AND RACIAL POLITICS IN AMERICA* 8 (1987) (examining the question as to whether a Black candidate can be elected to political office from districts where Whites comprise the majority of the voters); STEPHAN THERNSTROM & ABIGAIL THERNSTROM, *AMERICA IN BLACK AND WHITE: ONE NATION INDIVISIBLE* 286-312 (1997) (discussing and analyzing the closing of social, economic, and political gaps between Blacks and Whites); David C. Ruffin, *Election 2000: A Season of Indecision*, *FOCUS*, Nov./Dec. 2000, at 3-4 (commenting on the success of Black candidates in the 2000 election).

relate to the rapidly changing demography of the United States.

This Article addresses three critical challenges: (1) changing United States demographics and the tensions between minority groups as their numbers increase and they compete for resources and political power,⁴ (2) the creation of majority-minority congressional districts (principally African-American and Hispanic),⁵ and (3) factors and initiatives that continue to disenfranchise minority voters in spite of the implementation of the Voting Rights Act, as poignantly revealed in the 2000 presidential election.⁶ Finally, this Article concludes with a set of strategies designed to reduce inter-minority conflict, facilitate minority political representation at the congressional level, and to apply the Voting Rights Act in a way that will ensure the effective participation of minority voters in the new millennium.⁷

I. DEMOGRAPHIC CHANGE AND CURRENT AND EMERGING INTER-MINORITY TENSIONS

A. Demographic Change

The United States is experiencing rather dramatic demographic changes at all levels of contemporary society. The racial and ethnic makeup of our neighborhoods, schools, work force, and social and political institutions have become more diverse due to increased legal and illegal immigration and high birth rates among immigrants and other United States racial and ethnic minority groups.⁸ As a result,

4. See *supra* notes 8–87 and accompanying text.

5. See *supra* notes 88–124 and accompanying text.

6. See *supra* notes 125–163 and accompanying text.

7. See *supra* notes 164–173 and accompanying text.

8. See FARAI CHIDEYA, *THE COLOR OF OUR FUTURE* 4–5 (1999) (discussing the increasing racial diversity in America); James H. Johnson, Jr., Walter C. Farrell, Jr., & Chandra Guinn, *Immigration Reform and the Browning of America: Tensions, Conflicts, and Community Instability in Los Angeles*, in *THE HANDBOOK OF INTERNATIONAL MIGRATION: THE AMERICAN EXPERIENCE* 390 (Charles Hirschman et al. eds., 1999) [hereinafter *Browning of America*] (analyzing the changes in United States immigration policy and providing examples of the tensions between Hispanics, Asians, and Blacks); James H. Johnson, Jr., Karen D. Johnson-Webb, & Walter C. Farrell, Jr., *Newly Emerging Hispanic Communities in the United States: A Spatial Analysis of Settlement Patterns, In-Migration Fields and Social Receptivity*, in *IMMIGRATION AND OPPORTUNITY* 263 (Frank D. Bean & Stephanie Bell-Rose eds., 1999) (discussing the emerging distribution patterns of Hispanics and Blacks); U.S. Census Bureau, Population Estimates Program, Population Division, Quarterly Estimates of the United States Foreign-Born and Native Resident Populations: Apr. 1, 1990 to July 1, 1999, Washington, D.C., Apr. 11, 2000, <http://www.census.gov/population/estimates/nation/nativity/fbt001.txt> (presenting population

America is projected to become a pluralistic nation in which no racial group will constitute the majority by the middle of the twenty-first century.⁹

During this period, the United States will experience continued population growth that is substantially above replacement rates (zero population growth [ZPG]), which had been previously assumed.¹⁰ Moreover, the cumulative effects of immigration will be more significant than births to people already living here. The United States Census Bureau estimates that illegal and legal immigration combined will increase the United States population by 880,000 a year over the next five decades.¹¹ However, this annual increase could be higher than 1.5 million given the inability of the United States Census Bureau to count accurately minorities and immigrants.¹²

By 2050, the United States population will include eighty-two million people who arrived in or who were born to people who arrived in the country after 1991.¹³ This group of immigrants and their children will account for twenty-one percent of America's population.¹⁴ Whites will account for a declining share of the nation's population, and are projected to stop growing by 2029, peaking at 208

estimates for American racial groups in the 2000 census) (on file with the North Carolina Law Review).

9. See U.S. Census Bureau, Population Estimates Program, Population Division, Residential Population Estimates of the United States by Sex, Race, and Hispanic Origin: Apr. 1, 1990 to July 1, 1999, with Short-Term Projection to Nov. 1, 2000, Washington, D.C., Jan. 2, 2001, <http://www.census.gov/population/estimates/nation/intfile3-1.txt> (on file with the North Carolina Law Review).

10. Jennifer Day, U.S. Bureau of the Census P-25, Series No. 1092, Population Projections of the United States by Age, Sex, Race, and Hispanic Origin: 1992-2050, Washington, D.C.: U.S. Government Printing Office (1993).

11. See Day, *supra* note 10; Steven A. Holmes, *Rights Groups Urging Use of Sampling in United States Census*, N.Y. TIMES, Dec. 24, 2000, at A1; Al Knight, Editorial, *Immigration Rate Matters*, DENVER POST, Jan. 7, 2001, at H3 (claiming that immigration rates and data are often ignored in population growth discussions).

12. Day, *supra* note 10; Jack Sirica, *Hispanics to be Largest Minority? Group Expected to Eclipse Blacks by 2010*, NEWSDAY, Sept. 29, 2000, at 19; see Editorial, *Make Science, Not Politics, Count*, L.A. TIMES, Jan. 8, 2001, at B6 (arguing that statistically refined Census data should be used instead of the raw head count); Robert E. Pierre, *District Sees Hope in Population Loss; Early Estimates Predicted Larger Decline*, WASH. POST, Dec. 29, 2000, at A14 (noting that cities with large populations of black residents and poor people are often undercounted, as those groups are typically hesitant to provide much information to the government).

13. Day, *supra* note 10.

14. U.S. Census Bureau, National Projections Program, Population Division, Projected Migration by Race and Hispanic Origin, 1999 to 2000, Washington, D.C., Jan. 13, 2000, <http://www.census.gov/population/projections/nation/summary/np-t7-c.txt> (on file with the North Carolina Law Review).

million.¹⁵ Between 2000 and 2050, the African-American population will nearly double from approximately thirty-three million to sixty-two million, the Asian-American population will increase from eight million to approximately forty-one million, and the Hispanic-American population will increase from approximately thirty-four million to eighty-one million.¹⁶ Native Americans will remain the smallest minority group, peaking at approximately fifteen million at the end of this period.¹⁷ In 2050, the United States population is projected to reach 400 million, representing a 50.2% growth from 1992.¹⁸ By racial group, Asians are projected to grow by 412%, Hispanics by 238%, Native Americans by 109%, Blacks by 94%, and Whites by only 29%.¹⁹ Moreover, these demographic changes, in part, undergirded the Los Angeles civil insurrection of 1992. They provided a first glimpse at what inter-minority tensions loomed for the new millennium.

B. *Current and Emerging Inter-Minority Tensions*

However, not everyone welcomes or embraces the nation's emerging multiracial and demographic realities. In fact, tensions between racial minority groups have become intense in several regions of the country.²⁰ It is argued that one of the primary causes of the Los Angeles civil unrest was the failure of local elected officials to implement human relations policies to mitigate the widespread intolerance that had accompanied recent changes in the racial and ethnic composition of the Los Angeles population.²¹

This intolerance among the various minority populations is exacerbated by the fact that newly arrived immigrants often bring with them negative perceptions, stereotypes, and prejudiced attitudes

15. *Id.*; see also Day, *supra* note 10.

16. Day, *supra* note 10.

17. *Id.*

18. John Kavaliunas, *A First Look at the Numbers From Census 2000*, *MARKETING RES.*, Spring 2001, at 37 (stating the early results from the 2000 census).

19. Day, *supra* note 10; figure 1, *infra* p. 1247; Nicholas Kulish, *Census 2000: The New Demographics: U.S. Asian Population Grew and Diversified*, *Census Shows*, *WALL ST. J.*, May 15, 2001, at B4 (discussing changes in the Asian population).

20. *Browning of America*, *supra* note 8, at 390; Jack Miles, *Blacks vs. Browns*, *ATLANTIC MONTHLY*, Oct. 1992, at 51–53 (discussing tensions between Latinos and Blacks leading up to and following the 1992 Los Angeles riots).

21. See James H. Johnson, Jr. & Walter C. Farrell, Jr., *The Fire This Time: The Genesis of the Los Angeles Rebellion of 1992*, 71 *N.C. L. REV.* 1403, 1407–10 (1993) [hereinafter *The Fire This Time*] (analyzing the causes of the Los Angeles riots of 1992).

toward America's racial minority groups, especially Blacks.²² Some Hispanics, Mexicans in particular, have historically viewed African Americans as Black Anglo Saxons in the sense of being an inferior imitation of Whites.²³ It has also been asserted that Asian Americans, prior to their arrival in the United States, are continuously bombarded with exported American media and advertising that contain negative images of Blacks as crime prone, overly dependent on welfare, drug addicted, lazy, and as exaggerated cartoon caricatures in product advertisements.²⁴ In contrast, newly arrived immigrants, especially those who enter the country illegally, evoke public backlash due to concerns about the burden they place on public services such as hospitals, schools, and the welfare and criminal justice systems.²⁵

A survey of ethnic antagonisms in Los Angeles—one of the most ethnically diverse cities in the United States and one in which there is no racial majority group—provides a perspective on the nature and magnitude of inter-group stereotyping, a trend that is reflected in large and small cities throughout the country.²⁶ In the survey, respondents were asked to rank, on a seven-point scale, members of their own racial group and members of the other major racial categories.²⁷

The data in figures 2 and 3 provide insight into the extent to which members of any given group (e.g., Whites) rate members of other groups (e.g., African, Asian, and Hispanic Americans) more negatively on the following characteristics: intelligence, welfare dependence, and being hard to get along with,²⁸ as well as their willingness to have intimate and prolonged social contact with other

22. *Browning of America*, supra note 8, at 395.

23. *Id.*

24. *Id.*; Jonathan Kaufman, *Immigrants' Businesses Often Refuse to Hire Blacks in Inner City*, WALL ST. J., June 6, 1995, at A1 (describing the prevalence of negative stereotypes of blacks by Asian immigrant employers). Examples are personal care products and food items.

25. *Browning of America*, supra note 8, at 393–94.

26. See generally Lawrence Bobo, Camille L. Zubrinsky, James H. Johnson, Jr., & Melvin L. Oliver, *Public Opinion Before and After the Spring of Discontent*, in THE LOS ANGELES RIOTS: LESSONS FOR THE URBAN FUTURE 117–24 (Mark Baldassare ed., 1995) [hereinafter *Spring of Discontent*] (discussing ethnic antagonisms before and after the Los Angeles civil unrest of 1992).

27. *Id.* at 105. The survey was administered after the 1992 civil disturbance in Los Angeles. While this survey was taken during a period of heightened tensions, its results are nonetheless indicative of the underlying attitudes held by many.

28. See figure 2, *infra* p. 1248.

racial and ethnic minority groups.²⁹ Figure 2A shows that Blacks are viewed negatively with regard to intelligence and welfare dependence, especially by Asians.³⁰ Almost two-thirds (63.4%) of the Asian respondents view Blacks as less intelligent than themselves, and more than three-fourths (76.8%) rate Blacks as being prone to welfare dependency.³¹ Whites also rate Blacks negatively on these characteristics, but not nearly as negatively as do Asians.³²

In figure 2B, a similar pattern emerges when Whites, Blacks, and Asians rate Hispanics. Sixty percent of Asian respondents rate Hispanics as less intelligent than members of their group, and 71.9% rate Hispanics as preferring to live off welfare.³³ Whites also give negative ratings to Hispanics on intelligence and welfare dependence, which are similar to the ratings they gave Blacks.³⁴ Whites' ratings, however, were not nearly as negative as those given Hispanics by Asians.³⁵ On the whole, negative perceptions of Whites are lower than those of Blacks and Hispanics. Asians seem, on average, to be perceived less negatively than the other racial and ethnic groups.

Figure 2C reveals that Whites, Blacks, and Hispanics all view Asians as difficult to get along with, with Hispanics experiencing the most difficulty with Asians.³⁶ Hispanics' and Blacks' negative ratings of Asians are consistent with the looting, burning, and violence in Koreatown—predominantly by Hispanics and Blacks—that marked the 1992 civil disturbance in South Central Los Angeles.³⁷

Figure 2D shows that, in terms of intelligence and welfare dependence, Asians are substantially more negative in their views of non-Hispanic Whites than either Blacks or Hispanics.³⁸ Asians rate Whites negatively on intelligence and welfare dependence, albeit less negatively than Blacks and Hispanics.³⁹ Approximately one-fourth of

29. See figure 3, *infra* p. 1249.

30. *Spring of Discontent*, *supra* note 26, at 117–18; see also *Browning of America*, *supra* note 8, at 396.

31. *Browning of America*, *supra* note 8, at 396.

32. *Spring of Discontent*, *supra* note 26, at 117–18.

33. *Id.*; see also *Browning of America*, *supra* note 8, at 396.

34. *Spring of Discontent*, *supra* note 26, at 117–18; see also *Browning of America*, *supra* note 8, at 396.

35. *Spring of Discontent*, *supra* note 26, at 117–18; see also *Browning of America*, *supra* note 8, at 396.

36. *Spring of Discontent*, *supra* note 26, at 117–18; see also *Browning of America*, *supra* note 8, at 396.

37. *Id.* at 120–24 (discussing the hidden conflict between Hispanics and Asians).

38. *Id.* at 117–18; see also *Browning of America*, *supra* note 8, at 396.

39. *Spring of Discontent*, *supra* note 26, at 117–18; see also *Browning of America*, *supra* note 8, at 396.

Asians rate non-Hispanic Whites as less intelligent and more likely to live off welfare than their own group,⁴⁰ and Asians, Blacks, and Hispanics all rate non-Hispanic Whites as being hard to get along with.⁴¹

As illustrated in figure 3, the same survey revealed that Asians, Blacks, Hispanics, and Whites also held varying views about prolonged social contact with respect to whether they would favor or oppose living in neighborhoods where half of their neighbors would be members of each of the other groups and whether they would favor or oppose interracial marriage that involved a close relative or family member.⁴² Figure 3A shows socially distant feelings toward residential integration, and the most significant opposition emerges when the neighborhood is 50% Black.⁴³ Almost half of Asian respondents (46.2%) and approximately one-third of Hispanic (32.8%) and White (30.8%) respondents oppose a residential mixture of this proportion.⁴⁴ Furthermore, African Americans are the most rigidly segregated among American minority groups.⁴⁵ These and other data in figure 3A are consistent with contemporary observations of racial residential segregation, which suggest that racial segregation in America is approaching apartheid proportions.⁴⁶

When examining preference patterns regarding intermarriage, responses are somewhat similar. Consistent with the previous findings, the strongest opposition is to intermarriage involving Blacks. Nearly one-third of White and Asian respondents and approximately 25% of Hispanics objected to an interracial marriage with an African American.⁴⁷ Intermarriage with all other groups was less stringently opposed.⁴⁸

These inter-minority tensions have been characterized as a

40. *Spring of Discontent*, *supra* note 26, at 117–18; *see also Browning of America*, *supra* note 8, at 396.

41. *Spring of Discontent*, *supra* note 26, at 117–18; *see also Browning of America*, *supra* note 8, at 396.

42. *Id.* at 118–20.

43. *Id.* at 119–20; *see also Browning of America*, *supra* note 8, at 396.

44. *Id.* at 120; *see also Browning of America*, *supra* note 8, at 397.

45. *Id.* at 2.

46. *See generally* Douglas S. Massey & Nancy A. Denton, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS* (1993) (examines and discusses the residential segregation of racial minorities); *see also generally* Roderick J. Harrison, *The Status of Residential Segregation*, *FOCUS*, July/Aug. 2001, at 3–4, 8 (documenting the continuing status of African Americans as the nation's most segregated racial group).

47. *Spring of Discontent*, *supra* note 26, at 119; *see also Browning of America*, *supra* note 8, at 397.

48. *Id.* at 120.

struggle for the bottom rung of American society.⁴⁹ Hispanics (as well as Asians) are now competing for low-wage, unskilled jobs with Blacks as they strive to gain an economic foothold in American society. In a few instances, the feelings of tension and competition have been openly expressed. For example, *La Presna San Diego*, a Mexican-American newspaper, editorialized a month after the 1992 Los Angeles insurrection that:

Though confronted with catastrophic destruction of the Latino businesses, which were 60% of the businesses destroyed, major looting by Blacks and by the Central Americans living in the immediate area and a substantial number of Hispanics being killed, shot and/or injured, every major television station was riveted to the concept that the unfolding events could only be understood if viewed in the context of the Black and White experiences. They missed the crucial point: [t]he riots were not carried out against Blacks or Whites, they were carried out against the Latino and Asian communities by the Blacks!

What occurred was a major racial confrontation by the Black community, which now sees its numbers and influence waning.

Faced with nearly a million and a half Latinos taking over the inner city, Blacks revolted, rioted and looted. Whatever measure of power and influence they had pried loose from the White power structure, they now see as being in danger of being transferred to the Latino community. Not only are they losing influence, public offices, and control of the major civil rights mechanisms, they now see themselves as being replaced in the pecking order by the Asian community, in this case the Koreans.⁵⁰

However, there is little evidence of Blacks attacking Latino businesses during the civil disturbance, and most of the damage to businesses was sustained by Asians (principally Koreans).⁵¹ Moreover, most of those arrested for participating in the burning and looting were of Hispanic background.⁵² Nevertheless, these perceptions and stereotypes have *gravitas* in the Hispanic

49. Miles, *supra* note 20, at 59.

50. *Id.* at 51 (quoting LA PRENSA SAN DIEGO, May 15, 1992).

51. See *Fire This Time*, *supra* note 21, at 1407-10.

52. See James H. Johnson, Jr. et al., *The Los Angeles Rebellion: A Retrospective View*, ECON. DEV. Q. 358 (1992).

community.⁵³ As minority groups increase in size, there are growing tensions between them that are similar in magnitude to those that have historically existed between Blacks and Whites.⁵⁴ We assert that these tensions are likely to carry over into the political arena as Hispanics and Blacks, in particular, pursue their often separate agendas for obtaining political clout.⁵⁵

53. Miles, *supra* note 20, at 51. See *The Fire This Time*, *supra* note 21, at 1407–10 (emphasizing the effect of perceptions and stereotypes in the Hispanic community); see also Russell Grantham & Mark Bixler, *Jackson Group Stresses Unity with Hispanics*, ATLANTA J. CONST., Mar. 10, 2001, at H4 (explaining negative perceptions between Georgia Hispanics and African Americans); John Mollenkopf, *The Democratic Vote in Living Color*, N.Y. TIMES, Mar. 14, 2001, at A23 (identifying racial divisions in the New York City electorate).

54. There are several recent examples of current inter-minority conflicts and antagonisms between Blacks and Hispanics, Hispanics and Asians, and Asians and Blacks. See, e.g., PRONG GAP MIN, CAUGHT IN THE MIDDLE: KOREAN COMMUNITIES IN NEW YORK AND LOS ANGELES 261 (1996) (explaining conflicts between Koreans and other minorities in New York and Los Angeles); Ying Ma, *Black Racism*, AM. ENTERPRISE, Nov./Dec. 1998, at 54, 54 (noting conflicts between Blacks and Asians); Irwin L. Morris, *African American Voting on Proposition 187: Rethinking the Prevalence of Interminority Conflict*, POL. RES. Q., Mar. 2000, at 77, 79 (discussing conflicts between African Americans and Hispanics and Asians); Yolanda Flores Nieman et al., *What Does It Mean to Be Mexican? Social Construction of an Ethnic Identity*, HISPANIC J. BEHAV. SCI., Feb. 1999, at 47, 56 (noting conflicts between Mexican Americans and African Americans); Mark Bixler, *Hispanic Population Booming*, ATLANTA J. CONST., Mar. 8, 2001, at A7 (reporting frictions between African Americans and Hispanics in Georgia); Mark Bixler, *Tensions between Neighbors*, ATLANTA J. CONST., Nov. 21, 2000, at A1 (discussing the tensions between newly arriving Hispanics and long-term Georgia residents, including African Americans); Kaufman, *supra* note 24 (discussing Korean grocers' resistance to the unionization of their employees); Douglas Martin, *Seeking New Ties and Clout, Korean Grocers Join Voices*, N.Y. TIMES, Mar. 22, 1993, at A1 (reporting conflicts between Korean-Americans and Blacks in New York City); Sara Kershaw, *Union Drive Collides with Korean Grocers*, N.Y. TIMES, Feb. 15, 2001 at A1 (reporting conflicts between Hispanics and Koreans); Mirey Navarro, *Bricks, Mortar, and Coalition Building*, N.Y. TIMES, July 13, 2000, at A1 (noting examples of persons who overcame stereotypes between Blacks, Whites, and Hispanics); Scott Shephard, *South Faces Job Challenges with Influx of Hispanic, Asian Groups*, Cox News Service, Nov. 15, 1998 (discussing the influx of Hispanic and Asian immigrants and competition in the job market); Bill Wallace et al., *Guards Kill Prisoners in Brawl at Pelican Bay*, S.F. CHRON., Feb. 24, 2000, at A1 (discussing prison guard killings of minority prisoners and related inter-minority tensions); Jim Yardley, *Houston School Chief to Test Hispanic Will*, N.Y. TIMES, Feb. 9, 2001, at A14 (reporting resentment in the Houston Hispanic community because of the selection of Roderick R. Paige, an African American, as school board superintendent).

55. Yvette M. Alex-Assensoh, *supra* note 3, at 396–99 (discussing the need to rethink the practical and theoretical quandaries posed by racial categories in American politics); Michael Jones-Correa, *Immigrants, Blacks, and Cities*, in BLACK AND MULTIRACIAL POLITICS IN AMERICA, *supra* note 3, at 133–64 (discussing the tensions between institutional stability and democratic values by focusing on how cities have and are likely to respond to new actors in the urban political environment); see generally WILLIAM JULIUS WILSON, *THE BRIDGE OVER THE RACIAL DIVIDE* (1999) (discussing the rising inequality in American society and the need for a progressive, multiracial political

C. Competition for Political Power

Given the previous discussion, demographic changes in the United States population indicate that inter-minority competition for political power is an emerging issue. In addition, the 2000 census reveals that these population changes are shifting political power to the South and West—adding twelve congressional seats to those regions.⁵⁶

The four southern states that will be awarded congressional seats, North Carolina (1 seat), Georgia (2 seats), Florida (2 seats), and Texas (2 seats) added more than one million people each between 1990 and 2000, resulting in a net gain of seven congressional seats.⁵⁷ Colorado (1 seat), Arizona (2 seats), Nevada (1 seat), and California (1 seat) registered an even greater population increase and gained seats in the West.⁵⁸ Ten states in the Northeast, the Midwest, and the South have been designated to lose congressional seats.⁵⁹ New York will lose two of its thirty-one House seats, which is expected to spark

coalition to combat it).

56. Richard Stradling, *Census: N.C. Up 21%*, NEWS & OBSERVER (Raleigh, N.C.), Dec. 29, 2000, at A1 (noting the population shift from the Northeast and Midwest to the South and West and its effect on redistricting); Ben Wattenburg, *America by the Numbers*, WALL ST. J., Jan. 3, 2001, at A14 (describing the population shift to the South and the West).

57. Associated Press, *New Census Counts 281.4 Million Americans*, N.Y. TIMES, Dec. 28, 2000, at A14; Michael Hedges, *Census Gives Texas Two New House Seats*, HOUST. CHRON., Dec. 29, 2000, at 1A (reporting that Texas will be apportioned two additional Congressional seats); Steven A. Holmes, *Americans Number 281,421,906 in Census*, N.Y. TIMES, Dec. 29, 2000, at A1 (describing the ramifications of the state-by-state population counts on the allocation of seats in the House of Representatives); Tom Squitieri, *Parties Prepare for House Redistricting Fights*, USA TODAY, Dec. 27, 2000, at 4A (predicting which states will gain or lose Congressional seats and examining the likely battles over redistricting); Stradling, *supra* note 56 (stating that North Carolina will gain an additional Congressional seat); Wattenburg, *supra* note 56.

North Carolina won its additional seat because the census includes overseas diplomatic and military personnel in the reapportionment count. If these Americans had not been included, Utah rather than North Carolina would have gained the seat. Utah sued the federal government challenging this regulation, but North Carolina was allowed to keep the seat by a three-judge panel of a U.S. District Court in Salt Lake City, Utah on April 17, 2001. Utah officials are considering an appeal to the U.S. Supreme Court. See Ned Glascock, *Judges Say N.C. Can Keep Seat*, NEWS & OBSERVER (Raleigh, N.C.), Apr. 18, 2001, at A1; Susan Greene & Mike Soraghan, *Swelling State Gets 7th Seat, Census Counts 4.3 Million Coloradans*, DENVER POST, Dec. 29, 2000, at A1; Michael Jonotsky, *Utah, in Census War, Fights North Carolina for House Seat*, N.Y. TIMES, Feb. 8, 2001, at A12; *State Gains 2 House Seats*, ST. PETERSBURG TIMES, Dec. 29, 2000, at A1.

58. Susan Greene & Mike Soraghan, *Swelling State Gets 7th Seat*, DENVER POST, Dec. 29, 2000, at 1A (reporting that Colorado will receive an additional Congressional seat); Holmes, *supra* note 57.

59. Greene & Soraghan, *supra* note 58.

an intense political battle in the State legislature.⁶⁰ Connecticut will lose one of its six seats, and Pennsylvania is destined to lose two seats.⁶¹ In the Midwest, Wisconsin, Ohio, Indiana, Michigan, and Illinois are each projected to lose one congressional seat, as will Oklahoma and Mississippi in the South.⁶²

It is worth reiterating that all of the states that gained and lost congressional seats registered significant increases in their combined racial and ethnic minority populations.⁶³ Racial and ethnic minority groups are increasing their percentages of the population in these states based on four factors: in-migration from other parts of the United States, immigration from abroad, White out-migration to other states, and higher rates of procreation among ethnic minority women who tend to be disproportionate in number in the traditional child-bearing age (ages 18–40) as compared to their White counterparts.⁶⁴ Further, as noted in figure 1 and table 1, the White population, overall, is increasing at a significantly lower rate than racial and ethnic minorities.⁶⁵

Table 1 shows the net population change attributed to non-

60. *Id.*

61. *Id.*

62. David Peterson, *Minnesota Grows 12 Percent to 4,919,479*, STAR TRIB. (Minneapolis), Dec. 29, 2000, at A1 (reporting the results of the 2000 Census and its impact on redistricting); Tom Squitieri, *Census Shows Record Growth: Population Passes Bureau Predictions*, USA TODAY, Dec. 29, 2000, at 1A (noting that Sun Belt states will gain Congressional seats and political clout in Congress); Jerry Zremski, *Sun Belt Gains Political Clout*, BUFFALO NEWS, Dec. 29, 2000, at A1, available at 2000 WL 5704220 (noting that reapportionment based on the results of the 2000 census will give states stretching south and west from Virginia to California more representatives than states in the Northeast and Midwest).

63. Marc J. Perry & Paul J. Makun, U.S. Census Bureau, Population Change and Distribution, Census 2000 (Apr. 2001).

64. *Id.*

65. U.S. Census Bureau, *supra* note 8; Elizabeth M. Grieco & Rachel Cassidy, U.S. Census Bureau, Overview of Race and Hispanic Origin, at 3, available at <http://www.census.gov/prod/2001/pubs/cenbr01-1.pdf> (last visited Mar. 2001) (reporting census results) (on file with the North Carolina Law Review); Randal C. Archibold, *Census Cost States Seats in Congress*, N.Y. TIMES, Dec. 29, 2000, at B1 (explaining that New York will lose two Congressional seats following the census and Connecticut will lose one); Associated Press, *U.S. Is More Diverse, Less Hungry, More Wired Now Than When Clinton Took Office*, ST. LOUIS POST-DISPATCH, Jan. 15, 2001, at A5, available at WL 4439161 (noting that the increases in Hispanic and Black populations in the United States have significantly outpaced that of whites) (on file with the North Carolina Law Review); Susan Sachs, *What's In a Name? Redefining Minority*, N.Y. TIMES, Mar. 11, 2001, at sec. 4, 1 (reporting that Latinos will soon be the largest minority group in the United States); Eric Schmitt, *New Census Shows Hispanics Are Even with Blacks in U.S.*, N.Y. TIMES, Mar. 8, 2001, at A1 (same).

Whites (racial and ethnic minorities) between July 1, 1990 and July 1, 1999, at the national level and by region.⁶⁶ During this period, minorities represented 68% of the overall United States population growth.⁶⁷ However, when that growth was disaggregated by region, minorities represented 100% of the population growth in the Northeast, 77% in the Midwest, 73% in the West, and 59% in the South.⁶⁸ Thus, a larger and more racially diverse minority population will exist in all regions of the nation.⁶⁹ We now turn to congressional districts in which minority population percentages suggest that inter-minority conflict for political representation looms on the horizon.⁷⁰

African Americans currently hold thirty-nine Representative and Delegate seats in the 107th Congress—the largest by far of any minority group—followed by Hispanics with fourteen seats and Asians and Pacific Islanders with eight seats.⁷¹ In an effort to gauge the likelihood of inter-minority competition or conflict over electoral representation, we reviewed the demographic makeup of the thirty-nine Black congressional districts represented by African Americans to determine those with a 15% or greater Hispanic, Asian, and/or Native American population as of July 1, 1999 with the expectation that, given the rapid growth of the Hispanic population, these districts could generate inter-minority competitiveness and conflict over representation during the next decade.⁷²

66. See table 1, *infra* p. 1249.

67. *Id.*

68. See Day, *supra* note 10; Associated Press, *supra* note 65.

69. Associated Press, *supra* note 65.

70. *Id.*

71. The number of Black Congresspersons in the 107th Congress is thirty-nine: thirty-eight Democrats who are members of the Congressional Black Caucus and one Republican who is not a member. See Members of the Congressional Black Caucus, 107th Congress, <http://www.house.gov/ebjohnson/cbcmembers4.htm> (last visited Sept, 2001) (on file with the North Carolina Law Review); J.C. Watts, Jr., at <http://www.house.gov/watts> (providing information on the Black Congressman who is not a member of the CBC) (last visited Sept. 11, 2001) (on file with the North Carolina Law Review); Congressional Hispanic Caucus Members, at <http://www.house.gov/reyes/CHC/CHCmembers107txt.htm> (last visited on Aug 29, 2001) (on file with the North Carolina Law Review); Congressional Asian and Pacific American Caucus, at <http://www.house.gov/wu/capacweb/members.html> (last visited Mar. 31, 2001) (on file with the North Carolina Law Review). There are seven Asian and Pacific Islander members of the 107th Congress, although there are additional members of other races who serve in the CAPAC. Telephone interview with Congressman Wu's office (July 6, 2001); see also Ruffin, *supra* note 3, at 3–4.

72. The most recently released census data on the Hispanic population growth reveals that this group is increasing in size in several urban Congressional districts represented by African Americans in the West (California), South (Texas), and Northeast (New Jersey and New York). U.S. Census Bureau, Race Data, Apr. 2, 2001, available at

Because Hispanics and Asians are the fastest growing racial groups in the United States, the identified African-American districts are likely to move quickly into becoming competitive for representation by Hispanics or other groups as each district's population mix becomes more diverse. Table 2 identifies ten African American represented congressional districts where Hispanics and other minority groups make up 15% or more of the district population.⁷³ Four of these districts, District 32 in California (previously represented by the late Rep. Julian Dixon), District 15 in New York (represented by the venerable Rep. Charles Rangel, a sixteen-term veteran), District 35 in California (currently represented by Rep. Maxine Waters), and District 9 in California (represented by Rep. Barbara Lee), already have Hispanic pluralities or near pluralities when combined with Asians and Native Americans.⁷⁴ Districts 18 and 30 in Texas, and Districts 6 and 10 in New York have a strong possibility of becoming competitive for Hispanics during the

<http://www.census.gov/population/www/socdemo/race.html> (providing links to 1990 and 2000 census data on race); U.S. Census Bureau, Hispanic Population of the United States, <http://www.census.gov/population/www/socdemo/hispanic.html> (last visited Aug. 29, 2001) (providing links to 1990 and 2000 census data on the Hispanic population) (on file with North Carolina Law Review); Laura Parker, *U.S. Hispanics' Youth Assures More Growth*, USA TODAY, May 10, 2001, at 3A (discussing census data for people of Mexican ancestry); Eric Schmitt, *Census Shows Big Gain for Mexican-Americans*, N.Y. TIMES, May 10, 2001, at 28A (same). The 15% minority threshold level (comprised either solely of Hispanics or of a combination of Hispanics, Asians and Native Americans) was selected because the Hispanic population more than doubled in these urban areas during the last censal period. Moreover, in some of those urban areas, the doubling of the Hispanic population occurred during a five-year period between 1990 and 2000. Therefore, we believe, based on the best available demographic projections which include factors of in-country Hispanic migration, as well as immigration, that there will be sizable increases in the Hispanic population as well as other racial and ethnic minorities in these ten Congressional districts during the current censal period (2000–2010). At any point between 2002 and 2010, we believe that Hispanics, in collaboration with other majority and minority groups may compete with African Americans for what have traditionally been viewed as safe Black Congressional seats. See Greico & Cassidy, *supra* note 65, at 3; Schmitt, *supra* note 65 (describing the characteristics of the growing Hispanic population, which roughly equaled the black population in the 2000 census); Janny Scott, *Minorities Changing Landscape of New Jersey*, N.Y. TIMES, Mar. 9, 2001, at A1 (noting that minorities accounted for much of New Jersey's population growth in the 2000 census); cf. Sarah Kershaw, *Queens to Detroit: A Bangladeshi Passage*, N.Y. TIMES, Mar. 8, 2001, at A1 (describing the recent migration of thousands of Bangladeshis from New York to Michigan).

73. See table 2, *infra* p. 1250; U.S. Census Bureau, 103th Congressional Districts, Jan. 1995-Jan. 1997 Cartographic Boundary Files (1999), at <http://www.census.gov/geo/cob/bdy/st/st90shp/cd103.html> (providing an index for tables on congressional demographic district data) (last visited Aug. 29, 2001) (on file with the North Carolina Law Review).

74. *Id.*

decade after the 2000 census.⁷⁵ Because Hispanics and Asians tend to reside in historically Black areas or in neighborhoods contiguous to them, the districts' demographic makeup could change rapidly and dramatically. Finally, District 11 in New York and District 10 in New Jersey loom as potentially competitive for Hispanics over a longer term given their rapid population growth in those districts.⁷⁶

A recent example of Black-Hispanic competitiveness was the 32nd District congressional seat vacated by the December 2000 death of Rep. Julian Dixon.⁷⁷ While there was some Latino interest in the seat, in the end, Diane Watson, an African American and former California State Senator, won the election.⁷⁸ However, as the Latino population continues to accumulate in traditionally black residential areas in California and elsewhere throughout the nation, the probability of Hispanic-Black conflict over political representation will significantly increase.⁷⁹ "The Latino community feels more empowered by the population growth and more included, and they're voting in greater numbers," noted Tony Cardenas, a state assemblyman from the San Fernando Valley, where the booming Latino population could elect one of its own to the congressional seat

75. *Id.*

76. *Id.* In addition to our forecast, the National Association of Latino Elected and Appointed Officials Educational Fund has noted that the 2000 census has revealed that Districts 17 and 23 in Florida (represented by Rep. Carrie Meeks and Rep. Alcee Hastings, respectively), and District 37 in California (represented by Rep. Juanita Millender-McDonald), have rapidly growing Hispanic populations. See Janelle Carter, *Latinos Alter Dynamics of "Black" House Districts*, USA TODAY, Aug. 20, 2001, at 6A. Some would argue that non-citizenship of a sizeable number of Hispanics would serve as a barrier to Hispanics capturing the seats of African Americans who represent majority and/or near majority Latino populations. E-mail from Douglas Markham, Attorney, Houston Texas, to James H. Johnson, Professor of Public Policy, University of North Carolina at Chapel Hill (Feb. 21, 2001, 5:56 PM) (on file with the North Carolina Law Review). However, the substantial increase (percentage-wise) that has occurred and is projected for the overall Hispanic population in the 2002 and future redistricting periods, respectively, coupled with the redrawing of district lines, will, we believe, enable Latino candidates to be competitive and/or win congressional seats in those African-American represented districts identified in table 2, *infra* p. 1250, (notwithstanding their younger median age), and those identified by the National Association of Latino Elected Officials. See Day, *supra* note 10; U.S. Census, *supra* note 8.

77. B. Drummord Ayres Jr., *Political Briefing: Winnowing the Field in California District*, N.Y. TIMES, Feb. 4, 2001, at A23 (examining the choice of which Democratic candidate should run for the seat of the late Congressman Julian Dixon); Michael Janofsky, *Death Puts Focus on Demographic Change*, N.Y. TIMES, Dec. 24, 2000, at 16.

78. See *Democrat Easily Wins California Seat in House*, N.Y. TIMES, June 7, 2001, at A14.

79. Janofsky, *supra* note 77.

allocated to California.⁸⁰ Moreover, “the Latino population has increased seven times faster than the rate for [B]lacks and 50 percent faster than the rate for Asians. In the same period, the state’s [W]hite non-Hispanic population fell by nearly 5 percent.”⁸¹ Such demographic transformations will necessitate that Black politicians be more sensitive and responsive to the political preferences of Latino voters.⁸²

Several African-American elected officials who expressed interest in succeeding Rep. Dixon also acknowledged the rapidly expanding Hispanic population and the rise of Hispanic political power.⁸³ Many of them have had a long elected tenure in state and local government and were reluctant to risk losing safe seats.⁸⁴ In addition, California has to accommodate an additional congressional seat, and it would be politically expedient to meld the 32nd District into portions of the five surrounding districts, which are also represented by Democrats. This strategy would accommodate major population shifts in other parts of the state while not serving to disadvantage a Democratic incumbent. Latinos may be able to carve out a new Hispanic seat by capturing the naturally concentrated Hispanic populations situated within and in the vicinity of the 32nd Congressional District.⁸⁵

A summer 2000 primary election in New York demonstrates the power that growing minority groups can wield. There, Hispanic and African-American political leaders collaborated in an attempt to wrest the 17th District seat of a five-term White Congressman representing the Bronx.⁸⁶ Fielding a Black state senator in the Democratic primary, they were unsuccessful in their efforts.⁸⁷ But, given their combined population size—more than 71% of the district—these efforts are likely to be successful in the very near future. Although Blacks and Latinos had been combatants in the political arena previously, they came together, in this instance, for mutual benefit. Yet their competitiveness against each other for political power is likely to remain.

80. *Id.*

81. *Id.*

82. *See, e.g.,* Carter, *supra* note 76.

83. Janofsky, *supra* note 77.

84. *Id.*

85. *Id.*

86. *See* Adam Nagourney, *Ms. Clinton Sidesteps Race That Has Stirred Tensions*, N.Y. TIMES, Aug. 22, 2000, at B5.

87. *Id.*

II. MAJORITY-MINORITY CONGRESSIONAL DISTRICTS

A. *Creating Majority-Minority Districts*

In the twentieth century, the overwhelming majority of African Americans and Hispanics elected to the United States House of Representatives have represented majority-minority congressional districts.⁸⁸ Political scientists, liberal and minority legal activists, and the minority community in general have offered conflicting opinions as to whether these districts are the best way to increase or maintain the number of Blacks and Hispanics in Congress.⁸⁹ Since the passage of the Voting Rights Act in 1965, and under pressure from the United States Justice Department, several states (and local jurisdictions) have redrawn the boundaries of a number of congressional districts to ensure that members of minority groups would be the majority of voters.⁹⁰ These efforts were fueled by prevailing interpretations of the Voting Rights Act and have been endorsed, at times, by both the Democratic and Republican parties.⁹¹

However, during the 1990s, the Supreme Court considered the potential unconstitutionality of majority-minority districts in North

88. U.S. Census Bureau, *supra* note 73. One should note, however, that these numbers are operative until the 2002 Congressional elections. *See also* Ronald Walters, *Color-Blind Redistricting and the Efficacy of Black Representation*, in *THE STATE OF BLACK AMERICA: THE IMPACT OF COLOR CONSCIOUSNESS IN THE UNITED STATES* 107, 107–36 (William Spriggs ed., 1999). *But see* CAROL SWAIN, *BLACK FACES, BLACK INTERESTS: THE REPRESENTATION OF AFRICAN AMERICANS IN CONGRESS 193–200* (2d ed. 1995) (noting that before 1990, 40% of Blacks elected to Congress represented districts in which Blacks comprised less than 50% of the voting-age population).

89. *See* Bernard Grofman, *Introduction: Race and Redistricting in the 1990s*, in *RACE AND REDISTRICTING IN THE 1990S* 2–3 (Bernard Grofman ed., 1998); *MINORITY REPRESENTATION AND THE QUEST FOR VOTING EQUALITY* 1–3 (Bernard Grofman et al. eds., 1992); Walters, *supra* note 88; Robinson O. Everett, *A Personal Perspective on North Carolina Gerrymandering*, 79 N.C. L. REV. 1301, 1328–29 (2001); Carol Swain, *The Supreme Court's Ruling on Congressional Districts Could Benefit Minority Voters*, *CHRON. OF HIGHER EDUC.*, Sept. 27, 1996, at B3.

90. *See generally* SWAIN, *supra* note 88, at 193–200 (concluding that the creation of majority black congressional districts is not in the best political interests of African Americans); Charles Cameron et al., *Do Majority-Minority Districts Maximize Substantive Black Representation in Congress*, 90 AM. POL. SCI. REV., 810 (1996) (suggesting that majority-minority congressional districts do not maximize substantive Black political representation); Swain, *supra* note 89 (commenting that minorities may benefit from the Supreme Court's rulings in *Shaw v. Hunt* and *Bush v. Vera* because redistricters could no longer pack minorities into only a few heavily minority districts); Albert R. Hunt, *Racial Redistricting Hurts African Americans*, *WALL ST. J.*, Dec. 25, 1999, at A15 (illustrating the delicate racial considerations that must be considered in redistricting plans).

91. SWAIN, *supra* note 88, at 75–79; Swain, *supra* note 89.

Carolina,⁹² Texas,⁹³ Florida,⁹⁴ Georgia,⁹⁵ and Louisiana.⁹⁶ As a result, many civil rights activists concluded that minority membership in Congress would be substantially reduced, based on the relatively large number of Blacks and Hispanics elected to Congress in 1992 from newly drawn majority-minority districts.⁹⁷

Shortly thereafter, some White voters filed lawsuits in an effort to overturn these new districts, and the Supreme Court has generally upheld their objections since 1993.⁹⁸ In one of the most publicized cases, *Shaw v. Reno*,⁹⁹ Justice Sandra Day O'Connor concluded that:

Racial classifications of any sort pose the risk of lasting harm to our society. They reinforce the belief, held by so many for too much of our history, that individuals should be judged by the color of their skin. Racial classifications with respect to voting carry particular dangers.¹⁰⁰

She and several others have argued that we have reached the point in American society where color-blind strategies can and do ensure equal opportunity in education, the workplace, political representation, and other social venues for all.¹⁰¹ Justice O'Connor's position has made her the deciding vote in several cases that have reduced the reliance of race as a factor in providing economic and political opportunities to minorities.¹⁰²

B. *An Alternative to Majority-Minority Districting*

Irrespective of the constitutionality of majority-minority districts, there is evidence that majority-minority districting may not be necessary to ensure minority representation. Carol Swain found that 40% of Blacks elected to Congress before 1990, prior to the emphasis

92. *Shaw v. Hunt*, 519 U.S. 804, 804 (1996).

93. *Bush v. Vera*, 517 U.S. 952, 981 (1996) (plurality opinion).

94. *Johnson v. DeGrandy*, 512 U.S. 997, 1000 (1994).

95. *Miller v. Johnson*, 515 U.S. 900, 915-917 (1995).

96. *United States v. Hays*, 515 U.S. 737, 738-39 (1995).

97. SWAIN, *supra* note 88, at 75-79; A. LEON HIGGINBOTHAM, *SHADES OF FREEDOM* 182 (1996) (containing a study of American law and racial segregation); George E. Curry & Trevor W. Coleman, *Supreme Insult: Clarence Thomas Moves Further to the Right on a Conservative Court*, EMERGE, Nov. 1996, at 44-46.

98. Curry & Coleman, *supra* note 97, at 46; Everett, *supra* note 89, at 1319.

99. 509 U.S. 630 (1993) (holding that a facially race-neutral reapportionment statute may violate the Equal Protection Clause as a result of its effects); Kevin Sack, *Court Draws Georgia Map of Congressional Districts*, N.Y. TIMES, Dec. 14, 1995, at A1.

100. *Shaw*, 509 U.S. at 657.

101. Everett, *supra* note 89, at 1311; Swain, *supra* note 89.

102. See, e.g., *Adarand Constructors v. Peña*, 515 U.S. 200, 204 (1995); *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 476 (1989).

on creating majority minority districts, had been elected from districts where Blacks were less than 50% of the voting-age population.¹⁰³ Additionally, in those districts that did have a voting-age Black population greater than 50%, lower voter turnout among Blacks meant that Whites were frequently the majority of voters on Election Day.¹⁰⁴ Swain also concluded that because Blacks and Hispanics were beginning to disperse geographically, a long-term emphasis on creating majority-minority districts would have diminishing returns.¹⁰⁵

Based on these conclusions, Swain proposed an alternative strategy to majority-minority districting. She suggested that minority voters would receive the greatest political benefit when represented by legislators who aggressively promoted their policy concerns, irrespective of whether these elected officials shared their racial or ethnic identity.¹⁰⁶ Swain argues that by concentrating minority voters in a small number of majority-minority congressional districts, the reelection of Black and Hispanic incumbents may be ensured, but adjacent majority White districts are more likely to elect representatives who are not supportive of minority concerns.¹⁰⁷ This phenomenon was recognized by the first Bush Administration and the Republican National Committee, who championed majority-minority districts after the 1990 census in order to increase the number of Republicans elected to Congress.¹⁰⁸ The success of this strategy was evidenced by the 1994 Republican takeover of the House,¹⁰⁹ as a number of Republicans elected to Congress during the Republican landslide were from previously Democratic districts that had become Republican-dominated as a result of Black voters being concentrated

103. SWAIN, *supra* note 88, at 193.

104. *Id.* at 195.

105. Swain, *supra* note 89.

106. SWAIN, *supra* note 88, at 203.

107. *Id.* at 210–11.

108. See Chandler Davidson, *Racial Gerrymandering Across the Centuries: A Response to Professor Everett*, 79 N.C. L. REV. 1333, 1342 (2001); Bernard Grofman et al., *Drawing Effective Minority Districts: A Conceptual Framework and Some Empirical Evidence*, 79 N.C. L. REV. 1383, 1390 (2001).

109. SWAIN, *supra* note 88, at 205–06; Bernard Grofman & Lisa Handley, *Estimating the Impact of Voting-Rights-Related Districting on Democratic Strength in the U.S. House of Representatives*, in RACE AND REDISTRICTING, *supra* note 89 [hereinafter *Impact of Voting Rights*]; Davidson, *supra* note 108, at 1342; Bernard Grofman & Lisa Handley, *1990s Issues in Voting Rights*, 65 MISS. L.J. 205, 240–45; Gerald F. Seib, *A Look at Open Democratic Seats in Congress Show How GOP Could Take Control of Senate*, WALL ST. J., Oct. 11, 1994, at A20; see also R.H. Melton, *VA Draws U.S. House Districts to Aid GOP*, WASH. POST, July 11, 2001, at A1; Ellen Sorokin, *Redistricting Plan Clears Assembly*, WASH. TIMES, July 11, 2001, at C1.

into majority-minority districts.¹¹⁰

The litigation over the necessity and appropriateness of majority-minority congressional districts has yielded victories for both proponents and opponents of this political remedy. In 1999, the Supreme Court ruled that a concentration of Black voters did not necessarily make a majority-minority district unconstitutional as long as the intent behind its creation was political rather than racial.¹¹¹ Thus, the Court inadvertently gave the nod to the concept of creating a district based on a community of interest rather than its racial makeup, giving proponents an opportunity to draw majority-minority districts in which minorities could predominate.¹¹²

Meanwhile opponents of majority-minority districting were encouraged by the seeming affirmation of their view that minority candidates could win elective office in congressional districts in Georgia, North Carolina, Texas, and Florida that had been invalidated as racially gerrymandered.¹¹³ All minority incumbents who ran in the redrawn districts were re-elected in those districts that had been redrawn with a White majority,¹¹⁴ and there was but one casualty in this political process.¹¹⁵

Nonetheless, there continues to be a strongly held belief that reducing the number of majority-minority congressional districts may ultimately erase the gains that African Americans and Hispanics have made in the political arena.¹¹⁶ However, our analysis of this important public policy issue leads us to believe that this perspective needs to be reassessed. The Supreme Court's application of the strict scrutiny

110. SWAIN, *supra* note 88, at 205–06; *Impact of Voting Rights*, *supra* note 109, 51–66.

111. *Hunt v. Cromartie*, 526 U.S. 541, 551–54 (1999); Linda Greenhouse, *Court Gives Wiggle Room to Racially Drawn Districts*, N.Y. TIMES, May 18, 1999, at A21 (detailing the Court's ruling in *Hunt v. Cromartie*); *see also* *Hunt v. Cromartie*, 121 S. Ct. 1452, *reh'g denied*, 121 S. Ct. 2239 (2001).

112. *See* Greenhouse, *supra* note 111.

113. Kevin Sack, *Victory of 5 Redistricted Blacks Recasts Gerrymandering Dispute*, N.Y. TIMES, Nov. 23, 1996, at A1 (questioning whether it is necessary to gerrymander legislative districts in light of the re-election of five Black incumbents who won re-election after their majority Black districts were redrawn).

114. *Id.*

115. Cleo Fields, an incumbent Black Congressman from Louisiana, the fifth state that had a majority-minority district redrawn, chose not to stand for re-election after the racial makeup of his district was changed from 55% Black to 71.4% White. Curry & Coleman, *supra* note 97, at 44.

116. Katharine Inglis Butler, *In Response to Grofman, Handley, & Lublin: A Functional Analysis of Potential Voting Rights Liability May Demonstrate that the Intentional Creation of Black Remedial Districts Cannot be Justified*, 79 N.C. L. REV. 1431, 1434 (2001) (critiquing race-based construction of majority-minority districts); Grofman et al., *supra* note 108, at 1390–92.

standard for racial relief in congressional redistricting cases is consistent with its groundbreaking 1989 ruling in *City of Richmond v. J.A. Croson Co.* on racial set-asides.¹¹⁷ Moreover, given the sequence of Supreme Court decisions that have rejected race as the guiding legal construct for political and economic redress, we believe it to be counterproductive to continue in that vein, notwithstanding the most recent *Hunt v. Cromartie* decision.¹¹⁸ In the present legal, social, and political climate—where many argue that race does not matter—those who feel that affirmative efforts are still necessary to advance equality for America’s racial and ethnic minorities must devise alternative strategies to pursue their political goals.¹¹⁹

First, in designing congressional and other political districts, the emphasis—given the conservative legal realities—should be on the commonality of interests among district residents rather than on the commonality of race. Justice O’Connor’s conclusion, in *Shaw v. Reno*, that African Americans “have nothing in common but the color of their skin” can be challenged in a number of ways.¹²⁰

Utilizing information from the 2000 United States Census and other locally generated databases, commonality can be shown among a district’s residents, minorities and Whites alike, along a number of dimensions: *economic* (such as industrial and occupational specializations or banking and other transactional linkages); *cultural* (values, beliefs, orientations); *attitudinal* (views on political and social issues such as gun control, abortion, drug use, health care, and school reform); *behavioral* (such as the journey to work, shopping, and recreational habits); and *political* (orientation toward the policies and programs of a political party). Documentation of the social and economic integrity of a district’s historical geography can also provide further support of the rationale for creating a district that just happens to be majority-minority.¹²¹

Second, because not all states have statutory requirements for district compactness, attempting to establish that there is a uniform approach to the concentration of population in a congressional

117. 488 U.S. at 508; Walter C. Farrell, Jr. & James H. Johnson, Jr., *Racial Redistricting: An Affirmative Solution*, MILWAUKEE COURIER, July 8, 1995, at 4.

118. *Hunt v. Cromartie*, 121 S. Ct. 1452, *reh’g denied*, 121 S. Ct. 2239 (2001).

119. *Id.* Some may mistakenly view this decision as an affirmation of support for drawing majority-minority districts using race as a primary design tool rather than using political behavior upon which the ruling was based. *See Id.*; Farrell & Johnson, *supra* note 117.

120. 509 U.S. 630, 657–58 (1993); Farrell & Johnson, *supra* note 117.

121. *Id.*

district may not be the best strategy. Rather, it may be more feasible to focus on the fact that redistricting principles are flexible and serve as guidelines. A variety of assumptions form the basis for how geographic shapes or other district attributes facilitate the representation of voter interests.¹²² Data organized under the commonality of interests strategy, outlined above, should help to provide a firm basis for arguing against the wholesale reliance on race as a defining issue in drawing district boundaries. In response to concerns about a district's bizarre or grotesque shape, an additional line of argument could be that a political jurisdiction simply responded to a federal directive to change the makeup of the district as originally drawn due to demographic changes, and that communities were grouped together based on their commonality of interests.¹²³

The pursuit of the aforementioned strategies would de-emphasize race as a predominant factor in designing congressional and other political districts while at the same time enhancing minority representation. This suggested political recourse rests on the premise that the Supreme Court's use of the strict scrutiny standard is unlikely to change in the foreseeable future. Therefore, advocates for increasing minority political representation, at all levels of government, would be wise to reduce their reliance on race as a primary organizational strategy—unless they can marshal compelling evidence of prior racial discrimination, and thus possibly survive strict scrutiny review.¹²⁴ A more critical contemporary issue, in our estimation, is the disenfranchisement of minority voters.

122. *Id.*

123. *Id.* Examples of commonality of interests are politics and issues.

124. *Id.* Although we are philosophically in accord with those who argue that one should not presuppose that the United States Supreme Court was correct in its rulings in *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989), *Shaw v. Reno*, 509 U.S. 630 (1993), *Shaw v. Hunt*, 517 U.S. 899 (1996), and other related cases, we take the pragmatic view that the Court's consistency in not considering race as a primary factor in the distribution of economic (*Croson*) and political (*Shaw*, etc.) goods will not abate in the near future. Such arguments, irrespective of their merits, have not proven to be consistently persuasive since the 1989 *Croson* ruling. The rare exception of the Court's unanimous ruling in upholding the Ohio redistricting plan that concentrated Blacks into state legislative districts, *see Voinovich v. Quilter*, 507 U.S. 146 (1993), has not been repeated at the congressional district level. Therefore, we believe it advisable to advocate the construction of congressional districts to be represented by Blacks and/or other racial and ethnic minorities in the context of these legal and political realities.

III. DISENFRANCHISEMENT OF MINORITY VOTERS

The struggle for voting rights has been a central part of the minority struggle for equality throughout the twentieth century. The Voting Rights Act of 1965 and its reauthorizations have expanded, exponentially, the numbers of minorities registering and voting in American elections. Additionally, the number of minority office holders continues to increase on an annual basis.¹²⁵

The Voting Rights Act assures minorities that: (1) their right to vote cannot be abridged on the basis of their race, color, or previous condition; (2) pending qualification, they have the right to vote in all elections in the jurisdictions in which they reside; (3) they will not be subject to standards that are different from those applied to other individuals within the same political jurisdiction; (4) they cannot be denied the right to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting if such error or omission is not material in determining an individual's qualification to vote under state law; and (5) they will not be subject to intimidation, threats, and coercion that would interfere with their right to vote.¹²⁶ States that have questionable records in this area are subject to special monitoring.¹²⁷

The alleged trampling of these rights, especially for minority males in Florida, was central to concerns expressed in the hotly contested 2000 presidential election.¹²⁸ Minority leaders asserted that

125. See LANI GUINIER, *THE TYRANNY OF THE MAJORITY* 41–70 (1994) (analyzing the Voting Rights Act and the reasons for Black electoral success); THERNSTROM & THERNSTROM, *supra* note 3, at 215–16; Ruffin, *supra* note 3, at 3–4. See generally KLINKER & SMITH, *supra* note 3.

126. See 42 U.S.C. §§ 1971(a)–(b) (1994).

127. See 42 U.S.C. § 1971(e) (1994).

128. The errors and glitches in the Florida voting process ultimately led to litigation between the presidential candidates, Albert Gore, Jr. and George W. Bush, in order to determine the actual winner. On December 8, 2000, Gore's legal challenge was affirmed at the Florida Supreme Court level in a four to three decision when the justices, in a reversal of a lower court decision, ordered that there be an immediate manual recount of nine thousand Miami-Dade ballots which were registered as undervotes (votes not counted by the machine) and that a manual recount be conducted in all Florida counties where a recount had not already occurred. *Gore v. Harris*, 772 So. 2d 1243, 1262 (2000) (per curiam) (ordering the immediate manual recount of 9,000 Miami-Dade undervotes and a manual recount in all Florida counties where a recount had not yet occurred). The United States Supreme Court, however, reversed that decision just four days later, effectively ending the election, making George W. Bush the winner. *Bush v. Gore*, 121 S. Ct. 525, 532–33 (2000) (per curiam) (overturning the Florida Supreme Court's decision on equal protection grounds).

voting irregularities were disproportionately concentrated in minority precincts.¹²⁹ First, Florida's punch card ballots were found to be significantly unreliable throughout the state. Nearly 4% of votes using that method were disallowed due to machine error (they were read as blank or invalid) as compared to only 1.4% of votes cast via the optical scanning system.¹³⁰ An analysis of the State's voters revealed that 64% of Black voters live in counties that used punch card ballots compared to 56% of Whites.¹³¹ Table 3 shows the error rate by voting machine type, county, the winner in selected counties, and the availability of laptop computers to verify registration.

George W. Bush, who ultimately prevailed, carried nearly all those counties with up-to-date voting equipment (optical scanners) and those with laptop computers that could be used to verify voter registration.¹³² Access to laptop computers was critical for voter registration verification as the phone lines were busy most of the day,¹³³ and if a registered voter could not be validated when his or her name had been inadvertently dropped from the rolls, there was no provision allowing for the person to vote.¹³⁴ Because exit polls showed that Blacks overwhelmingly cast their votes for Al Gore, the invalidation of votes in those precincts could have been pivotal in the election outcome.¹³⁵ Alan Lichtman, an expert in voting rights litigation, concluded that these differences may have been a direct violation of the Voting Rights Act.¹³⁶

In addition, all across Florida, a disproportionate number of

129. See Nichole M. Christian, *Jesse Jackson at Head of Protest in New York over Florida Vote*, N.Y. TIMES, Dec. 8, 2000, at A36; Helen Cooper et al., *Election Butterflies: Black Leaders Ponder What Lessons to Take From Ballot Miscues*, WALL ST. J., Nov. 22, 2000, at A1; Lynette Holloway, *Democrats Now Back Jackson's Role in Voting Concerns*, N.Y. TIMES, Nov. 13, 2000, at A26; Mireya Navaro & Somini Sengupta, *Arriving at Florida Voting Places, Some Blacks Found Frustration*, N.Y. TIMES, Nov. 30, 2000, at A1; *Race and the Florida Vote*, N.Y. TIMES, Dec. 26, 2000, at A30; Andrea Robinson, *Black Leaders Hail Order for Vote Recount*, MIAMI HERALD, Dec. 9, 2000, at 31A.

130. Josh Barbanel & Ford Fessenden, *Racial Pattern in Demographics of Error Prone Ballots*, N.Y. TIMES, Nov. 29, 2000, at A25; see also David Gonzalez & Dexter Filkins, *In Palm Beach County, Tumult Grew Hourly*, N.Y. TIMES, Nov. 13, 2000, at A1 (describing the confusion and frustration brought on by the butterfly ballot); Navaro & Sengupta, *supra* note 129 (discussing the fact that inferior voting technology was found throughout minority dominated precincts).

131. Barbanel & Fessenden, *supra* note 130:130.

132. *Id.*

133. Gonzalez & Filkins, *supra* note 130.

134. See Navaro & Sengupta, *supra* note 129.

135. See Barbanel & Fessenden, *supra* note 130; Gonzalez & Filkins, *supra* note 130; Navaro & Sengupta, *supra* note 129.

136. Barbanel & Fessenden, *supra* note 130.

disqualified ballots were found in predominantly African-American precincts.¹³⁷ For instance, Palm Beach County Blacks made up 75% to 95% of the electorate in eight of the ten precincts with the highest incidence of over-voting—ballots punched more than once for a presidential candidate.¹³⁸ Duval County discarded 40% of the 27,000 ballots cast in predominantly Black city-council districts.¹³⁹

Minority voters also alleged a variety of abuses experienced while attempting to vote. The abuses were dispersed across six categories: (1) voters turned away at the polls; (2) polling places moved without notice; (3) intimidation, threats, and harassment of African-American voters; (4) absentee ballot irregularities; (5) failure to provide bilingual ballots as required by law; and (6) failure to provide or allow assistance.¹⁴⁰ Being turned away at the polls was the most common complaint heard from minority voters.¹⁴¹ Minority voters were told that they did not appear on the voting lists although they had voted at the same precinct in recent elections. Many were asked for photo identification before being allowed to vote—even though that is not a requirement under Florida law—while White voters were not asked for such identification.¹⁴² Others stated that they were turned away in spite of having their voter registration card and photo identification.¹⁴³

Some voters complained that they were sent from polling place to polling place, denied the right to vote because of minor discrepancies in their names, and subjected to strict challenges of their qualifications by poll workers.¹⁴⁴ Further, those registering after October 10, 2000 did not receive their voting cards before November 7, 2000.¹⁴⁵ Polling places were moved without notice, minority voters were intimidated or harassed at police checkpoints, voters requesting absentee ballots did not receive them, and bilingual ballots were not available at many precincts.¹⁴⁶ Non-English speaking Haitian

137. Lawyers' Committee for Civil Rights Under Law, *Memo to Media*, Nov. 17, 2000, at 1, 1-9, <http://www.lawyerscommittee.org/memotomedia1117.html> (on file with the North Carolina Law Review).

138. Cooper et al., *supra* note 129.

139. *Id.*

140. Lawyers' Committee for Civil Rights Under Law, *supra* note 137.

141. *Id.*

142. Gonzalez & Filkins, *supra* note 130.

143. Lawyers' Committee for Civil Rights Under Law, *supra* note 137 (detailing allegations of minorities being disenfranchised in the 2000 election in Florida).

144. *Id.*

145. *Id.*

146. *Id.*

immigrants alleged that they were not allowed to seek assistance in translating the ballot, while other minority voters reported being denied a second ballot to correct any errors made in filling out the initial one.¹⁴⁷ Taken together, these allegations evidence a pattern of disenfranchisement of large numbers of minority voters who attempted to exercise one of the highest forms of citizenship, and, if proven, represent egregious violations of the Voting Rights Act.¹⁴⁸

Errors in voting procedures and by voting machines were not restricted to Florida. Faulty voting machines were widely documented in New Mexico and other parts of the nation.¹⁴⁹ In addition, access barriers, as in Florida, to polling places were significant in Selma, Alabama, a landmark of the civil rights struggle where massive demonstrations led to the passage of the Voting Rights Act in 1965.¹⁵⁰ In the city's five overwhelmingly Black precincts, only 37% of the Blacks who were registered to vote actually did so in the 2000 presidential election.¹⁵¹ In addition to access barriers, the votes of Selma's Blacks, especially males, were further reduced because of apathy and a high proportion of felons among the group, who are not eligible to vote.¹⁵²

A host of legal advocacy groups sent experienced civil rights attorneys to Florida to document complaints of disenfranchisement by minority and majority voters during the 2000 election.¹⁵³ As a result of the attorneys' findings, a class action lawsuit was filed against

147. *Id.*

148. See 42 U.S.C. § 1971 (1994).

149. Bryan Gruley & Chip Cummins, *Down for the Count: Election Day Became a Nightmare, as Usual, for Bernalillo County*, WALL ST. J., Dec. 15, 2000, at A1 (discussing voting administration problems in New Mexico).

150. *Id.*; Gary Fields & Jennifer Davit, *Lost in the Shuffle: In Selma, a Landmark of Civil Rights, Voting Can Still Be a Struggle*, WALL ST. J., Dec. 18, 2000, at A1 (discussing voting problems for minorities in Alabama).

151. Fields & Davit, *supra* note 150. Interviews with members of the African-American community and others indicated that Blacks were discouraged from voting by local officials.

[S]eemingly benign issues—like public transportation, where the polls are located and what time they close—are barriers to many people, says [sociologist] Bernard Levin . . . [who] . . . calls these factors structural, institutional discouragement . . . [W]ould-be voters in the presidential election were assigned to a different polling place than the one they went to for the mayoral election two months earlier. Several other cities have a similar system in Alabama, the only state in the U.S. where voters' polling-station assignments are altered so extensively between elections.

Id.

152. *Id.*

153. Lawyers' Committee for Civil Rights Under Law, *supra* note 137.

the State of Florida.¹⁵⁴ This action was another in a series of lawsuits filed against Florida over the past eleven years in an effort to protect the voting rights of minorities.¹⁵⁵ The formal lawsuit was filed on January 10, 2001.¹⁵⁶ The complaint alleged that Black voters were impeded in exercising their voting franchise in the November 2000 general election.¹⁵⁷

In the months after the election was decided, a local, state, and national consensus has emerged that the American voting process needs to be significantly overhauled.¹⁵⁸ This consensus is fueled, in part, by the bitter feelings of African-American and other minority voters who aggressively assert that they were disenfranchised in the 2000 presidential election and that their candidate (Gore) was robbed of a victory that he richly deserved.¹⁵⁹

Mary Francis Berry, chairwoman of the United States Commission on Civil Rights, speaking at the State of the Black Union Forum, concluded that “we [minorities] cannot get over the disenfranchisement in Florida until we document what happened so that we can devise strategies to keep it from happening again.”¹⁶⁰ The Reverend Jesse Jackson concurred and stated that “we need to be concerned about the link between voting and public policy. Voting is preservative of all other rights.”¹⁶¹ Lani Guinier, Professor of Law at Harvard University and a noted expert on minority voting rights,

154. NAACP v. Harris, No. 01-CIV-120-GOLD (S.D. Fla. filed Jan. 10, 2001).

155. See *Reno v. Bossier Parrish School Board*, 520 U.S. 471 (1997); *Fouts v. Harris*, 88 F. Supp. 2d 1351 (S.D. Fla. 1999); *Davis v. Chiles*, 139 F.3d 1414 (11th Cir. 1998); *Johnson v. Mortham*, 926 F. Supp. 1540 (N.D. Fla. 1996); *Nipper v. Smith*, 1 F.3d 1171 (11th Cir. 1993); Lawyers' Committee for Civil Rights Under Law, *supra* note 143.

156. NAACP v. Harris, No. 01-CIV-120-GOLD (S.D. Fla. filed Jan. 10, 2001).

157. *Id.*

158. Katharine Q. Seelye, *Nation Awash in Ideas for Changing Voting*, N.Y. TIMES, Jan. 28, 2001, at 12 (surveying the efforts of those in government, industry, and academia to prevent another voting debacle like the one that occurred in Palm Beach, Florida).

159. In addition to hearings and investigations by the NAACP, The Lawyers' Committee for Civil Rights Under Law, and the United States Commission on Civil Rights, there have been a number of rallies, forums, and demonstrations protesting the election of President George W. Bush. See *Shadow Inauguration* (C-SPAN television broadcast, Jan. 20, 2001); *The State of the Black Union* (C-SPAN television broadcast, Feb. 3, 2001).

160. *State of the Black Union*, *supra* note 159 (comments of Mary Francis Berry). On March 8, 2001, Mary Francis Berry sent a formal letter to Florida's Governor, Jeb Bush, warning him that the Commission intended to hold more hearings in Florida to follow up on the State's response to electoral problems in the November 2000 election. See Katharine Q. Seelye, *Rights Panel Chief Warns Florida on Elections*, N.Y. TIMES, Mar. 9, 2001, at A14 (discussing the commission's future plans).

161. *State of the Black Union*, *supra* note 159 (comments of Jesse Jackson).

concluded that the election of George W. Bush “was a theft of democracy and we [minority voters] should develop strategies to reclaim it.”¹⁶²

Thus, America’s minority groups have much to ponder at the beginning of the new millennium: how they will resolve inter-group tensions and conflicts as their numbers increase and they vie for social, economic, and political resources; what strategy they will utilize to pursue political office at the national level—whether to strive for majority-minority congressional districts in an era where racially drawn districts have been subjected to the strictest scrutiny by their majority peers and the courts; and how they will maintain equal protection of and access to their voting franchise when it appears to be under assault. The minority response to these challenges is far from certain in a demographically changing society, but it is “bringing with it some very strange fruit so delightfully different and yet so hauntingly familiar.”¹⁶³

IV. STRATEGIES FOR RESOLVING THE CHALLENGES

Inter-minority conflict, minority political representation at the congressional level, and the disenfranchisement of minority voters are issues that we believe will become more prevalent in the twenty-first century—generating new domains of conflict if left unabated. Thus, we suggest a number of strategies designed to strengthen minority voting power.

First, minorities of all racial and ethnic hues must make a conscious effort to reduce inter-group competition by embracing each other’s concerns and devising collaborative strategies to facilitate progress across groups. For instance, in advocating for greater minority representation in the television media, African-American, Hispanic, and Asian civil rights groups approached the major TV networks—ABC, NBC, CBS, FOX, and CNN—with individual strategies that primarily focused on their respective groups.¹⁶⁴

162. *Id.* (comments of Lani Guinier).

163. C. Eric Lincoln, *The New Black Estate: The Coming of Age of Black America*, in *HAVE WE OVERCOME? RACE RELATIONS SINCE BROWN* 30 (Michael V. Namorato ed., 1979) (discussing the attempts by white America to divide middle class African Americans from their low-income counterparts by providing them access to expanded opportunities, thus encouraging them to abandon low-income interests and problems).

164. *See, e.g.*, David Folkenflik, *Mfume Widens Call for Diverse TV*, *BALT. SUN*, July 8, 2000, at 1A (highlighting NAACP efforts in network diversification); Terry Jackson, *The Browning of Cable TV*, *NEWS & OBSERVER* (Raleigh, N.C.), July 13, 2000, at E1 (reporting on developments in Hispanic programming).

Although each group stated that other minorities also needed to be included, their primary advocacy was individually focused.

To the extent that such apparently unilateral initiatives continue as minority groups rapidly expand in size, there is reduced likelihood that they will be able to collaborate in the political arena. Because opinion polls and current periodical reports reveal that minorities negatively stereotype and distrust each other,¹⁶⁵ inter-minority conflict will most probably increase in intensity if they pursue social and political issues along individual lines.¹⁶⁶ Given that racial minorities still have numerous commonalities with respect to social, economic, and political inequality,¹⁶⁷ the lack of concerted collaboration can only serve to balkanize them as they seek parity with the White majority.¹⁶⁸ Therefore, collaboration and cooperation on a mutual agenda are useful strategies to mitigate emerging inter-minority conflict.¹⁶⁹

Second, the approach to creating majority-minority congressional districts should be rethought as the American judicial system, during most of the recent decade, has moved aggressively to institute a color-blind litmus test for the distribution of public resources and the geographic design of political representation. Starting with *City of Richmond v. J.A. Croson Co.* in 1989 and continuing in *Shaw v. Reno* in 1993, the Supreme Court has pointedly indicated that it will not distribute resources or permit political representation based on race alone.¹⁷⁰ In the wake of the 2000 United States Census, minorities should carefully explore non-racial means of aggregating their

165. See *supra* notes 20–55 and accompanying text (describing the tension and animosity that exists between minority groups).

166. See *Spring of Discontent*, *supra* note 26, at 114–24.

167. See Wilson, *supra* note 55. See generally THE INEQUALITY PARADOX: GROWTH OF INCOME DISPARITY (J.A. Auerbach & R.S. Belous eds., 1998) (discussing the growth of inequality between minorities and the broader society).

168. To the extent that the previously identified minority groups continue their individual advocacy, the current White majority—even as it devolves to pluralist status—is likely to maintain disproportionate political and economic power.

169. The Rev. Jesse Jackson has recently attempted to resolve a dispute between Georgia's Black and Hispanic leaders over whether Hispanics would be included in state legislation that would give tax breaks to contractors who employed Hispanic-owned companies. (The legislation already confers such coverage on Black-owned businesses). Several Black legislators had blocked the inclusion of Hispanics, which had generated conflict between the two groups. See Grantham & Bixler, *supra* note 53.

170. See *Reno v. Shaw*, 509 U.S. 630, 658 (1993) (holding race-based districting presumptively invalid); *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 505–06, 509–11 (1989) (permitting affirmative action only with a compelling government interest which is narrowly tailored to remedy documented past discrimination).

increased population size and determine who is best, irrespective of racial background, to represent minority interests.¹⁷¹

Finally, the disenfranchisement of minority voters in all the minority racial groups was ubiquitous in the 2000 presidential election, with Florida representing the most egregious case.¹⁷² Minority legal and civil rights organizations should organize to monitor voter intimidation, the use of dilapidated voter equipment, improper registration procedures, and other subtle barriers to minority voters' participation. These efforts must be collective and collaborative. To date, African Americans have begun to spearhead initiatives in this regard with only minimal input from Asians, Hispanics, and Native Americans.¹⁷³

The overall strategy for these three challenges redound to cooperation and collaboration. Without such efforts among America's racial minority groups, their political representation in the new millennium will most probably parallel that of the twentieth century—a largely minor and symbolic political presence.

EPILOGUE

Since we began this essay, much has changed with respect to minority political power and how to achieve it. A three-judge federal tribunal upheld New Jersey's redrawn legislative districts, overruling Republican claims that the breakup of three predominantly Black districts in and around Newark discriminated against minority voters.¹⁷⁴ Democratic leaders in New Jersey and Washington hailed the decision as they accused Republicans of trying to pack as many minority voters into as few districts as possible, and noted that the redistricting would expand future political opportunities for Black and Hispanic voters.¹⁷⁵ In addition, Black and Hispanic Democratic

171. In some districts, Blacks will predominate, and in others, Hispanics will be the majority population. But increasingly there will be sizeable numbers of Black, Hispanics, Asians, and Native American who will collectively constitute the majority and/or near majority in a Congressional district. In those instances, there will be a need for cooperative decision-making about the selection of the best person, irrespective of race, to represent collective minority interests, including White candidates.

172. See, e.g., Lawyers' Committee for Civil Rights Under Law, *supra* note 137; Gurley & Cummins, *supra* note 149; Fields & Davit, *supra* note 150; Cooper et al., *supra* note 129.

173. See *Shadow Inauguration*, *supra* note 159; *State of the Black Union*, *supra* note 159. To our knowledge, no major inter-majority initiatives have been launched to date.

174. Robert Hanley, *Judges Uphold New Districts in New Jersey*, N.Y. TIMES, May 3, 2001, at B1; Robert Hanley, *Judge Turns Aside a Republican Motion to Stall Redistricting*, N.Y. TIMES, May 10, 2001, at B6 [hereinafter Hanley, *Judge Turns Aside*].

175. Hanley, *Judge Turns Aside*, *supra* note 174.

incumbents in the New Jersey Legislature, along with their White counterparts, overwhelmingly supported this transfer of minority voters.¹⁷⁶

Elsewhere, Hispanic activists have accused both Democrats and Republicans of not following through on promises to give them more political power.¹⁷⁷ Eighty percent of Black voters joined with White conservatives and liberals in the Los Angeles mayoral election, ensuring the victory of a White moderate over the Hispanic candidate who was the frontrunner during much of the race,¹⁷⁸ and Fernando Ferrer, a candidate for mayor in New York City, rejected a demand from an African American leader, the Rev. Al Sharpton, that he endorse Black candidates for two specific city offices as a condition for Mr. Sharpton's endorsement. After political negotiations, Sharpton enthusiastically endorsed Mr. Ferrer without any contingencies.¹⁷⁹ As observed by Harry Pachon, president of the Tomas Rivera Policy Institute, "There are serious issues of interethnic competition . . . that have to be worked out in the future."¹⁸⁰

Meanwhile, many supporters of increased political power for Blacks, Hispanics, and Asians remain convinced that race should be the primary organizing principle in the creation of electoral districts that give minority candidates a strong possibility of being elected, using labels such as majority-Black, majority-Hispanic, or majority-minority.¹⁸¹ Professor Leo Estrada believes that such a focus is consistent with Justice O'Connor's guiding commentary in *Bush v. Vera*.¹⁸² But, as already stated, we embrace a different perspective—agreeing with Katharine Butler that the law is somewhat settled:

Manipulating a district's boundaries for the purpose of assuring that black voters will control the electoral outcome therein, however, is constitutional only when done in response to proven, or strongly suspected, racial vote

176. *Id.*

177. See Tom Squiteri, *Hispanics Say Political Clout is Still Elusive*, USA TODAY, Mar. 15, 2001, at 1A.

178. See Ellis Cose, *A Brownout in Los Angeles*, NEWSWEEK, June 18, 2001, at 32.

179. Dexter Filkins & Adam Nagoruney, *Sharpton Pledges Support to Ferrer in Mayor's Race*, N.Y. TIMES, Aug. 28, 2001, at A14; Adam Nagoruney, *Ferrer Refuses Endorsement Linked to Mayoral Race*, N.Y. TIMES, May 10, 2001, at B1.

180. Cose, *supra* note 178, at 32.

181. See Grofman, *supra* note 108, at 1390–92; Estrada, *Making the Voting Rights Act Relevant to The New Demographics of America: A Response to Farrell and Johnson*, 79 N.C. L. REV. 1283, 1290 (2001).

182. Estrada, *supra* note 181, at 1290–91.

dilution as defined by section 2 of the Voting Rights Act, or in section 5 jurisdictions, to prevent “retrogression” in minorities’ ability to exercise their political franchise.¹⁸³

Furthermore, the Supreme Court’s judicial decisions in these matters since 1993, under the leadership of Justice O’Connor, reveal a disinclination to support race-based strategies for drawing electoral districts, unless the violations described above have been fully documented.¹⁸⁴ Thus, we believe that a more fruitful strategy for increasing minority representation at the congressional level, as well as in state and local political jurisdictions, should include the following: (1) a laser-like focus on the creation of communities of interest in minority areas, with an emphasis on socioeconomic conditions, political party affiliation, and election patterns, which will likely yield a high concentration of minority voters,¹⁸⁵ and (2) an intense monitoring of voting procedures and voting mechanisms deployed in minority communities across this nation, in order to monitor disparities in balloting, access to voting polls, and the counting of ballots.¹⁸⁶ Failure to pursue such strategies, in our judgment, will impair the ability of minorities to gain additional elected offices and to exercise effective political power.

The 2000 presidential election has shown that just providing minority groups with the general opportunity to vote does not ensure that they will be able to and/or allowed to vote, or that their votes will be counted. These are the challenges that minority groups will face in this new millennium. As they continue to increase in size, it will be imperative that they find ways to work together to overcome these barriers as they attempt to maximize their political power.

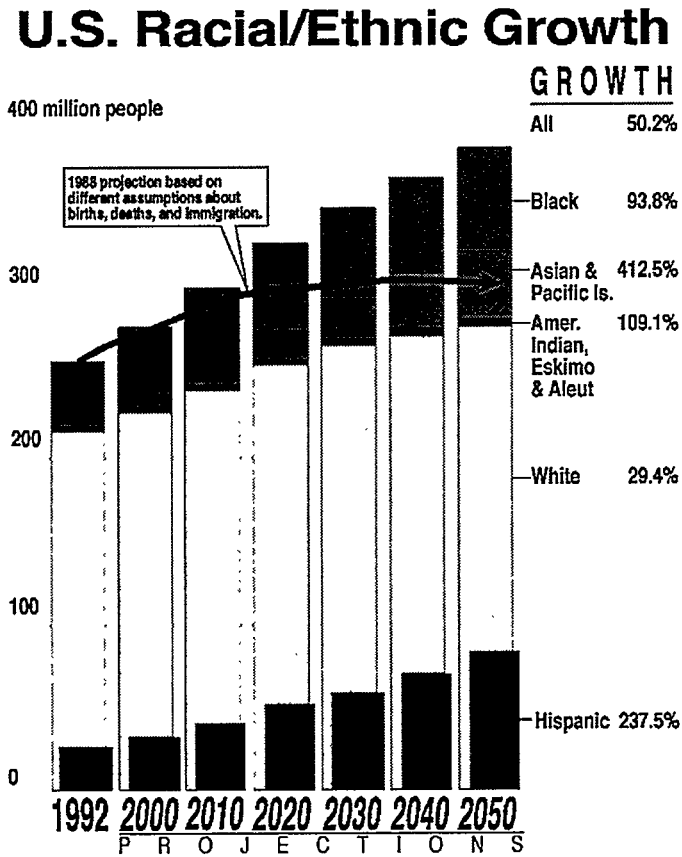
183. Butler, *supra* note 116, at 1431.

184. See Jeffrey Rosen, *The O’Connor Court: America’s Most Powerful Jurist*, N.Y. TIMES MAG., June 3, 2001, at 32–37, 64, 68, 73–75.

185. See Estrada, *supra* note 181, at 1291–92; Farrell & Johnson, *supra* note 117.

186. See Fields & Davit, *supra* note 150; Mary Francis Berry, *Letter to Governor Bush from Chairperson Mary Frances Berry*, Mar. 8, 2001; U.S. Commission on Civil Rights, *Voting Irregularities in Florida During the 2000 Presidential Election*, at www.USCCR.gov/vote2000/stdraft1/intro.htm (last visited Aug. 31, 2001) (on file with the North Carolina Law Review).

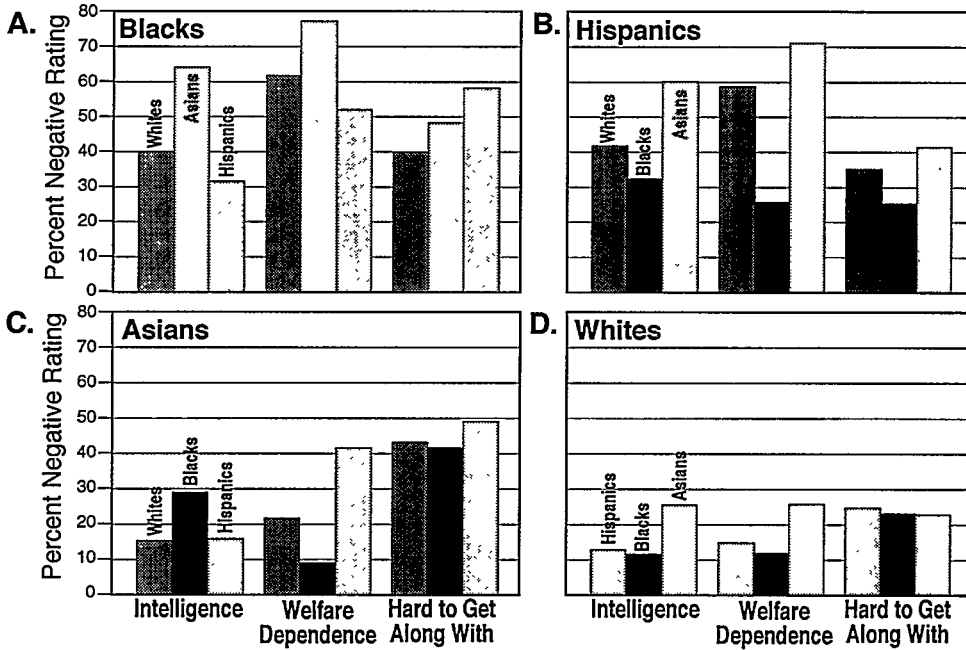
FIGURE 1



© J.H. JOHNSON, 1992 Source: N.Y Times & Bureau of the Census

FIGURE 2

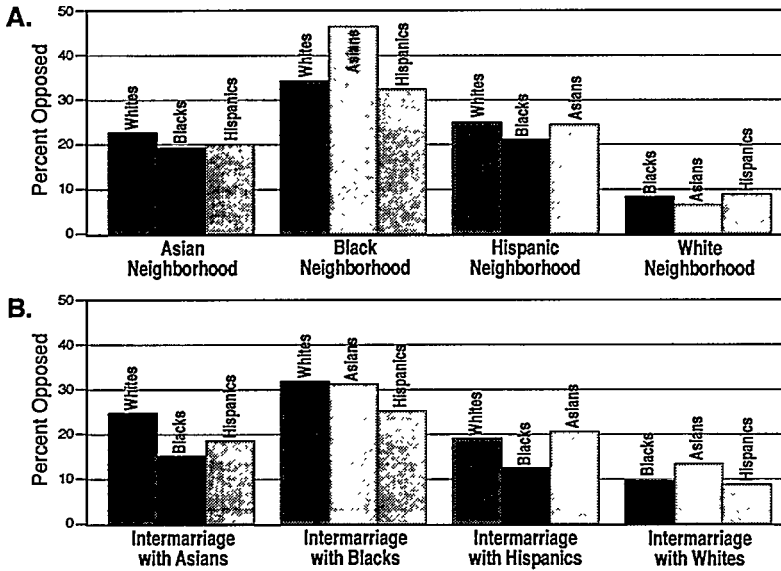
Intergroup Stereotypes



Source: Compiled by authors from the Los Angeles County Social Survey (1992).

FIGURE 3

Intergroup Attitudes Toward Intimate/Prolonged Social Contact



Source: Compiled by authors from the Los Angeles County Social Survey (1992).

TABLE 1

Net Population Change Attributed to Non-White Population Growth, July 1, 1990 to July 1, 1999 (United States)		
	Net Absolute Gain	Non-White Percent
United States	23,226,417	68%
Northeast	954,323	100%
Midwest	3,476,844	77%
South	10,736,708	59%
West	8,058,542	73%

TABLE 2

Selected African-American Represented Congressional Districts by Combined Hispanic, African American (AA), Asian, and Native American Populations 15% and Above, 1990*			
Predominantly AA and/or AA Represented Districts by State	Percentage AA Population	Percentage Hispanic Population	Percentage Asian and Native American Population
#18 TX***	51%	15%	3.2%
#32 CA*	40%	30%	19.4%
#30 TX***	52%	17%	1.4%
#9 CA**	32%	12%	16%
#6 NY***	56%	17%	7%
#11 NY	74%	12%	3%
#10 NJ	60%	12%	2.5%
#15 NY**	47%	46%	3%
#10 NY***	61%	20%	3%
#35 CA*	43%	43%	6%

Source: U.S. Census, 1990

* The balance of the population in these districts is non-Hispanic White.

** Districts represented by African Americans with other minority populations larger than and/or roughly equal to the African American populations.

*** Districts in which Hispanic candidates could be competitive with the African-American incumbent after the 2000 census given the rapid growth of the Hispanic population in these districts.

TABLE 3

Error Rates in Selected Florida Counties by Voting Machine Type and Winner and Laptop Availability to Verify Registration			
Voting Machine Types by County	Proportion of Ballots Not Registering a Choice for President by County	Winner	
		Bush	Gore
Scanners			
Orange	1/300		X
Manatee	1/800	X	
Brevard	1/800	X	
Punch Card Ballots			
Miami-Dade	1/60		X
Hillsborough	1/67		X
Pinellas	1/96		X
Eighteen Counties with Laptops to Confirm Registration		X	
Source: Compiled from 2000 Florida Presidential Election Data by the Authors			

