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The Constitution Comes to the County Unit: Georgia's State Level Electoral College

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Georgia's State Level Electoral College

INTRODUCTION

As Prof. Akhil Amar outlines in his work, *America's Constitution: A Biography*, the Philadelphia Plan and its outline of a stronger executive power inspired replication on the state level. States from Massachusetts to Georgia strengthened the power of their governors, with many granting them independent elections and a veto pen.¹ Over time, most states replicated the Federal terms of office, and currently all but two states hold quadrennial gubernatorial elections balanced with biennial or other staggered legislative terms.² Yet, even as many states replicated features of Article II, from the veto to the establishment of “supreme executive power,” nearly all failed to replicate the peculiar indirect method of electoral college election found within Article II, Section 1, Clauses 2-3 of the Constitution (later altered by the 12th Amendment), instead moving towards direct election of state governors. However, there is a notable and infamous exception to that trend: Georgia’s county unit system.

For nearly a century, through at first informal and then state-sanctioned elections, Georgia utilized a system of indirect election to select their chief executive and other statewide posts. While some states, including Maryland³ and Mississippi,⁴ experimented with similar systems, Georgia’s stood out for its length of use and undemocratic skew. Although Georgia had followed its peers in the early 19th century by moving to the direct election of the governor, following the end of Reconstruction Georgia reverted to indirect rule. With the establishment of a one-party state, the de facto election of the governor came not in the general election, still determined by popular vote, but in the Democratic Party primary, determined by the “county unit” system. This meant that, rather than being nominated by winning a majority or plurality of the popular vote, candidates had to win a majority of 410 ‘unit votes’ divided amongst Georgia’s 159 counties.⁵

The system proved controversial, spurring repeated litigation targeted at its destruction. Nevertheless, the system lasted until the 1962 election. That year, a federal district court, relying on *Baker v. Carr*, 369 U.S. 186 (1962), issued an injunction barring its use. The Supreme Court then permanently ended it in *Gray v. Sanders*, 372 U.S. 368 (1963), which was the beginning of the Warren Court’s series of “one person, one vote” cases. Georgia’s use of a de facto state level electoral college that operated over half a century provides a valuable case study to examine the impact of the Constitution’s flawed method of indirect election. While Georgia’s system was even more skewed by population than the current electoral map, the underlying electoral data provides a useful example of how such a system was designed and abused to thwart racial and democratic progress. In both public debate and legal argument over the validity of the system, the Constitution’s electoral framework was frequently front and center. Indeed, many of the arguments made in support of the system echo those we have heard in support of the electoral college following the 2000 and 2016 elections. And, as with the electoral college itself, the original sins of slavery and African-American disenfranchisement was ever present as underlying reasons for the system.

Georgia’s own electoral college experiment presents a more extreme example of the flaws present in the electoral college. By examining it, we better understand a system that, if it was not written into the Constitution, would quite possibly fail to pass muster under current Supreme Court equal representation doctrine. This paper will look at the history, electoral impact, and arguments provided by supporters of the system in order to demonstrate those flaws. In describing how the system came to exist, the paper will demonstrate the peculiar fealty to geography over population that lay at the heart of the state’s government from the beginning. Influenced by the federal model, the system remained in place even in the face of efforts to better reflect the popular will. By analyzing the mechanisms of the system itself, both through the underlying population discrepancies and their specific electoral performance in the election of 1946, the paper will illuminate how the system created the same flawed incentives towards regressive democracy found in the electoral college. The focus on districts over voters incentivized disenfranchisement and endemic corruption. Finally, the paper will, by examining the arguments put forth by leading proponents of the system, demonstrate their similarity to the flawed analogies underlying the electoral college as well. In so doing, they will show that the commitment to equal suffrage embodied in our post-Warren

Era understanding of the Constitution—an understanding that abolished the unit system by judicial fiat—place the antiquated 18th Century electoral mechanisms in sharp relief.

THE EVOLUTION OF GEORGIA’S ELECTORAL SYSTEM

In the early days of Georgia’s post-colonial existence, the state elected its governors via the legislature, the apportionment of which was intricately tied up with the state’s counties.⁶ Under the Constitution of 1777, the legislature was to select a new governor, “On the first day of the meeting of the representatives so chosen” following an annual election.⁷ The legislature itself was apportioned on a county-by-county basis, with the numbers assigned to each county written into the Constitution. The number of legislators allotted to each county varied depending on their population at the time, ranging from one as a minimum to ten as a maximum, although the largest, Liberty County was granted fourteen members.⁸ The executive power was shared by the governor with an executive council, consisting of one or two councilors from each county who were elected by the legislature.⁹ The council, not the Governor, had input on legislation and its vote was taken by on a county-by-county basis, not via individual members.¹⁰

Following adoption of the Philadelphia plan at the national constitutional convention, Georgia radically rewrote its state Constitution in 1789. Contemporaneous accounts showed the convention, meeting at the same time as the first Congress, was directly following the Philadelphia model.¹¹ The executive council was abolished, while the legislature was divided into a House and Senate.¹² The Governor was granted an independent salary, pardon and veto power, while the previous term limit, specifying that an individual could only serve once every three years, was abolished.¹³ While retaining legislative selection of the executive, the circumstances of election were substantially altered. Under the terms of the Constitution:

“The House of Representatives shall, on the second day of their making a House, in the first, and in every second year thereafter, vote by ballot for three persons; and shall make a list containing the names of the persons voted for, and of the number of votes for each person; which list the Speaker shall sign in the presence of the House, and deliver it in person to the Senate; and the Senate shall, on the same day, proceed, by ballot, to elect one of the three persons having the highest number of votes; and the person having a majority of the votes of the senators present shall be the governor.”¹⁴

This manner of election echoes the original vision of George Mason and other supporters of the Philadelphia system. Here, the House acts as the electoral college would, in theory, work: Winnowing the electoral field for another body to then choose the executive from the most fit candidates.¹⁵

Indeed, the 1789 Constitution’s changes to legislative apportionment demonstrate this similarity. The Constitution maintained its county-by-county apportionment of the House of Representatives, assigning each county between two to five members, reflecting to some degree the then-current population disparities.¹⁶ The Senate, much like the national one, was apportioned on the basis of geography, with each county granted one member.¹⁷ In this way, larger population areas could, by virtue of their superior number of representatives, ensure their choice made it to the next round. At that point, as in the Philadelphia system’s special House rules in the case of a Presidential election, a one-county, one-vote system would then have the final say.¹⁸ Amendments to the Constitution in 1795 and a revision of the Constitution in 1798 altered the apportionment of the House but made no change to the Senate or to the manner of gubernatorial election.¹⁹

Notably, the 1798 Constitution added another feature of the Philadelphia plan. The Constitution adopted a variation of the federal “Three Fifths Compromise.”²⁰ While the Senate was still distributed based on counties, “The house of representatives shall be composed of members from all the counties which now are, or hereafter may be, included within this State, according to their respective numbers of free white persons, and including three fifths of all the people of color.”²¹ It is noteworthy to see the 3/5 compromise filter down to the state level, albeit without the language of “other persons” used to elide its purpose in the federal Constitution. As in other cases, the 3/5 compromise here exists to empower more sparsely populated plantation counties against urban locales. An 1833 Constitutional Convention narrowly voted 126 to 122 on sectional lines to abolish the 3/5 compromise, with delegates from areas with the largest slave populations voting against.²² The new constitution was rejected by the voters, however.²³ The secession Constitution of 1861 removed the language of the 3/5 compromise from legislative apportionment, however.²⁴ This change was retained in the first Reconstruction Constitution of 1865, which also, recognizing the Emancipation Proclamation had “carried [the emancipation of slaves] into full practical effect” and thereby abolished slavery in the state.²⁵

In 1824, Georgia amended its Constitution to provision for the direct election of state governors.²⁶ Beginning with the 1825 election, “the Governor shall be elected by persons qualified to vote for members of the General Assembly.”²⁷ In the event no candidate received a majority, then the legislature, with the House and Senate meeting jointly, was to select a Governor from the top two recipients—a situation that did not legally occur until 1966.²⁸ Unlike in the previous system, the requirement for election was “a majority of the votes of the members present.”²⁹ While the various manners of legislative appointment continued to skew the body in favor of less populous counties, the power of ‘one county, one Senator, one vote’ was diluted by joining with the larger House. This manner of gubernatorial election was continued in the Constitutions of 1861,³⁰ 1865,³¹ 1868,³² 1877,³³ and 1945.³⁴

While, at least on paper, the manner of gubernatorial elections remained constant throughout the remainder of 19th and early 20th Centuries, Georgia continued to tinker with legislative apportionment. While the formula itself changed over time, the state continued to assign members of the House and Senate on a county-by-county basis. The House retained a nominal variance based on population, while the Senate was apportioned strictly on the basis of existing counties.

The 1868 Constitution established the formula for legislative apportionment that would become the basis for the county unit system. The formula itself had been proposed as an amendment in 1833 but was rejected by popular referendum.³⁵ While retaining the method of state Senate apportionment from the previous two constitutions,³⁶ the Legislature was to be appointed as follows:

“The House of Representatives shall consist of one hundred and seventy-five representatives, apportioned as follows: to the six largest counties, ... three representatives each; to the thirty-one next largest, ..., two representatives each; and to the remaining ninety-five counties, one representative each.”³⁷

The counties themselves, as in the 1777, 1789, and 1798 constitutions, were explicitly named. While the constitution allowed for reapportionment after the federal census, it was not required.³⁸ The 1877, post-Reconstruction constitution followed the same language, changing the number of counties in the second group to twenty-six, and requiring the apportionment to change after each federal census.³⁹ The 1945 constitution slightly altered the formula, increasing the number of counties granted three representatives to eight and the number granted two to thirty, but not otherwise altering the ratio.⁴⁰

The period from the establishment of direct elections in 1825 until the Civil War saw closely contested general elections in Georgia. Two local parties, the ‘States Rights Party’ and the ‘Union Party,’ allied nationally with the

Whigs and Democrats respectively, had about equal strength in the state through the 1840s.⁴¹ While Democrats/Union Party candidates won most gubernatorial elections during that period, they were closely contested, with no single candidate gaining over 53% of the vote.⁴² The rise of sectional tensions and demise of the Whig Party in the 1850s saw most former Whigs join the Democratic Party following the passage of the Kansas-Nebraska Act. While the American, or Know-Nothing, Party had strong showings in the 1855 and 1857 gubernatorial elections, by 1860 Georgia was a mostly Democratic state.⁴³ The trauma of Civil War and Reconstruction further cemented the loyalty of white Georgians to the Democratic Party, with the result that, with the exception of the Populist Party challenge of the 1890s, Georgia became a completely one-party state. From 1870 to 1900, only one Democrat was elected Governor with less than 60% of the vote.⁴⁴ From 1902 to 1962, no Democrat received less than 90% of the vote.⁴⁵ Eighteen separate gubernatorial elections during this period, including every election from 1912-1934, were completely uncontested, with no non-Democrats on the ballot.⁴⁶ No Republican candidates ran for the office between 1876 and 1966.⁴⁷ As such, general elections were completely moot when it came to determining who actually was to govern the state. Rather, whoever was selected to be the Democratic Party nominee was guaranteed to win election, and the method of that choice was the de facto gubernatorial election in the state.

In the post-Reconstruction period, Democratic candidates for statewide office were nominated by delegates at the party's statewide convention.⁴⁸ The allocation of the delegates was determined by the apportionment of the state's general assembly, with each county granted two delegates for every one representative to the Georgia House of Representatives.⁴⁹ Prior to 1898, the method of delegate selection was left to the discretion of the executive committee of each county's party. While initially the most common selection methods were mass meetings of interested Democrats or appointments by the executive committee itself, direct primary elections gained increased use.⁵⁰ In 1874, Fulton County, the home of Atlanta, moved to the popular election of delegates.⁵¹ In 1886, approximately half the counties in the state held primary elections where voters chose between the two leading candidates for governor before picking delegate slates.⁵² In 1892, the State Democratic Executive Committee recommended each county use primary elections, and six years later the committee established it as a mandatory rule, including that the state's primary election had to occur on a single date.⁵³ As in the case of the modern electoral college, while the official mechanism of selection was the human delegates at the convention, in practice they were supposed to simply ratify the results of the primary.

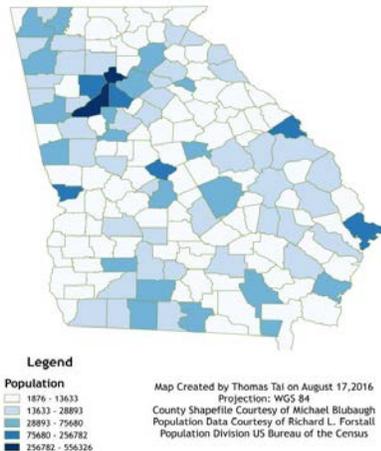
The now firmly established system⁵⁴ was codified in state election law with the Neill Primary Act of 1917.⁵⁵ The act itself was the product of an attempt to make the county unit primary more standardized and remove the potential of 'human error' and faithless delegates that remained in the electoral college system. In a 1914 special election for a vacant U.S. Senate seat, no candidate received a majority of either the county unit or popular vote.⁵⁶ When the state convention convened later that year, one candidate led with a clear plurality on the first ballot detailing the results of the primary.⁵⁷ However, over the course of multiple ballots during an all-night convention session, ultimately the third placed candidate was chosen.⁵⁸ Voter disapproval of the outcome resulted in a movement for runoff elections for gubernatorial and senatorial elections, ultimately resulting in the act, which also specified that the result of a primary could be proclaimed with no need for a convention at all.⁵⁹ In this sole manner the final county unit system was superior to our current electoral college—no random prima donna could nullify his county's voters by writing in the gadfly of his choice come convention time. With minimal modification, the Neill Primary Act continued to govern the county unit system for the remainder of the system's lifetime.⁶⁰ Amusingly enough given how the system's undemocratic skew harmed its readers, the *Atlanta Constitution* praised the Act as "a direct step toward [the] purification of politics in this state", as it "restored" the naming of candidates "to the people, where it belongs."⁶¹

THE COUNTY UNIT SYSTEM

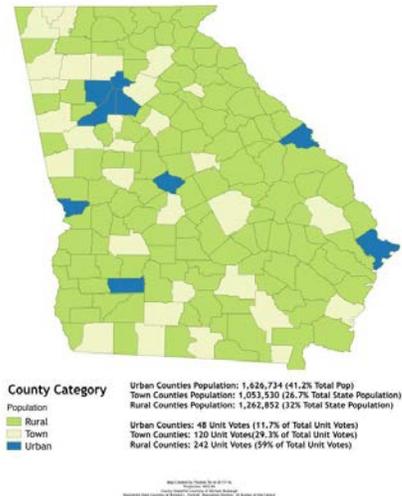
The Neill Primary Act stipulated that the nomination for Governor, U.S. Senator, elected constitutional officers such as Treasurer and Attorney General, and judges of the Georgia Supreme Court and Court of Appeals would be by county unit primaries.⁶² Local parties could also use the system for nominations to congressional seats and other non-statewide offices at their discretion.⁶³

The act established Georgia's 159 counties as separate electoral units for the purposes of primary elections. Each county was granted two unit votes for every member it had in the Georgia House of Representatives. The eight most populous counties received six votes each. The next 30 most populous counties received four votes each, and the remaining 121 counties had two votes a piece. As the act was based on the current apportionment of the General Assembly, the specific composition of the counties in each group could change with each decennial Federal census. To receive all of a county's unit votes, a candidate only had to receive a plurality of popular votes within the county, with a tie resulting in a 50-50 split. Nominations for Governor or Senator required a majority, with a runoff election if no candidate reached 50%+1 in unit votes in the first round.⁶⁴ All other officers required a plurality.⁶⁵

Population of Georgia Counties in 1960



Georgia County Unit System in 1960



Source⁶⁶

The apportionment mechanism entrenched within the system a bias in favor of rural voters that grew over time. While the electoral college's requirement of a minimum three votes per state, and the granting of two Senators to each state tends to skew the population in favor of rural states, that skew is nowhere near as bad as the county unit's system. Even in 1900, shortly after the Democratic Party established the system, the rural skew was clear. As the cities and suburbs boomed while rural areas depopulated after World War II, the system became drastically unbalanced. For the 1948 primary election, the state's urban counties made up less than 24% of the total popular vote.⁶⁷ By 1962, they accounted for 31% of the primary vote.⁶⁸ That power of that skew was demonstrated in the electoral results: From the 1920s until the system ended in 1962, no Governor was elected from an urban county.⁶⁹

Operation of the County-Unit System in 1900, 1920, and 1960⁷⁰

		Population							
		<u>Total</u>		<u>Unit</u>					
Number of	Vote per	<u>Vote</u>		<u>1900</u>		<u>1920</u>		<u>1960</u>	
Counties	County	No.	%	No.	%	No.	%	No.	%
8	6	48	11.7	417,000	18.8	635,326	21.9	1,626,734	41.3
30	4	120	29.2	692,559	31.3	816,987	28.2	1,053,852	26.7
121	2	242	59.0	1,094,436	49.4	1,443,519	49.8	1,262,852	32.0

Even this obscures the specific way the system penalized Atlanta, located in Fulton County. By 1880, Atlanta had surpassed Savannah to become that most populous city in the state.⁷¹ By 1910, Fulton was more than twice as populous as any other Georgia county.⁷² Yet on primary day, the county’s 177,000 potential voters were equal to the 12,700 found in the state’s three smallest counties.⁷³ One vote in Echols County, Georgia’s smallest, was worth nearly eighteen times a vote in Fulton.⁷⁴ By 1960, the skew would be even more outrageous: More than 550,000 Fulton voters were equal to the less than 7,000 found in the three smallest counties.⁷⁵ In that year’s general election, Fulton County made up 15% of the state’s total vote, yet its primary electorate was locked into determining only 1.46% of the result.⁷⁶ By then, one vote in Echols was worth nearly 100 times as much as one in Fulton. If the system were still in place today, a vote in Georgia’s smallest county would be worth 179 times a Fulton one.⁷⁷ By comparison, in the current electoral college, one Wyoming vote is worth 3.6 times a California one.⁷⁸

Citizens per Vote in the Most and Least Populous Voting Units

County Unit					Electoral College						
1910	1960	2010			1910	1960	2010				
<u>County</u>	<u>County</u>	<u>County</u>			<u>State</u>	<u>State</u>	<u>State</u>				
Fulton	29,622	Fulton	92,721	Fulton	153,430	New York	161,531	New York	390,286	California	677,345
Echols	1,655	Echols	938	Taliaferro	859	Nevada	14,112	Alaska	75,389	Wyoming	187,875
<i>Ratio:</i>	<i>17.9</i>		<i>98.8</i>		<i>178.7</i>		<i>11.4</i>		<i>5.2</i>		<i>3.6</i>

Source⁷⁹.

ELECTORAL CONSEQUENCES OF THE COUNTY UNIT SYSTEM AND THE ELECTORAL COLLEGE

Any indirect election method creates the possibility that the final outcome will diverge from the underlying popular result. As with the electoral college, the allocation of unit votes on the basis of plurality ‘winner-take-all’ empowered many candidates to win solid majorities far disproportionate to their popular vote margins. A plurality candidate could, by winning the right counties, win a solid majority of the unit vote without a runoff. Strong third-party challenges have resulted in Presidents, such as Bill Clinton in 1992, Richard Nixon in 1968, Woodrow Wilson in 1912, and Abraham Lincoln in 1860, who received substantial electoral majorities even in the face of winning pluralities of the popular vote far below 50%. However, in the wide open primary campaigns governed by the unit system, it was an even more frequent occurrence. Notably, in 1954, Lt. Gov. Marvin Griffin won the gubernatorial primary with 36.9% of the vote. This was ten points clear of his next closest competitor in a divided field, but Lt. Gov. Griffin won a landslide in the unit system: 302 unit votes, 246 more than his closest competitor.⁸⁰ In other

circumstances, the unit system's rural skew turned a narrow popular win into a decisive victory. In 1950, Gov. Herman Talmadge had a narrow 289,637-279,138 lead—less than one percentage point—in the popular vote over former Gov. Melvin Thompson.⁸¹ Yet, by winning 124 of the state's 159 counties, Talmadge won the unit vote 295-115.⁸² While relatively narrow popular vote majorities, such as in 1968 or 2012, can be comfortable wins in the electoral college, the 1954 result was akin to if President Kennedy's 1960 victory resulted in President Barack Obama's 2008 electoral map.

Systems of indirect election present the opportunity for perhaps the greatest democratic distortion, however: When a person with fewer votes nevertheless wins office. In four circumstances, 1876, 1888, 2000, and 2016, a candidate has received fewer popular votes than their opponent yet received a majority of the electoral vote and been elected President.⁸³ Six times, a state-wide candidate received fewer primary votes than an opponent who nevertheless won under the Georgia unit system.⁸⁴

The most egregious example of this was the 1946 gubernatorial primary between James V. Carmichael and former Gov. Eugene Talmadge, one that carried disturbing echoes of the 2016 Presidential result. That year, the 5th Circuit held that Georgia's primary elections, including to state offices, were state action by virtue of being conducted under the 1917 law, and as such under the 15th Amendment had to be open to the participation of African-American voters.⁸⁵ In the aftermath of the decision, over 135,000 African-Americans registered to vote.⁸⁶ By the end of the year, Georgia had more than 150,000 registered African-American voters—dwarfing the 10,000 registered in neighboring Alabama, and more than any other Southern state save Texas.⁸⁷ The registration was facilitated by liberal Gov. Ellis Arnall, who controlled the State Democratic Executive Committee, and took no steps to stop African-American participation.⁸⁸

Nevertheless, what followed was a campaign of voter suppression as Talmadge allies in rural counties purged voter rolls and defied federal court orders to restore names, ultimately removing between 15,000 and 25,000 African-American voters.⁸⁹ In all, Talmadge forces attempted to purge the voter roles in ninety of Georgia's counties, and succeeded in carrying out their purge in forty seven—with a focus on the counties with the greatest percentage of African-American voters.⁹⁰ While the efforts were resisted in many places, some counties, mostly in South Georgia, saw nearly their entire African-American voting population stricken from the registrar.⁹¹ Other challenges were used to slowdown African-American voters. On Election Day in Savannah, the Talmadge campaign challenged individual black voters, greatly delaying the process and resulting in voting delays of several hours and the disenfranchisement of over 5,000 voters.⁹²

Beyond the purges and slowdowns, Talmadge forces also used the threat of violence against African-Americans to suppress the vote. In Meriwether County, the Ku Klux Klan burned a cross in the county seat the night before the primary.⁹³ In Grady County, the FBI discovered armed white men shooting up black neighborhoods ahead of the election.⁹⁴ In Ben Hill County, notices appeared on seven African-American churches warning the parishioners “The first Negro to vote in the white primary in Fitzgerald July 16 will never vote again.”⁹⁵ In Taylor County, despite similar threats, World War II veteran Maceo Snipes cast the first vote of any African-American in county history on election day.⁹⁶ While officials allowed him to vote, one week later three whites came to his home, called him outside, and murdered him.⁹⁷ Local officials buried him in an unmarked grave and refused to prosecute his murderers, and continual threats drove his family to flee to Ohio.⁹⁸

Moreover, as Gov. Arnall later recalled, the Talmadge campaign used the prospect of black suffrage against Carmichael. According to Gov. Arnall, “Their vote probably hurt... The Talmadge people put ads in the paper; they paid folks \$10 for sitting next to ‘their black brother’ and all that.”⁹⁹ Talmadge supporters launched a number of ‘dirty tricks’ as well, including sending around a Carmichael look-a-like in the company of African-Americans throughout South Georgia, distributing anonymous racist leaflets advertising integrated pro-Carmichael barbecues,

and passing out fake invitations for African-Americans to visit the governor's mansion once Carmichael moved in.¹⁰⁰ Governor Arnall described the Talmadge campaign as one of "race hatred."¹⁰¹ Local newspapers agreed, with the *Augusta Chronicle* declaring Talmadge 'conjured up a fear ...blacks would run rampant in the state if he were not reelected.¹⁰² The *Rome News-Tribune* added Talmadge's campaign "was based entirely on one issue—that of white supremacy."¹⁰³

On primary day, Carmichael led Eugene Talmadge in the popular vote 313,389 to 297,245. Despite that plurality, he lost the unit vote in a landslide, 242-146. As with Sec. Clinton, Carmichael decisively won the most populous unit, carrying Fulton by 44% and 38,000 votes.¹⁰⁴ About 85,000 African-Americans, many of them in Atlanta and other urban areas, voted in the primary.¹⁰⁵ Nevertheless, the Talmadge voter suppression campaign clearly had a major effect. Of the forty Georgia counties, most of them rural, that had majority African-American populations in 1950, Carmichael carried only eight.¹⁰⁶ In Chatham County, location of the 'slowdown,' Eugene Talmadge beat Carmichael by a mere 3,600 votes.¹⁰⁷

Beyond the headline result, the 1946 Georgia Democratic Gubernatorial primary demonstrates many of the democratic flaws found in systems of indirect election. As the electoral college's role in forestalling the spread of women's suffrage demonstrates, the system incentivizes the component units to suppress the vote because the goal is not to maximize your total.¹⁰⁸ In a direct popular vote system, a county could maximize its influence by registering and enfranchising its African-American citizens. Instead, the influence is fixed based on the allocated unit vote—a county with 98 African-Americans and two Whites has the same power even if only the latter two vote. The incentives are actually, as Governor Arnall pointed out, even more pernicious. If all votes counted equally, the potential 135,000 African-American votes—nearly 20% of the electorate—would have been a key voting bloc that could have spurred reformers and challenges to Jim Crow. Instead, their participation was neutered for another twenty years, existing mostly as a bogeyman to White voters. Indeed, Gov. Herman Talmadge would later cite the role of the county unit system in neutering those votes as precisely a reason to keep it.¹⁰⁹

Instead, the 1946 voter suppression and triumph of the Talmadge forces spurred a consistent decline in African-American voter participation. In the 1948 Democratic Primary, estimates of African-American participation ranged from 60,000 to 65,000.¹¹⁰ By 1950, African-American participation declined even further, to 43,000 voters.¹¹¹ At the same time, Gov. Herman Talmadge and his allies attempted to further suppress the vote, passing new voter reregistration requirements and literacy tests.¹¹² Though not all of these measures were fully implemented, they nevertheless ensured the state's African-American population remained mostly disenfranchised until the system was ended in the 1960s.¹¹³

THE CONSTITUTIONAL IMPLICATIONS OF ARGUMENTS FOR THE COUNTY UNIT SYSTEM

Although the system itself was the product of a slow evolution in the manner of Georgia's primary elections, wedded to the state's flawed manner of legislative apportionment, it nevertheless had several strong advocates. The importance of the system to state government rendered the unit system a "third rail" in state politics. As Rep. James Mackay, a longtime Fulton legislator and founder of Georgia Veterans for Majority Rule, pointed out, "you couldn't get elected governor if you questioned the county unit system" and indeed, no gubernatorial candidate opposed the system.¹¹⁴ In fact, one of the earliest television political advertisements in Georgia featured gubernatorial candidate Melvin Thompson promising to "leave the County Unit system exactly as I found it," which was actually the 'liberal position' in Georgia, standing in opposition to efforts to expand it further.¹¹⁵ When liberal Gov. Arnall shepherded through a new state constitution in 1945 at the peak of his popularity and influence, he recognized any substantial alteration of the county unit system or malapportionment would be a bruising political fight that would drain his

political capital and that he might well lose.¹¹⁶ As such, he left the constitution’s democratic deficiencies completely untouched, and did not publicly oppose the unit system until the early 1960s.¹¹⁷ Even dedicated supporters of the system, such as Talmadge protégé Gov. Ernest Vandiver, could find themselves attacked as displaying insufficient fealty to it.¹¹⁸ Ralph McGill, the longtime anti-segregationist editor of the *Atlanta Constitution*, defended the system as “a check on the influence of large city populations.”¹¹⁹ James Carmichael, who was victimized by the unit system in 1946, later denounced it as “bad, bad, bad, the worst barrier to good government” but mournfully conceded he had no choice but to defend it during the 1946 race “because I had to.”¹²⁰ He further noted “no legislature is going to vote to abolish it...few men are going to vote for something that’ll abolish their jobs.”¹²¹ Meanwhile, even in the systems’ last days, liberals such as future Gov. Carl Sanders stated the system “can be defended” while insisting on reapportionment as the moderate solution.¹²² During the latter years of the system, the biggest advocate for the system was Herman Talmadge. The son of Gov. Eugene Talmadge, he served as Governor of Georgia from Jan. to March 1947¹²³, and 1948 to 1955, and U.S. Senator from 1957 to 1981. Shortly after winning the governorship, Talmadge attempted to adopt the county unit system in general elections.¹²⁴ In 1950, Gov. Talmadge and the legislative leadership placed a constitutional amendment on the ballot.¹²⁵ The amendment, supported by nearly all of Georgia’s statewide elected officials, was nevertheless defeated 164,337 to 134,290 as the eight ‘urban counties’ under the unit system were decisively opposed.¹²⁶ Talmadge forces made a variety of excuses, from bad weather in rural areas to confusing legal language, for the failure of the 1950 vote, and prepared for a rematch in 1952.¹²⁷ That year, Gov. Talmadge’s amendment mandated the county unit system to be the sole method of primary candidate selection for the aforementioned offices allowed under Georgia’s constitution.¹²⁸ Boosted by a rise in state revenues, the Talmadge administration conducted an intensive patronage campaign in support of the measure, and pro-Amendment forces outspent their opponents more than five to one.¹²⁹ Despite these efforts, the amendment failed by a similar margin, 309,170 to 279,882, although both would have passed under the county unit system.¹³⁰ Again, the eight ‘urban counties’ ran up decisive margins against the amendment: Nearly 50% of the total votes against the amendment were registered in those counties.¹³¹ Indeed, Fulton’s negative margin of 30,023 votes was able to balance out the pro-amendment margin racked up in the sixty-nine smallest counties—whereas in the unit system, pro-amendment forces would have led 128 to 16.¹³² Despite these setbacks, Gov. Talmadge remained a lifelong proponent of the system, defending it for decades after its dissolution.¹³³

In preparation for the second referendum, Gov. Talmadge outlined his support for the system in the 1951 *Georgia Review* and the resulting article, “Georgia’s County Unit System, Fountainhead of Democratic Government”¹³⁴ presents his arguments in favor of the system in great detail. In doing so, the article stands as perhaps the best example of the underlying constitutional thinking infecting the discussion. In doing so, Gov. Talmadge implicates many modern arguments on behalf of the electoral college. While the arguments of the past are no more persuasive than the arguments of the present, by attacking their flaws we see the weakness of their successors.

To begin his piece, he argues from history, citing the wisdom of the founders and basis of indirect rule as derived from the Constitution itself. Gov. Talmadge attempts to place the unit system as just the latest example in a system of indirect and rural-tinged rule imported from English parliament and adapted by the Framers at Philadelphia. In Gov. Talmadge’s view, the guarantee of “territorial representation,” where territorial representation could balance population centers, was “the spark that kindled liberty.”¹³⁵ Talmadge argued that “the whole scheme of government embodied in the Federal Constitution and in the Georgia Constitution is not committed to elections by individual voters over the whole territory in which every vote will have equal weight, but rather the voting is by smaller units of unequal population and unequal voting power for each vote.”¹³⁶ The governor notes the existence

of the electoral college itself, and lack of direct national popular vote anywhere within the document, to justify empowering “the counties as voting units” acting analogous to the role of states in the federal system.¹³⁷ Gov. Talmadge favorably cites the undemocratic results of the 1951 British General Election, where Winston Churchill’s Tories returned to power despite Labour winning more votes, as an example of the system’s successful use.¹³⁸ In his 1987 memoir, Gov. Talmadge expanded upon this belief by tying the territorial representation to “group representation,” again analogizing it to the British system, but also mentioning that the unit system ensured ‘all organizations’ in the political body, not just individuals, were represented in the body politic.¹³⁹

Gov. Talmadge’s historical arguments tying the skewed system to the Framers’ understanding of territorial representation is gravely flawed, however. While the Framers did recognize the states as the level for representation, and included the electoral college, they made no moral judgment as to what was to be represented in their allocation. The Philadelphia Constitution provided no framework for allocation within a state, and no guidepost specifying it as favoring a rural representation against the cities. Indeed, the Constitution states clearly: Representatives are to be “chosen...by the People.” Taken with Clause 3’s own apportionment of members of the House by population, the underlying democratic spirit of the Constitution precludes the more aristocratic Talmadge interpretation. Indeed, the Constitution is silent as to whether the House requires territorial representation at all. There is nothing in the document precluding states from not requiring territorial allocation. In fact, from the 3rd through 19th and 21st through 28th Congresses, Georgia elected its Congressmen not on a district-by-district basis, but at large on a general ticket throughout the state, with urban and rural counties alike voting for each member.¹⁴⁰

The real heart of Gov. Talmadge’s argument, however, is not historical, but structural. Gov. Talmadge presents indirect election as a bulwark against the prospect of city rule by ‘bloc vote.’ In his words, “Without the protection of the County Unit System to diffuse political initiative over the entire state, the huge bloc vote concentrated in the Atlanta metropolitan area would reduce all of the other six-unit counties from their present co-equal status to that of mere vassalage.”¹⁴¹ He cites the failure of his recent county unit amendment, noting that a large enough majority in Atlanta could allow someone to win despite losing every other county in the state.¹⁴² Gov. Talmadge argues the unit system works to “diffuse political initiative over the entire state.”¹⁴³ Without the unit system, he argues, “The people over Georgia would never get a chance to see their Governor” as instead candidates would center their entire campaign around appealing to the Atlanta area.

In the same vein, Gov. Talmadge argued that this would incentivize the creation of large political machines to maximize the vote. Without the county unit system, he claimed, Atlanta would create a political machine analogous to the Daleys of Chicago or Tammany Hall. To Gov. Talmadge, “It [was] obvious that gangster elements operating with the protection of dishonest politicians could set up in our cities a powerful, corrupt political machine which the people in the other counties through- out the state could not have the slightest hope of defeating.”¹⁴⁴ Even long after the unit system was eliminated, Gov. Talmadge held to this belief. In 1976, then-Sen. Talmadge said “In the county unit system, it broke up the political machine at the county line. You couldn’t have 159 political machines.”¹⁴⁵ Nearly twenty years later, Herman Talmadge still supported the system, claiming “It destroyed every political machine at the county line.”¹⁴⁶

These arguments are perhaps the most familiar and frequent one heard amongst supporters of the electoral college. Without that system, the person claims, Presidential elections would be contested and won only in the big cities and suburbs. Even worse, they fret, those cities or worse, California, with its 14 million voters, could decide the election

for the entire country. Yet, as countless election results, even within Georgia, make clear, this is not a legitimate or likely occurrence. In order for urban results (or California) to be decisive, a candidate must perform well enough in the rest of the country for that to matter. Even in New York, Massachusetts, and Illinois, states dominated by one large city, gubernatorial candidates that decisively lose the state's major city can still win statewide office.¹⁴⁷ Georgia itself remains a spectacular example of that fact. In 2016, Sen. Clinton won the Atlanta metro area, which amounted to over 60% of the Georgia electorate, by over 150,000 votes.¹⁴⁸ She performed better in the region than any Democrat since Jimmy Carter in 1976, and yet lost the state. Why? Because she lost the non-Atlanta parts of the state by nearly 370,000 votes.¹⁴⁹

Indeed, Gov. Talmadge's worry that certain areas will get no attention gets the incentive structure of both the unit system and the electoral college system precisely backwards. As with its incentive for voter repression over expanded suffrage, narrowing political competition to independent units empowers those within. Under both, it's only the competitive regions that actually get attention. Indeed, both systems served to empower specific political machines that held sway within the specific units. In narrowly divided states, huge urban machines, notably Tammany Hall in 1888¹⁵⁰ and Chicago's Daley Machine in 1960, literally made the difference between victory and defeat for a potential President. Pennsylvania's status as a perpetual swing state in recent years has resulted in the steady payment of infamous 'street money' to elements of the Philadelphia machine to maximize turnout.¹⁵¹

Despite the small amounts of county unit votes found in anyone county, nevertheless campaigns under the unit system also targeted a few, key, swing counties. Indeed, future President Jimmy Carter alleged the Talmadge Machine concentrated on only 20 counties in order to win in 1946.¹⁵² V.O. Key, the most contemporary scholar of Southern politics, observed in 1949 a process remarkably similar to how current Presidential elections are carried out today:

"Practical politician emphasizes that the man who knows what he is doing diagnoses every county individually. HE classifies the counties into three groups: This in which he is sure of a plurality; those in which he has no chance of a plurality; those which are doubtful. He forgets about the first two groups except for routine coverage. He concentrates his resources in the third group: expenditures, appearances by the candidate, negotiations, all the tricks of county politicking..."¹⁵³

Even though campaigns under the unit system were intraparty skirmishes, lacking the recent 'red state/blue state' dynamics, the fact that Georgia politics from the 1930s onward tended towards bi-factional contests between the pro and anti-Talmadge forces meant voting patterns were relatively easy to determine and swing counties remained relatively predictable.

While the rigid allotment of unit votes meant few counties were considered true 'swing' counties, the disproportionate power of the rural vote meant they were showered with attention and patronage and threatened with its removal.¹⁵⁴ Famously, candidates would stomp at every rural county courthouse they could find under the unit system and avoid cities and bigger towns.¹⁵⁵

Despite Talmadge's protestations of the importance of the county unit system to fight machine government, in practice the system created permanent, endemic, corruption. In the earliest days of the system, new counties were actually created to further skew it. From 1904 to 1924, twenty-three new counties were added to Georgia.¹⁵⁶ These campaigns were often spurred by the prospect of graft that came with creating the infrastructure around a new

county government—a new county potentially meant new state revenues to build a courthouse and a seat of government.¹⁵⁷ The result was a frenzy of lobbying: In 1905, the legislature was presented with twenty-four proposed new counties in a single session.¹⁵⁸ “The creation of counties became a kind of lobbyists’ racket,” noted one critic.¹⁵⁹ One lobbyist, Clay Robson, became a specialist in the field between 1910 and 1924, and “it was common knowledge that a group or community could get a county of its own for as little as \$25,000 properly laid out in the legislature.”¹⁶⁰ As the state assistant attorney general bemoaned in 1946, “many county governments exist solely for the benefit of individuals, so they can have power that they can hawk off in Atlanta.”¹⁶¹

Candidates catered to rural power brokers and doled out patronage to individuals, such as arch-segregationist Roy V. Harris, a former speaker of the Georgia General Assembly. Power brokers like Harris could deliver rural counties through their connections with ‘courthouse men’ whose patronage and persuasion could in turn deliver their county’s unit votes.¹⁶² As Attorney General Griffin Bell would later say, “You didn’t have to know but one person in a small county.”¹⁶³ The result was a system just as much a machine as any old Irish ward boss. As Robert Kennedy would later point out when arguing *Gray v. Sanders* before the Supreme Court, “We used to have, and I repeat used to have, a saying in my City of Boston which was vote early, and vote often. If you live in one of the small counties in the State of Georgia, all you have to do is vote early and you accomplish the same result.”¹⁶⁴

The practice of “trading roads for votes” was a common practice in Georgia politics, and increased election year expenditures for rural road construction, often distributed with complete control of the governor’s office,¹⁶⁵ were common.¹⁶⁶ The rural counties always received more from the state treasury than they contributed.¹⁶⁷ Such patronage also had real electoral consequences. Failure to properly provide pork to the “courthouse gangs” was credited as a reason for defeat for incumbent Governors or their chosen successors in 1936,¹⁶⁸ 1942,¹⁶⁹ and 1946.¹⁷⁰ In turn, certain state officials, such as Gov. Eurith “Ed” Rivers and Harris, were able to swing elections on the backs of their patronage machines. The defection of Harris from the anti-Talmadge to the pro-Talmadge faction was considered a key factor in Talmadge’s 1946 win. Precincts where Harris was active demonstrated concrete swings of over 30% of the vote from one faction to the other between the 1942 and 1946 elections.¹⁷¹ The consequence of this patronage network spurred further corruption: Gov. Rivers’ highway department was infamous as the “asphalt racket.”¹⁷² At the end of his administration, multiple members of the Rivers Administration were indicted for a kickback scheme related to bids for asphalt contracts in the state highway department, while Rivers was indicted for trading pardons for bribes.¹⁷³

Beyond corruption in patronage and administration of state funds, the system also incentivized electoral fraud. The narrow margins—as few as a few dozen voters—able to swing individual counties nurtured a system where ballots were destroyed, lost, misplaced, counted twice or more, never counted at all, recounted with different results, or otherwise tampered with.¹⁷⁴ Writing for *Harpers’ Magazine* in 1948, one reporter at a rural primary noted a “happy unconcern” and “remarkable tolerance” for election fraud, describing votes sold by “going from candidate to candidate as to seek the highest bidder” and estimating between 30 to 40% of the votes cast were bought.¹⁷⁵ In the words of one Georgian, “people can make more money selling their votes than farming.”¹⁷⁶ These machinations went hand in hand with Georgia’s failure to implement a secret ballot until the later years of the system. Prior to 1941, no counties operated under secret ballot.¹⁷⁷ Even as their use expanded throughout the decade, by the time the secret ballot was mandated by law in 1949, eighty counties still had no secret ballot.¹⁷⁸

Voter fraud was systemic enough to potentially swing elections. After his defeat in the 1950 primary, former Gov. Thompson accused Harris of stealing at least fifty counties from him, but Harris claimed “it wasn’t more than thirty-five.”¹⁷⁹ In 1946, the Three Governors Controversy was precipitated when Talmadge supporters produced a set of “lost” write-in votes from Talmadge’s home county sufficient to propel him into the legislative contest for governor.¹⁸⁰ These “lost votes” all voted within minutes of each other, in alphabetical order, and in the exact same handwriting, while some of the voters currently resided in the county cemetery.¹⁸¹ As one former governor put it, “We’ve never had an honest vote in Georgia.”¹⁸²

In order to win in a direct popular vote system, candidates must have broad coalitions even in locations they’ll lose overall. Simply running up the margins in certain areas is not enough. Just because candidates actually campaign in New York or Los Angeles doesn’t mean they’ll forget about Scranton or Des Moines. And while they’d probably skip Wyoming, they already do so anyway. As Labor Commissioner Sam Caldwell, elected statewide in 1966 after the unit system fell, later recalled, while candidates stopped appearing at every tiny county courthouse, winning campaigns nevertheless devoted resources and energy to organizing rural counties.¹⁸³ Such organizational strength is in line with how Presidential elections almost immediately evolved under the Philadelphia system, ratified by the 12th Amendment. As not every state had to intimately know a candidate for President, not every county must necessarily size a candidate’s stump speech up for themselves in order to make a rational choice. In any event, Gov. Talmadge’s fearmongering of the power of a post-unit Atlanta has not been borne out by the results: Of the nine men elected Governor following the end of the unit system, six hailed from rural or exurban counties.¹⁸⁴

Underlying both Gov. Talmadge’s historical and structural arguments was something far more sinister, however. Underneath the high principals of British liberty and popular sovereignty, Gov. Talmadge makes a nakedly sectarian argument: Georgia is threatened by “foreign agitators, the National Association of Colored People, the Communist Party, the Regional Council” who would “overturn our traditional pattern of segregation,” and these “dangers can be guarded against only so long which can be guarded against only System is in effect to guarantee that its leaders represent...all our people, not regimented bloc.”¹⁸⁵ Gov. Talmadge recounts his father’s victory in the 1946 primary to make clear exactly what kind of bloc he is referring to: “A bloc of 100,000 negro voters concentrated heavily in the urban areas lost Talmadge the popular vote by a slim margin of approximately 16,000 votes out of the total of approximately 700,000 votes cast for all of the candidates. Actually, Talmadge won the white popular vote by about 100,000 majority.”¹⁸⁶ The argument was more explicit among Talmadge supporters during the 1950 amendment fight. In a radio broadcast supporting the unit system, they argued “[a]nti-segregationist agitators and parlor pinks [would] make little headway in rural Georgia” because “the farmer...is not as susceptible to the Carpetbag press.”¹⁸⁷ In 1950, before Selma, before ‘I Have A Dream,’ before Montgomery, and before *Brown*, the county unit already represented the “final bulwark” against integration to Talmadge forces.¹⁸⁸ In prior cases, the unit system was used to deliberately suppress the African-American vote. After Rep. Helen Douglas Mankin won a 1946 Congressional special election in Atlanta, aided by the near unanimous support of Fulton County’s African-American voters, local Democrats reinstated the unit rule in her district, and shortly thereafter she lost renomination despite winning more popular votes.¹⁸⁹ Voters followed Talmadge in recognizing the racial component of the county unit system. Fourteen years after the failure of Talmadge’s county unit amendment, there was a very high correlation between pro-county unit votes and votes for arch segregationist Lester Maddox’s 1966 Gubernatorial campaign, even as Maddox, a gadfly restaurant owner and perpetual candidate, had minimal ties to the remains of the Talmadge organization.¹⁹⁰

In making clear that a key benefit of the unit vote is that it empowers the people whose votes “really” count, Talmadge is making clear that the unit system, however it was originally conceived, acted as a sectarian protectorate. By empowering rural counties where African-American votes could be suppressed by local officials (or simply ignored because they were less than 50% of the vote), the system was one of mass disenfranchisement for a vulnerable minority population. By ensuring many African-American votes were ‘wasted’ in Atlanta and other units where their votes were concentrated, where they had become a valuable constituency for local leaders, the unit system worked to completely neuter their power—exactly the result Talmadge recounted in 1946.¹⁹¹ In 1950, Georgia’s population was 30.9% African-American, the fourth highest percentage in the country, and yet their political power was non-existent.¹⁹² Notably, African-American voters recognized the system’s inherent discrimination and overwhelmingly rejected the 1952 Amendment to expand the system.¹⁹³ Just 2.5% of Atlanta African-Americans and 3.8% of Macon African-Americans supported the measure.¹⁹⁴ By contrast, even the most sympathetic white demographic group, the affluent, gave the measure 17.9% support in Atlanta and 34.6% support in Macon.¹⁹⁵

Such a role is not alien to the electoral college either. Large ethnic populations that make substantial minorities of unwinnable states, such as African-Americans in the Deep South, are ignored. Large Latino populations in California are ignored as well, their votes wasted on a state already ‘safe’ without their help. Even in competitive states, the incentive against greater participation incentivizes voter suppression efforts against minorities and other vulnerable groups. In a direct popular vote system, there’s less incentive to make it more difficult for people to vote because such measures can impact your supporters as well relative to the national result. While rural counties may make it harder for African-Americans to vote either way, if Atlanta is making it easier than the benefits are limited. Lower turnout in your own area during a direct election lowers your voice overall. Lower turnout in an indirect system can swing a unit entirely to your side. A system, such as the electoral college, that does not make any accommodation for turnout is one that incentivizes efforts to prevent minorities from voting—a violation of the Constitution’s clear goal, implicated by the 14th, 15th, and 19th Amendments, to protect and expand suffrage.

GRAY V. SANDERS ENDS THE SYSTEM

The county unit system was the subject to challenge via litigation from the late 1940s until the early 1960s,¹⁹⁶ but until the Supreme Court’s decision in *Baker v. Carr*, federal courts avoided ruling on the issue. Following that decision, in 1962 a Fulton County resident, James Sanders, sued the state Democratic Party, as well as the State of Georgia, alleging the system was unconstitutional under the 14th and 17th Amendments. The Federal Court for the Northern District of Georgia, led by Judge (and future U.S. Attorney General) Griffin Bell agreed.¹⁹⁷ The Court applied *Smith v. Peters*, barring inequality in voting power in primaries on the basis of race, to establish a multifactor test as to whether such a unit system would violate the equal protection clause. Balancing the historical grounding of the system, including the existence of the electoral college, with considerations of its arbitrariness or rationality, the Court held not that the county unit system was unconstitutional, merely that this iteration¹⁹⁸ of it was.¹⁹⁹ Indeed, the Court held that “no discrimination is deemed to be invidious under the system if the disparity against any county is not in excess of the disparity that exists against any state in the most recent electoral college allocation.”²⁰⁰ Discussing the case later, Attorney General Bell still felt the unit system could have been allowed under the Constitution without the disparity, analogizing it to legislative districts.²⁰¹

The Supreme Court, hearing the case on appeal, disagreed with that analogy. In *Grey v. Sanders*, the Court permanently ended the county unit system. Justice William Douglas, writing for the court, made it clear. “Once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote—whatever their race, whatever their sex, whatever their occupation, whatever their income, and wherever their home may be in that geographical unit.”²⁰² In finding the system unconstitutional the Court dismisses analogies to the use of the electoral college as “inapposite,” with the system itself the “result of specific historical concerns.”²⁰³ Indeed, the Court recognizes the inclusion of the system in the Constitution itself is the main validation of its principle in spite of its inherent numerical inequality.²⁰⁴ In the Court’s view, “The inclusion of the electoral college in the Constitution, as the result of specific historical concerns, validated the collegiate principle despite its inherent numerical inequality, but implied nothing about the use of an analogous system by a State in a statewide election. No such specific accommodation of the latter was ever undertaken, and therefore no validation of its numerical inequality ensued.”²⁰⁵

Rather, the Court builds its argument from the preamble. “The concept of ‘we the people’ under the Constitution visualizes no preferred class of voters but equality among those who meet the basic qualifications.”²⁰⁶ Reading through both the written and symbolic elements of the document, the Court makes clear: “The conception of political equality from the Declaration of Independence, to Lincoln’s Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing—one person, one vote.”²⁰⁷ Finding the core democratic truth of the document, the Court empowered thousands of Georgia voters.

CONCLUSION

As the litigation made its way through the courts, Georgia saw the first gubernatorial election in more than half a century truly decided by the popular vote. State Rep. Carl Sanders, from the city of Augusta (and six-unit county Richmond), was decisively nominated on September 12 with 58% of the vote, easily outpacing his rival, Talmadge protégé and former Gov. Marvin Griffin.²⁰⁸ While Sanders would have won the nomination even if the county-unit system had been in place, the urban counties powered his decisive landslide.²⁰⁹ More than half of his overall popular vote total came from the eleven urban counties, including carrying Fulton by a 91,773-27,107 margin.²¹⁰ By contrast, while Sanders managed to win rural counties in northern and coastal Georgia, his margins in those counties were often a few dozen votes.²¹¹ Going forward, Georgia politicians would have to reckon with the state’s African-American citizenry and Atlanta’s growing clout. Gov. Sanders, the youngest Governor in Georgia’s history, and the first from an urban county in forty years, embodied a generational shift in the state’s politics.

President Jimmy Carter called the injunction that ended the county unit system in 1962 “one of the most momentous political decisions of the century in Georgia.”²¹² The removal of the system’s structural barriers to reform were instrumental in the thirty-seven year old farmer’s decision to seek his first elected office, filing just 15 days before the primary election.²¹³ The removal of the county unit system empowered a new generation of reformers that would lead Georgia away from Jim Crow and Atlanta towards being a world class metropolis. As Prof. Amar is fond of pointing out, “ports are law towns.”²¹⁴ They are “places of trade and commerce, where goods and ideas flow freely, where people and peoples intermingle.”²¹⁵ Though it lacks a major river and is hundreds of miles from the coast, Atlanta, born from a railroad crossroads and now home of the busiest airport in the world, is a port city. The county unit system in many ways existed explicitly as a reaction against that very idea. Atlanta was

where African-Americans and whites could collaborate in biracial coalitions. The very idea of that collaboration was a threat to segregationist hatred and rural reaction.

As America grapples with an election where a reactionary rural minority, empowered the unbalanced electoral college, was granted full federal power, it is important to examine Georgia's past experiences. While the product of compromises throughout the years, our 21st Century Constitution, its meaning elaborated and clarified by the 14th, 15th, 17th, 19th, 24th, and 26th Amendments, is a 'Nautical Document,' grounded in the pluralist ideals that live within it. From the very preamble—We The People—the document establishes its underlying argument in favor of popular, not territorial, sovereignty. The arguments in favor of the vestigial tail of the Philadelphia system, the electoral college, are flawed misinterpretations of our democratic document. To understand their flaws, we simply have to remember the grave consequences of the era when one state took those arguments to the most dangerous extremes.

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Published: May, 2018 by the Center for the Advancement of Public Integrity at Columbia Law School.
Available at www.law.columbia.edu/CAPI.

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ENDNOTES

- ¹ Akhil Reed Amar, *America's Constitution: A Biography*, 139-40 (2005).
- ² *Id.* at 137.
- ³ Unlike Georgia, Maryland's system provided some adjustment for Baltimore City, although it still favored rural interests. See Virginia Wood Hughes, *The County Unit System in Maryland, Mississippi, and Georgia Elections*, 5 GA. REV. 354 (1951).
- ⁴ Mississippi's County Unit system applied to General Elections, while party primaries were by popular vote. Given the one-party nature of pre-Second Reconstruction Mississippi, the result was the opposite of Georgia: De facto popular election of governors in the face of a de jure indirect vote. See William G. Cornelius, *The County Unit System of Georgia: Facts and Prospects*, 14 W. POL. Q. 942, 946 (1961).
- ⁵ To this day, despite only ranking 24th in area, Georgia has the second most counties of any state. Only Texas, with 254 counties, has more. The unit system discouraged consolidation, and no consolidation has been forthcoming in the 54 years since its termination. Indeed, recent discussion has centered on creating one or two new counties by dividing up the state's most populous. See Doug Nurse, *Plan to Resurrect Milton County Passes House Panel*, ATLANTA JOURNAL-CONSTITUTION, Feb. 18, 2009.
- ⁶ Ga. Const. of 1777, art. IV (replaced 1789).
- ⁷ Ga. Const. of 1777, art. II (replaced 1789).
- ⁸ "At their first institution each county shall have one member, provided the inhabitants of the aid county shall have ten electors; and if thirty, they shall have two, if forty, three; if fifty, four; if eighty, six; if a hundred and upward, ten." Ga. Const. of 1777, art. V (replaced 1789).
- ⁹ Ga. Const. of 1777, art. II (replaced 1789).
- ¹⁰ Ga. Const. of 1777, art. XXV, art. XXII (replaced 1789).
- ¹¹ T.S. Arthur and W.H. Carpenter, *THE HISTORY OF GEORGIA FROM ITS EARLIEST SETTLEMENT TO THE PRESENT TIME* 268 (1852).
- ¹² Ga. Const. of 1789, art. I (replaced 1798).
- ¹³ Ga. Const. of 1777, art. XXIII (replaced 1789); Ga. Const. of 1789, art. II, §5, 7, 10 (replaced 1798).
- ¹⁴ Ga. Const. of 1789, art. II, §2 (replaced 1798).
- ¹⁵ Akhil Reed Amar, *America's Constitution: A Biography*, 148-49 (2005).
- ¹⁶ Ga. Const. of 1789, art. I, §6 (amended 1795).
- ¹⁷ Ga. Const. of 1789, art. I, §2 (replaced 1798).
- ¹⁸ Amar, *supra* note 15 at 149.
- ¹⁹ Ga. Const. of 1789, amend. III, (replaced 1798).
- ²⁰ Ga. Const. of 1798, art. I, §7.
- ²¹ *Id.*
- ²² ALBERT B. SAYE, *A CONSTITUTIONAL HISTORY OF GEORGIA 1732-1945* 171 (1948).
- ²³ *Id.*
- ²⁴ Ga. Const. of 1861, art. II, §2, cl. 1 (replaced 1865); Ga. Const. of 1861, art. II, §3, cl. 1 (replaced 1865).
- ²⁵ Ga. Const. of 1865, art. II, cl. 20 (replaced 1868); Ga. Const. of 1865, art. II, §2, cl. 1 (replaced 1868); Ga. Const. of 1865, art. II, §3, cl. 1 (replaced 1868); Ga. Const. of 1868, art. II, §2, cl. 1 (replaced 1877).
- ²⁶ Ga. Const. of 1798, amend. VII (replaced 1861).
- ²⁷ *Id.*
- ²⁸ *Id.*
- ²⁹ *Id.*
- ³⁰ Ga. Const. of 1861, art. III, §1, cl. 2 (replaced 1865).
- ³¹ Ga. Const. of 1865, art. III, §1, cl. 2 (replaced 1868).
- ³² Ga. Const. of 1868, art. IV, §2 (replaced 1877).
- ³³ Ga. Const. of 1877, art. V, §1, para. III-VI (replaced 1945).
- ³⁴ Ga. Const. of 1945, art. V, §1, para. II-V (replaced 1976).
- ³⁵ Albert B. Saye, *Georgia's County Unit System of Election*, 12 J. OF POL. 93, 95 (1950).
- ³⁶ Ga. Const. of 1868, art. III, §2, cl. 1 (replaced 1877).
- ³⁷ Ga. Const. of 1868, art. III, §3, cl. 1 (replaced 1877).
- ³⁸ Ga. Const. of 1868, art. III, §3, cl. 2 (replaced 1877).
- ³⁹ Ga. Const. of 1877, art. III, §2, cl. 1 (replaced 1945).
- ⁴⁰ Ga. Const. of 1945, art. III, §3, para. 1-2 (amended 1963).
- ⁴¹ Albert B. Saye, *Georgia's County Unit System of Election*, 12 J. OF POL. 93, 94 (1950).

- ⁴² *Georgia – Governor – History*, Our Campaigns (last visited Mar. 31, 2018), <http://www.ourcampaigns.com/ContainerHistory.html?ContainerID=114>.
- ⁴³ Thomas Walker, *Georgia – Governor – General Election – Oct. 1, 1855*, Our Campaigns, (last visited, Dec. 26, 2016), <http://www.ourcampaigns.com/RaceDetail.html?RaceID=204942>;
- Thomas Walker, *Georgia – Governor – General Election – Oct. 5, 1857*, Our Campaigns, (last visited, Dec. 26, 2016), <http://www.ourcampaigns.com/RaceDetail.html?RaceID=204943>.
- ⁴⁴ During the height of the Populist Party in the 1890s, Gov. William Atkinson was elected with 56% of the vote in 1894 and 59% of the vote in 1896. See *Georgia – Governor – History*, *supra* note 45.
- ⁴⁵ *Georgia – Governor – History*, *supra* note 42.
- ⁴⁶ *Id.*
- ⁴⁷ *Id.*
- ⁴⁸ Albert B. Saye, *Georgia’s County Unit System of Election*, 12 J. OF POL. 93, 94-5 (1950).
- ⁴⁹ *Id.*
- ⁵⁰ *Id.*
- ⁵¹ Saye *supra* note 48 at 95-96.
- ⁵² *Id.*
- ⁵³ *Id.*
- ⁵⁴ At the 1906 state Democratic Convention, Gov. Hoke Smith and his followers abolished the county unit system for primaries. Following his defeat by the popular vote in 1908, the system was quickly restored by his opponents. See Dewey W. Grantham, Jr., *Hoke Smith: Progressive Governor of Georgia, 1907-1909*, 15 J. of S. Hist. 423-440 (1949).
- ⁵⁵ Lynwood M. Holland, *Republican Primaries in Georgia*, 30 Ga. Hist. Q. 215 (1946).
- ⁵⁶ Albert B. Saye, *Georgia’s County Unit System of Election*, 12 J. OF POL. 93, 97 (1950).
- ⁵⁷ *Id.*
- ⁵⁸ *Id.*
- ⁵⁹ *Id.*; William G. Cornelius, *The County Unit System of Georgia: Facts and Prospects*, 14 W. POL. Q. 942, 946 (1961).
- ⁶⁰ Saye *supra* note 56 at 98.
- ⁶¹ Patrick Novotny, THIS GEORGIA RISING 21 (2007).
- ⁶² Lynwood M. Holland, *Republican Primaries in Georgia*, 30 Ga. Hist. Q. 215 (1946).
- ⁶³ Albert B. Saye, *Georgia’s County Unit System of Election*, 12 J. OF POL. 93, 98 (1950).
- ⁶⁴ Holland, *supra* note 62 at 215-16.
- ⁶⁵ *Id.*
- ⁶⁶ Thomas Tai, *The Electoral College You Never Knew: Georgia’s County Unit System*, Maps, Data, and Visuals, (last visited Mar. 31, 2018), <https://ttaigis.wordpress.com/2016/08/18/the-electoral-college-you-never-knew-georgias-county-unit-system/>.
- ⁶⁷ Numan V. Bartley, FROM THURMOND TO WALLACE POLITICAL TENDENCIES IN GEORGIA 1948-1968 20 (1968).
- ⁶⁸ *Id.*
- ⁶⁹ *Georgia – Governor – History*, Our Campaigns (last visited Mar. 31, 2018), <http://www.ourcampaigns.com/ContainerHistory.html?ContainerID=114>.
- ⁷⁰ Sources: 1900: Richard J. Forestall, *GEORGIA Population of Counties by Decennial Census: 1900 to 1990*, U.S. Bureau of Census, Population Division (March 27, 1995).
- 1920 and 1960: Scott E. Buchanan, *The Effects of the Abolition of the Georgia County-Unit System on the 1962 Gubernatorial Election*, 25 S. POL. R. 687, 689 (1997).
- ⁷¹ Campbell Gibson, POP-WP027, *Population of the 100 Largest Cities and Other Urban Places in the United States: 1790 to 1990*, U.S. Bureau of Census, Population Division, (June 1998) (last visited, Dec. 28, 2016) <http://www.census.gov/library/working-papers/1998/demo/POP-twps0027.html>.
- ⁷² Forestall, *supra* note 70.
- ⁷³ *Id.*
- ⁷⁴ *Id.*
- ⁷⁵ *Id.*
- ⁷⁶ Numan V. Bartley, FROM THURMOND TO WALLACE POLITICAL TENDENCIES IN GEORGIA 1948-1968 20 (1968).
- ⁷⁷ Fulton County’s population, 2010: 920,581. Taliaferro County’s Population, 2010: 1,717. Source: <https://www.census.gov/prod/cen2010/cph-2-12.pdf>.
- ⁷⁸ Katy Collin, *The Electoral College Badly Distorts the Vote. And It’s Going to Get Worse.*, WASHINGTON POST, Nov. 17, 2016.
- ⁷⁹ Georgia: 1910, 1960: Richard J. Forestall, *GEORGIA Population of Counties by Decennial Census: 1900 to 1990*, U.S. Bureau of Census, Population Division (March 27, 1995). 2010: U.S. Census Bureau, *Georgia: 2010 Census of Population and*

- Housing* 6-7 (2012); U.S.: 1900, 1960: U.S. Bureau of the Census, *Population of States and Counties of the United States: 1790 – 1990* 2-3 (1996) 2010: U.S. Census Bureau, *Interactive Population Map*, (last accessed, Dec. 28, 2016) <http://www.census.gov/2010census/popmap/>.
- ⁸⁰Ga. Dept. of Archives and History, *Georgia's Official Register, 1953-1954* 626-630 (1954).
- ⁸¹Patrick Novotny, *The Impact of Television on Georgia, 1948-1952*, 91 GA. HIST. Q. 335 (2007).
- ⁸²*Id.*
- ⁸³In 1824, although John Quincy Adams finished a distant second in the popular vote, he was chosen President by the House of Representatives after no candidate received a majority in the electoral college. He finished second the electoral count as well, trailing future President Andrew Jackson 99-84.
- ⁸⁴Albert B. Saye, *Georgia's County Unit System of Election*, 12 J. OF POL. 93, 98-9 (1950).
- ⁸⁵Chapman v. King, 154 F.2d 460 (5th Cir. 1946).
- ⁸⁶Joseph L. Bernd, *White Supremacy and the Disfranchisement of Blacks in Georgia, 1946*, 66 GA. HIST. Q. 492 (1982).
- ⁸⁷Harold Paulk Henderson, ERNEST VANDIVER GOVERNOR OF GEORGIA 27 (2000).
- ⁸⁸Bernd, *supra* note 86 at 496.
- ⁸⁹*Id.* at 494-99; Henderson *supra* note 87 at 27; Charles S. Bullock III, Scott E. Buchanan, and Ronald Keith Gaddie, *The Three Governors Controversy: Skullduggery, Machinations, and the Decline of Georgia's Progressive Politics* 98 (2015).
- ⁹⁰Bullock III, Buchanan, and Gaddie *supra* note 89 at 92-93.
- ⁹¹*Id.*
- ⁹²Joseph L. Bernd, *White Supremacy and the Disfranchisement of Blacks in Georgia, 1946*, 66 GA. HIST. Q. 492 (1982).
- ⁹³Charles S. Bullock III, Scott E. Buchanan, and Ronald Keith Gaddie, *The Three Governors Controversy: Skullduggery, Machinations, and the Decline of Georgia's Progressive Politics*, 95 (2015).
- ⁹⁴*Id.* at 99.
- ⁹⁵*Id.*
- ⁹⁶Elliot Miner, *Answers Sought In 1946 Ga. Killing*, ASSOCIATED PRESS, Feb. 13, 2007 (last visited Mar. 31, 2018) <http://www.washingtonpost.com/wp-dyn/content/article/2007/02/13/AR2007021300121.html>.
- ⁹⁷Bullock III, Buchanan, and Gaddie *supra* note 93 at 99.
- ⁹⁸*Id.* at 99-100.
- ⁹⁹Arnall, Ellis, Interviewed by James F. Cook, 25 Mar. and 17 Apr. 1986, P1986-03, Series A. Georgia Governors, Georgia Government Documentation Project, Special Collections and Archives, Georgia State University Library, Atlanta.
- ¹⁰⁰Charles S. Bullock III, Scott E. Buchanan, and Ronald Keith Gaddie, *The Three Governors Controversy: Skullduggery, Machinations, and the Decline of Georgia's Progressive Politics*, 101-2 (2015).
- ¹⁰¹Arnall *supra* note 99.
- ¹⁰²Harold Paulk Henderson, THE POLITICS OF CHANGE IN GEORGIA, A POLITICAL BIOGRAPHY OF ELLIS ARNALL 168 (1991).
- ¹⁰³*Id.*
- ¹⁰⁴Ga. Dept. of Archives and History, *Georgia's Official Register, 1945-1950* 490-493 (1951).
- ¹⁰⁵Joseph L. Bernd, *White Supremacy and the Disfranchisement of Blacks in Georgia, 1946*, 66 GA. HIST. Q. 492, 502 (1982).
- ¹⁰⁶*Id.* at 492.
- ¹⁰⁷*Id.*
- ¹⁰⁸Amar, Akhil Reed, "Some Thoughts on the Electoral College: Past, Present, and Future" (2007). Faculty Scholarship Series. Paper 790. http://digitalcommons.law.yale.edu/fss_papers/790.
- ¹⁰⁹Herman A. Talmadge, *Georgia's County Unit System, Fountainhead of Democratic Government*, 5 GA. REV. 411 (1951) (hereinafter "Talmadge").
- ¹¹⁰Harold Paulk Henderson, ERNEST VANDIVER GOVERNOR OF GEORGIA 27 (2000).
- ¹¹¹*Id.* at 28
- ¹¹²*Id.*
- ¹¹³*Id.*
- ¹¹⁴Mackay, James, Interviewed by Clifford Kuhn, 31 Mar. 1987, P1986-01, Series B. Public Figures, Georgia Government Documentation Project, Special Collections and Archives, Georgia State University Library, Atlanta; Albert B. Saye, *Revolution by Judicial Action in Georgia*, 17 WESTERN POL. Q. 10 (1964).
- ¹¹⁵M.E. Thompson, *1954 Georgia Gubernatorial Ad, County Unit System*, RUSSELL LIBRARY AUDIOVISUAL COLLECTIONS (last visited Mar. 31, 2018), <https://www.youtube.com/watch?v=J7PhJ1NxN8w>.
- ¹¹⁶Henderson *supra* note 99 at 95-96.
- ¹¹⁷*Id.* at 95-96, 249.

¹¹⁸ Henderson *supra* note 84 at 83.

¹¹⁹ Novotny, *supra* note 58, at 26.

¹²⁰ *Id.* at 141.

¹²¹ *Id.*

¹²² James F. Cooke, CARL SANDERS SPOKESMAN OF THE NEW SOUTH 77 (1993).

¹²³ The circumstances of Gov. Herman Talmadge's first governorship are the subject of the infamous "Three Governors Controversy." After winning the 1946 gubernatorial primary, Eugene Talmadge went on to win the fall general election. However, already in poor health, he died in December of that year. As insurance during the campaign, Talmadge supporters had organized a write-in campaign for Herman, who ended up being the distant second place finisher that fall. (There are credible accusations Talmadge's write-in position was the result of fraudulent votes in a rural county.) With no Governor Elect, three men claimed the office: outgoing Gov. Arnall, incoming Lt. Gov. Melvin Thompson, and Herman Talmadge, who claimed that, as there was no candidate above 50%, the vote should go to the General Assembly. The new General Assembly elected the younger Talmadge Governor, with the result that on Inauguration Day, Jan. 15, Talmadge and Arnall both sat in the state capitol, conducting business as the Governor. Shortly thereafter, Arnall withdrew to support Thompson's claim. In March of that year, the Georgia Supreme Court ruled that Thompson was rightfully Governor. Talmadge relinquished the office, only to defeat Thompson in the forthcoming 1948 special election.

Notably, during the dispute, Talmadge and his supporters charged Arnall and Thompson with wanting to destroy the county unit system, saying "this fight I am making is a white man's fight to keep Georgia a white man's state." Henderson *supra* note 99 at 174.

For a fuller account of the controversy, see: Bullock III, Buchanan, and Gaddie *supra*.

¹²⁴ Novotny, *supra* note 78, at 336.

¹²⁵ *Id.*

¹²⁶ *Id.* at 336-38.

¹²⁷ Joseph L. Bernd, GRASS ROOTS POLITICS IN GEORGIA 16 (1960).

¹²⁸ State Officers – Primary Elections On County Unit Basis, S.J. Res. 6, 121st Gen. Ass., 1951 Regular Sess. (Ga. 1951); BRYAN, *supra* note 125, at 570.

¹²⁹ *Id.*

¹³⁰ Saye *supra* note 111 at 10; James C. Bonner, 47 GA. HIST. Q. 369 (1963).

¹³¹ Bernd, *supra* note 124 at 105-139.

¹³² *Id.*

¹³³ Talmadge, Herman, Interviewed by Robert DuBay 1 June 1976, P1976-09, Series F. Marvin Griffin, Georgia Government Documentation Project, Special Collections and Archives, Georgia State University Library, Atlanta (hereinafter "Talmadge Oral History (1976)"; Talmadge, Herman, Interviewed by Stephan Tuck, 1 Aug. 1994, P2003-07, Series R. Beyond Atlanta, Georgia Government Documentation Project, Special Collections and Archives, Georgia State University Library, Atlanta (Hereinafter "Talmadge Oral History (1994)").

¹³⁴ Talmadge, *supra*.

¹³⁵ *Id.* at 411.

¹³⁶ *Id.* at 412-13.

¹³⁷ *Id.* at 413.

¹³⁸ Talmadge, *supra* at 413. Ironically enough, both supporters and opponents of the county unit system would cite the effect of the British system of indirect election and unbalanced districts during these debates. While Gov. Talmadge cited the 1951 British election as a proper outcome of the county unit system, Rep. Mackay, an opponent, cited the 1945 British election as a failure, saying "So that Gene Talmadge got elected as a socialist did in Britain, when they whipped Churchill, by winning a majority of the seats, but only 43% of the popular vote." (It should be noted that Rep. Mackay's figures are incorrect; In that election Labour won 48% of the vote, easily outpacing Churchill's 36%.) While they couldn't agree on the fundamental principles of democracy, Georgia politicians could nevertheless agree any system where the Labour Party (or "British socialists") won was a bad one. See Mackay, *supra*.

¹³⁹ Herman E. Talmadge with Mark Royden Winchell, TALMADGE A POLITICAL LEGACY, A POLITICIAN'S LIFE, A MEMOIR 105 (1987).

¹⁴⁰ Biographical Directory of the U.S. Congress, (1774–2005), H.R. Doc. 108–222, at 49-133.

¹⁴¹ Talmadge, *supra* at 421.

¹⁴² *Id.* at 420. Indeed, this result recently occurred in Nevada’s 2016 U.S. Senate race. *See* Nevada Results (2016), N.Y. TIMES, (last visited Dec. 28, 2016), <http://www.nytimes.com/elections/results/nevada>.

¹⁴³ Talmadge, *supra* at 421.

¹⁴⁴ *Id.* at 420.

¹⁴⁵ Talmadge Oral History (1976), *supra*.

¹⁴⁶ Talmadge Oral History (1994), *supra*.

¹⁴⁷ Illinois Election Results (2014), N.Y. TIMES, (last visited Mar. 31, 2018), <http://elections.nytimes.com/2014/illinois-elections>; Massachusetts Election Results (2014), N.Y. TIMES, (last visited, Mar. 31, 2018), <http://elections.nytimes.com/2014/massachusetts-elections>; New York State Board of Elections, *NYS Board of Elections Governor Election Returns Nov. 5, 2002* (2002) (last visited Mar. 31, 2018), http://www.elections.ny.gov/NYSBOE/elections/2002/general/2002_gov.pdf

¹⁴⁸ Georgia Results (2016), N.Y. TIMES, (last visited Mar. 31, 2018), <http://www.nytimes.com/elections/results/georgia>.

¹⁴⁹ *Id.* at 952

¹⁵⁰ 1888: Harrison v. Cleveland, Harper’s Weekly, (last visited Mar. 31, 2018), <http://elections.harpweek.com/1888/Overview-1888-4.htm>.

¹⁵¹ *Philly Clout: Show Us the Street Money!*, PHILADELPHIA INQUIRER, Nov. 4, 2016.

¹⁵² Jimmy Carter, *TURNING POINT: A CANDIDATE, A STATE, AND A NATION COME OF AGE* 14 (1992).

¹⁵³ Bernd, *supra* note 124 at 4-5.

¹⁵⁴ Bernd, *supra* note 83 at 508-09; Bell, *supra*; Caldwell, *supra*; Mackay, *supra*.

¹⁵⁵ Arnall, *supra*; Caldwell, Sam, Interviewed by Robert Dubay, 12 Dec. 1978, P1978-01, Series F. Marvin Griffin, Georgia Government Documentation Project, Special Collections and Archives, Georgia State University Library, Atlanta;

¹⁵⁶ Novotny, *supra* note 58, at 17.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.* at 19.

¹⁶⁰ Novotny, *supra* note 58, at 19.

¹⁶¹ *Id.* at 20.

¹⁶² Sanders, Carl, Interviewed by James F. Cook, 5 & 12 Aug. 1986, P1986-06, Series A. Georgia Governors, Georgia Government Documentation Project, Special Collections and Archives, Georgia State University Library, Atlanta; Talmadge Oral History (1994), *supra*; Arnall, *supra*, Caldwell, *supra*. Indeed, the author’s great-grandfather, Ralph W. Golucke, the longtime superior court clerk of Taliaferro County, was one such individual. Family lore says that whenever Talmadge visited the county to try and win his support, Mr. Golucke managed to have ‘gone fishing.’ In turn, Govs. Eugene and Herman Talmadge never carried Taliaferro County in a contested primary election during the unit era. In one sign of the interplay between the ‘courthouse gangs’ and electoral process, Mr. Golucke, as Clerk of the Taliaferro County Superior Court, was also the source of the county’s electoral returns. *See* Bernd, *supra* note 124 at 64.

¹⁶³ Bell, *supra*.

¹⁶⁴ Transcript of Oral Argument, Gray v. Sanders, 372 U.S. 368 (1963) (No. 122)

¹⁶⁵ Henderson *supra* note 99 at 165-166.

¹⁶⁶ Henderson *supra* note 84 at 63-64.

¹⁶⁷ Novotny, *supra* note 58, at 22.

¹⁶⁸ Bernd, *supra* note 124 at 7-8.

¹⁶⁹ Henderson *supra* note 99 at 41.

¹⁷⁰ Bullock III, Buchanan, and Gaddie *supra* at 111.

¹⁷¹ Bernd, *supra* note 124 at 38-39.

¹⁷² *Id.* at 8.

¹⁷³ Bullock III, Buchanan, and Gaddie *supra* at 38.

¹⁷⁴ Novotny, *supra* note 58, at 26.

¹⁷⁵ *Id.* at 15-16.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.* at 30-31.

¹⁷⁸ Novotny, *supra* note 58, at 30-31.

¹⁷⁹ Henderson *supra* note 99 at 217.

¹⁸⁰ Scott E. Buchanan, “SOME OF THE PEOPLE WHO ATE MY BARBECUE DIDN’T VOTE FOR ME” THE LIFE OF GEORGIA GOVERNOR MARVIN GRIFFIN 66 (2011).

¹⁸¹ *Id.*

¹⁸² *Id.* at 56.

¹⁸³ Caldwell, *supra*.

¹⁸⁴ Gov. Carl Sanders (1863-1867) was elected from the city of Augusta, and Gov. Roy Barnes (1999-2003) was elected from the Cobb County, in Atlanta's inner suburbs. Only one Governor, Lester Maddox (1867-1971), was elected from the City of Atlanta proper during that time. A notorious segregationist who failed several times to win local office, Gov. Maddox's support was actually strongest in the rural areas. He lost the Atlanta metro vote 150,136-77,560 to Republican Bo Callaway. A minority governor, in 1966 Gov. Maddox was elected by the legislature despite finishing second in the popular vote as a write in campaign by Gov. Arnall ensured no candidate finished higher than 50%. Thomas Walker, *Georgia – Governor – General Election – Nov. 8, 1966*, Our Campaigns, (last visited, Dec. 26, 2016), <http://www.ourcampaigns.com/RaceDetail.html?RaceID=40398>.

¹⁸⁵ Talmadge, *supra* at 417-418.

¹⁸⁶ *Id.* at 415.

¹⁸⁷ Novotny, *supra* note 78, at 337.

¹⁸⁸ *Id.* at 338.

¹⁸⁹ Saye *supra* note 32 at 99; Davis, James, Interviewed by Lorraine Nelson Spritzer, 11 Nov. 1977, P1977-18, Series G. The Belle of Ashby Street: Helen Douglas Mankin and Georgia Politics, Georgia Government Documentation Project, Special Collection and Archives, Georgia State University Library, Atlanta; Camp, Thomas, Interviewed by Lorraine Nelson Spritzer, 7 Nov. 1993, P1977-06, Series G, The Belle of Ashby Street, Georgia Government Documentation Project, Special Collections and Archives, Georgia State University Library, Atlanta.

¹⁹⁰ Bartley, *supra* at 79.

¹⁹¹ For detailed history of the role of African-American voters in contested Atlanta elections, see Kevin M. Kruse, *White Flight: Atlanta and the Making of Modern Conservatism* (2005).

¹⁹² Henderson *supra* note 84 at 17.

¹⁹³ Bartley, *supra* at 41-42.

¹⁹⁴ *Id.* at 20.

¹⁹⁵ *Id.*

¹⁹⁶ For a description of these challenges, see *Sanders v. Gray*, 203 F. Supp. 164-66 (N.D. Ga. 1962), vacated, 372 U.S. 368, (1963).

¹⁹⁷ *Sanders v. Gray*, 203 F. Supp. 158, 170 (N.D. Ga. 1962), vacated, 372 U.S. 368, (1963).

¹⁹⁸ On the eve of the District Court's decision, the Georgia Legislature altered the system to boost the number of votes allocated to major counties such as Fulton, but the District Court noted that "Even the new system misses the mark in two respects: first in failing to accord the unit of plaintiff a reasonable proportion of the whole, and second in failing to accord the units representing a majority of the population a reasonable proportion of the whole." *Id.* at 170.

¹⁹⁹ *Id.* at 168-171.

²⁰⁰ *Id.* at 170.

²⁰¹ Bell, *supra*.

²⁰² *Gray v. Sanders*, 372 U.S. 368, 379 (1963).

²⁰³ *Id.* at 378.

²⁰⁴ *Id.* at 378.

²⁰⁵ *Id.*

²⁰⁶ *Id.* at 379-80.

²⁰⁷ *Gray v. Sanders*, 372 U.S. at 381.

²⁰⁸ *Georgia – Governor – D Primary – Sept. 12, 1962*, Our Campaigns, (last visited, Mar. 31, 2018), <https://www.ourcampaigns.com/RaceDetail.html?RaceID=378538>.

²⁰⁹ Henderson *supra* note 84 at 175.

²¹⁰ *Id.*

²¹¹ *Georgia – Governor – D Primary – Sept. 12, 1962*, Our Campaigns, (last visited, Mar. 31, 2018), <https://www.ourcampaigns.com/RaceDetail.html?RaceID=378538>.

²¹² Carter, *supra* at xxii-xxiii; Harold Paulk, *Ernest Vandiver, Governor of Georgia*, 104 (2000).

²¹³ *Id.*

²¹⁴ Akhil Reed Amar, *The Law of the Land: A Grand Tour of Our Constitutional Republic*, 270 (2015).

²¹⁵ *Id.*