

The Future of the Voting Rights Act

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Trends in Minority Representation, 1974 to 2000

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Following the 2000 Census, Georgia redrew its fifty-six state senate districts to comply with the one-person-one-vote rule. At the time, the assembly and senate both had Democratic majorities. The governor, Roy Barnes, was a Democrat as well, and led the charge to construct a districting plan that could stem the expected Republican tide in the upcoming 2002 elections.

The key to this plan was to "unpack" many of the heavily Democratic districts and distribute loyal Democratic voters to surrounding districts. In particular, black voters were reallocated away from districts with either especially high or low levels of black voting age population (BVAP) to create more districts in the 25 to 40 percent BVAP range, so-called influence districts. This meant that some districts with black populations above 55 percent or 60 percent were brought down close to the 50 percent mark.

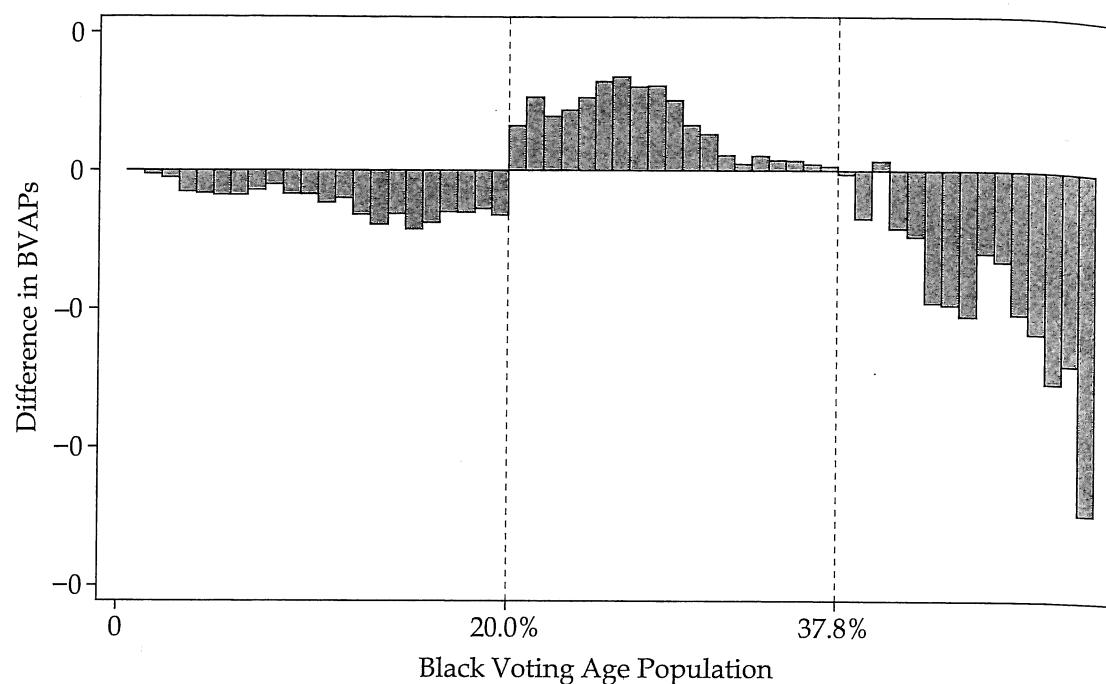
This strategy is illustrated graphically in figure 4.1. To construct this graph, the BVAPs in each district for both the existing baseline plan and the proposed plan were sorted from highest to lowest, and the difference between corresponding entries was calculated. The figure clearly shows the reallocation of black voters away from the extremes of the distribution and toward the center.

The state submitted its plan directly to the D.C. District Court for preclearance, and the Justice Department (DOJ) indicated its intention to interpose objections to Senate districts 2, 12, and 26, whose BVAPs were slated to fall from 60.6 percent, 55.4 percent, and 62.5 percent to 50.3 percent, 50.7 percent, and 50.8 percent, respectively. The state submitted evidence showing that the point of equal opportunity—the level of BVAP at which a minority-preferred candidate has a 50 percent probability of winning—was 44.3 percent, and argued that the redrawn districts should still offer black candidates a healthy chance of gaining office. The DOJ disagreed, arguing that the state had not met its burden of proving the proposed plan non-retrogressive.

The district court agreed with the DOJ and refused to preclear the plan. The Supreme Court eventually overruled in the case *Georgia v. Ashcroft* (539 U.S. 461), ruling that the district court had not taken sufficiently into account the state's avowed objective of increasing substantive representation, even at a possible cost

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FIGURE 4.1 / Changes in Black Voting Population, Proposed Versus Baseline Plan for Georgia Following 2000 Census



Source: Authors' compilations.

to descriptive representation. The Court relied heavily on the testimony of black state legislators, including civil rights leader and U.S. Representative John Lewis, who supported the plan as an attempt to expand Democratic control of state government.¹

The reaction to Ashcroft was swift and heated. Karlan (2004) denounced the decision as a first step towards "gutting" section 5 preclearance. Others claimed that it "greatly weakened the enforcement provisions of Section 5" (Benson 2004). An ACLU official's reaction was that "The danger . . . is that it may allow states to turn black and other minority voters into second-class voters, who can influence the election of white candidates but cannot elect candidates of their own race" (House Committee on the Judiciary 2005, 6).

Others viewed the decision more favorably. Henry Louis Gates, for example, wrote in the *New York Times* that descriptive representation "came at the cost of substantive representation—the likelihood that lawmakers, taken as a whole, would represent the group's substantive interests. Blacks were winning battles but losing the war as conservative Republicans beat white moderate Democrats" (September 23, 2004, A23).

At the heart of the latter set of arguments lies the notion of a tradeoff between substantive and descriptive representation: getting more of one necessarily entails accepting less of the other. This topic has been the subject of previous research: Morgan Kousser (1993) discusses the possibility of such a tradeoff in the context

of influence districts, as does Richard Pildes (1995) in his review of social science research on the changing political landscape in the South. More quantitative studies of the tradeoff include Charles Cameron, David Epstein, and Sharyn O'Halloran (1996) and David Lublin (1997), both of which studies detected the possibility of an emerging tradeoff in their analyses of election and roll call data through the early 1990s.

One of our goals is to expand and update this work, studying patterns of minority electability and congressional voting on minority-supported legislation for the years 1974 to 2000, and the districting plans that maximize substantive and descriptive representation. We also, for the first time, include Hispanic as well as black voters in these calculations, both to see if the patterns emerging for Hispanic representation differ significantly from black representation and to examine the degree of cross-minority support between blacks and Hispanics in elections and in the legislature.

Our results show that up until roughly the mid-1980s few nonminority legislators in the South championed black causes in Congress. As a result, districting schemes that maximized black descriptive representation were identical to those that maximized substantive representation. Over the past two decades, though, these objectives diverged, so that recent increases in the number of blacks elected to Congress have come at the cost of substantive representation.

For Latinos, the story is rather different. It has always been relatively difficult to elect Hispanic representatives, quite possibly due to the gap between total voting age population and citizen voting age population in concentrated Latino districts. On the other hand, white Democratic representatives have been generally supportive of Latino positions on roll call votes, much more so than Republicans. Thus there has always been a tradeoff between Latino descriptive and substantive representation, with the dimensions of this tradeoff changing little over time. The situation is much the same for blacks outside the South: supportive votes from nonminority Democrats have led to tradeoffs between the two types of representation throughout the period.

Finally, we find interesting relationships between issues of black and Latino representation. There remains an almost perfect electoral separation: districts with more black than Hispanic voters rarely elect a Hispanic representative and vice-versa. Further, adding Hispanic voters to a heavily black district increases the probability that a black representative is elected, but adding blacks to a Hispanic district does little to help Hispanic candidates win office.

DESCRIPTIVE REPRESENTATION

We begin with analysis of black and Hispanic electoral opportunity. Our data set consists of all elections to the House of Representatives between 1974 and 2000. For each election held during that period, we recorded the party and race (white, black, Hispanic) of the winning candidate. We also calculated the black voting age population (BVAP) and Hispanic voting age population (HVAP) of the district,

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interpolating between census estimates to impute district demographics. In addition, we coded the region in which the election took place: east, south, or west.²

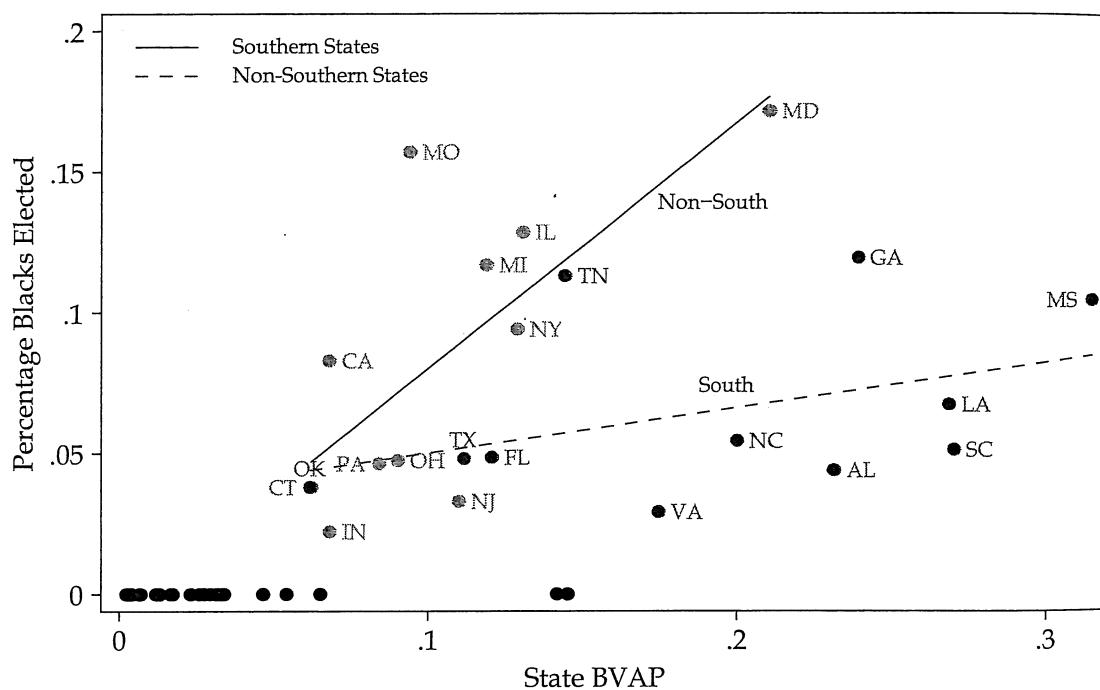
Blacks

Our first step is to review regional effects in the election of black representatives to Congress. Figure 4.2 displays the average percent of black voting age population for each of the fifty states on the horizontal axis and the percent of all elected representatives who are black during our time period on the vertical axis. Linear fit trend lines have been added to show the relationship between BVAP and the percentage of minorities elected for states with at least one black representative during the sample period.

The patterns shown clearly indicate that more blacks are elected to Congress in states with higher concentrations of black voters, but it is also clear that the southern states generally lie further to the right on the graph in comparison with other states. That is, it takes a higher percentage BVAP in southern states to elect the same proportion of black representatives as compared to all other states. We consequently separate these regions in our further analysis of black electoral opportunity.³

For the analysis of black electoral opportunity, we divided representatives into three types: Republicans, white Democrats, and black Democrats. We then per-

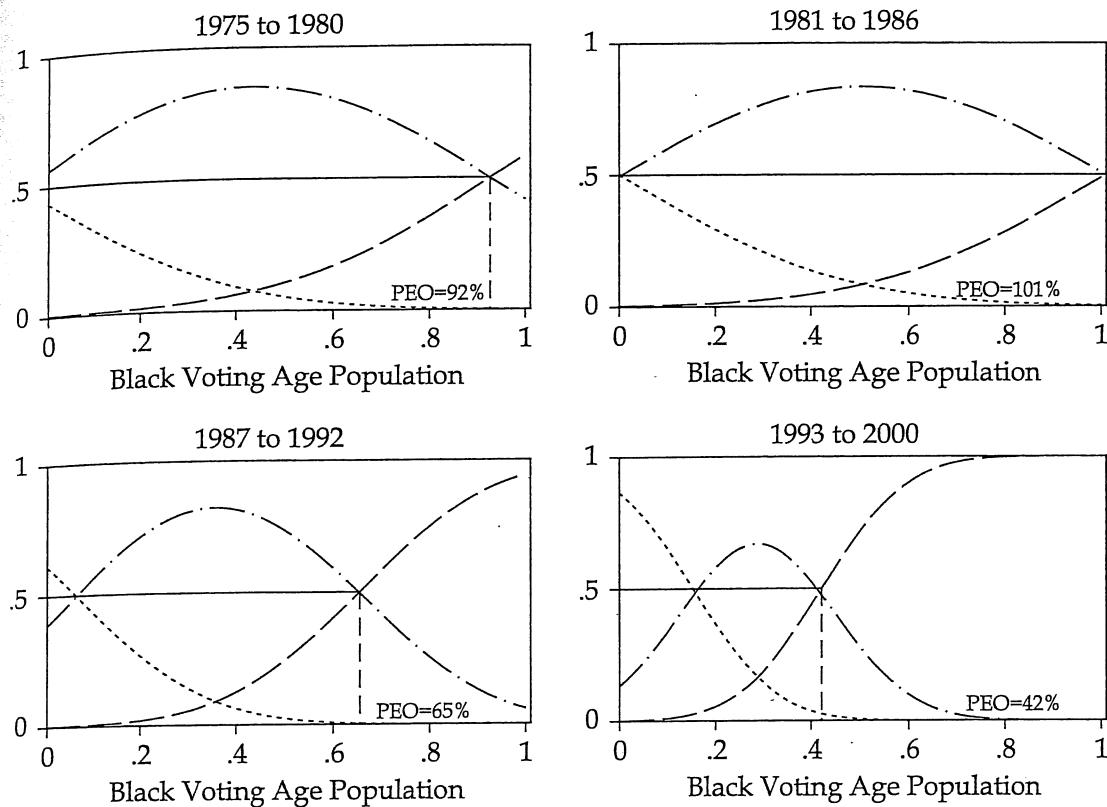
FIGURE 4.2 / Black Representatives Elected by State, 1974 to 2000



Source: Authors' compilations.

Note: Trendlines indicate relationships for Southern and Non-Southern states with at least one black representative.

FIGURE 4.3 / Probability of Electing Different Types of Representatives,
Southern States



Source: Authors' compilations.

Note: — White Democrat, — Black Democrat, - - - Republican.

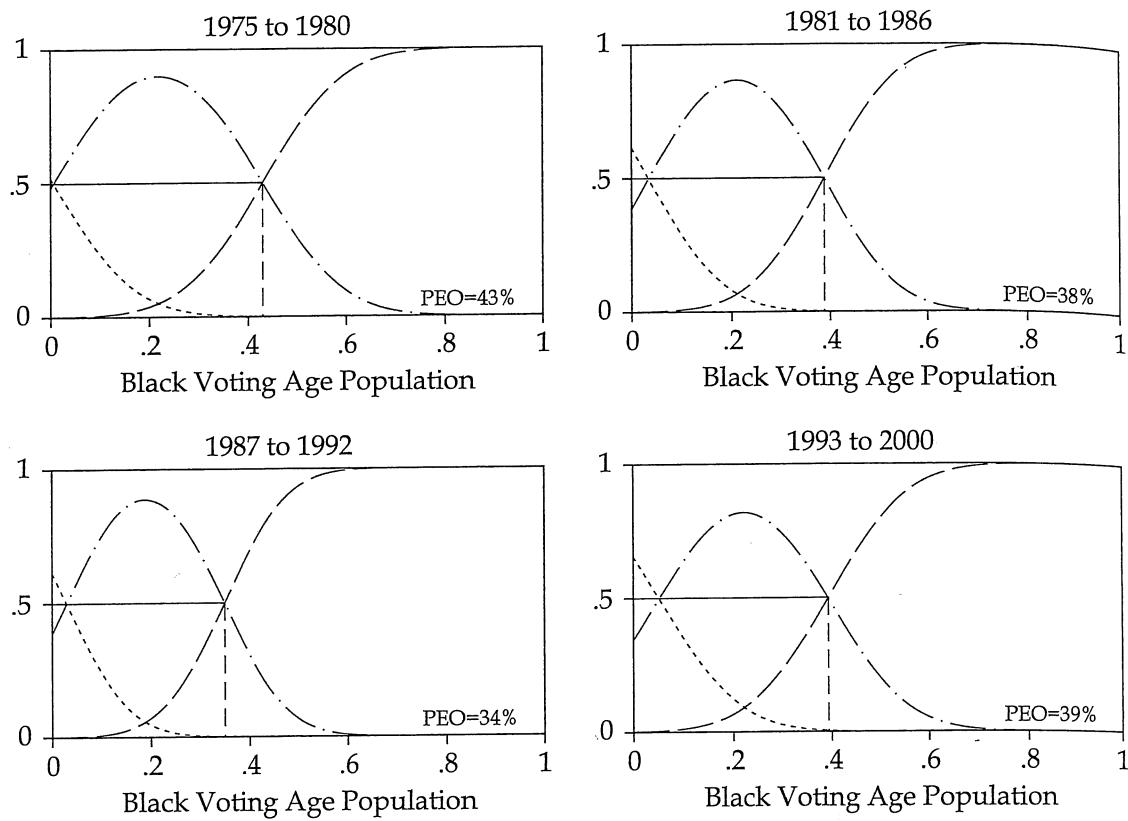
formed an ordered probit analysis on this representative type using BVAP as an independent variable, for each congress and region. The results of this analysis, grouped into four periods, are shown in graphical form for southern districts in figure 4.3 and for all other districts in figure 4.4.

In each graph, the central curve represents the probability of electing a white Democrat, the curve reaching its maximum at low levels of BVAP indicates the probability of electing a Republican, and the line reaching its maximum at high levels of BVAP is the probability of electing a black Democrat. These graphs also include a horizontal line at 0.5; the level of BVAP where this line intersects the black Democrat curve indicates the point of equal opportunity (PEO). This is the level of BVAP needed to give a black Democrat a 50-50 chance of winning election and serves as a convenient summary of black electoral opportunities.

As shown in the figure, from the mid-1970s to the mid-1980s, white Democrats were still the dominant group in southern politics. In fact, the point of equal opportunity is estimated at over 100 percent in the 1981 to 1986 period, given that a number of southern districts with majority black populations still elected white

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FIGURE 4.4 / Probability of Electing Different Types of Representatives,
Nonsouthern States



Source: Authors' compilations.

Note: — · — White Democrat, — — Black Democrat, - - - - Republican.

Democrats, such as Hale and then Lindy Boggs from Louisiana. Even in an all-white district (0 percent BVAP), Republicans had no better than an even chance of winning.

From here on, though, the picture changes dramatically. The point of equal opportunity falls steadily, to 65 percent in the third figure (1987 to 1992) and 42 percent in the fourth (1993 to 2000). At the same time, white Democrats' chances of winning an election in a district with no blacks crashes to about 20 percent. The rise of Republican and black electoral prospects, that is, necessarily came at the expense of white Democrats. In the first two scenarios, white Democrats have a greater than 50-50 chance of winning elections for almost all levels of BVAP. By 2000, they only have a slightly greater than 50 percent chance of winning in the 20-40 percent BVAP range.

This increase in black electoral opportunity in the South can be traced to the greater willingness of white voters to cast their ballots for black candidates. Whereas white cross-over was estimated at under 10 percent during the 1980s, it has risen since then to somewhere between 30 and 40 percent on average.⁴

For districts outside the South, not much change is apparent. Equal opportunity starts in the first period at a level (43 percent) nearly equal to where it ends up

in the South (42 percent), and then drifts down slightly from there. In terms of electing blacks to Congress, then, after lagging behind up through the early 1990s, the South has now caught up to the rest of the country.

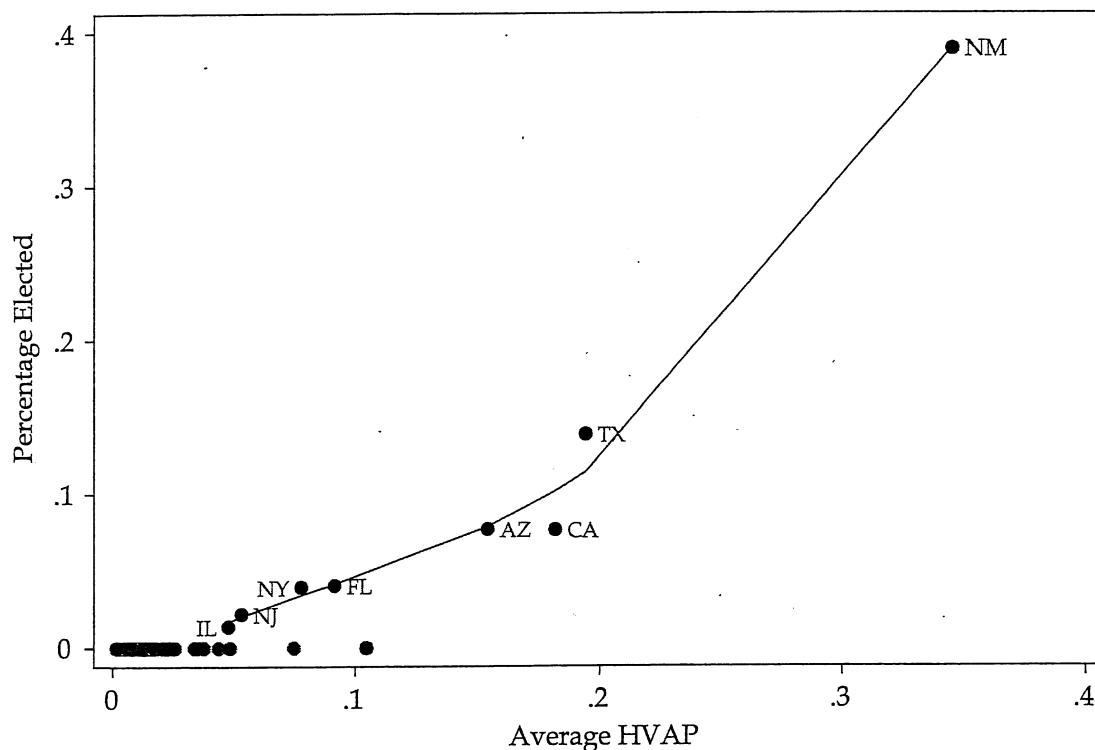
Latinos

In analyzing the electoral patterns for Latino representatives, we again start with an examination of regional effects. As we did with black representatives, figure 4.5 charts the percent of elected Hispanic representatives as a function of overall state Hispanic voting age population.

The first thing to note is that relatively few states have elected any Latino representatives over the period studied. In particular, only eight states have had at least one Latino representative over the past thirty years. Given this small number of states, and the fact that, as shown in figure 4.5, there is no obvious regional pattern to the electoral relationship, this portion of the analysis has no regional breakdown.

Turning to the electoral patterns themselves, figure 4.6 shows the electoral curves in the same four periods as in figures 4.3 and 4.4 above. As indicated, Hispanic electoral opportunity nationwide is similar to black electoral opportunity outside the South: the trend here is to have no trend. The point of equal opportunity for

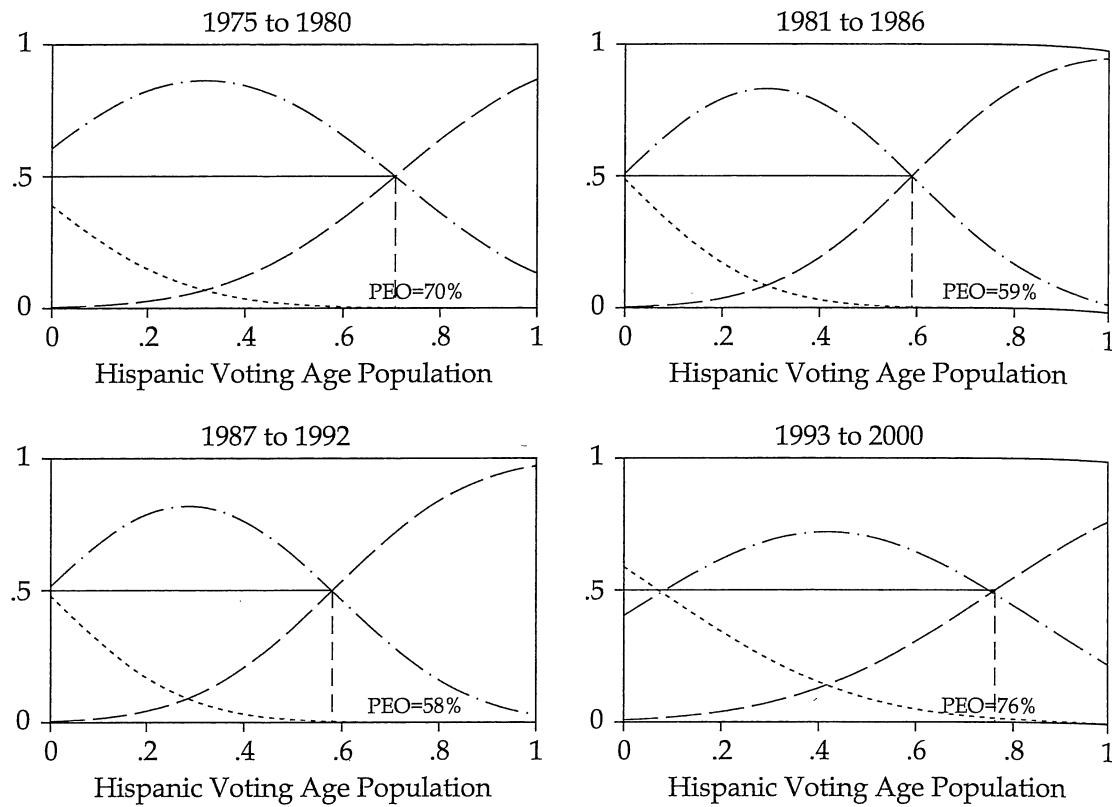
FIGURE 4.5 / Hispanic Representatives Elected by State, 1974 to 2000



Source: Authors' compilations.

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FIGURE 4.6 / Probability of Electing Different Types of Representatives



Source: Authors' compilations.

Note: — White Democrat, — Hispanic Democrat, - - - Republican.

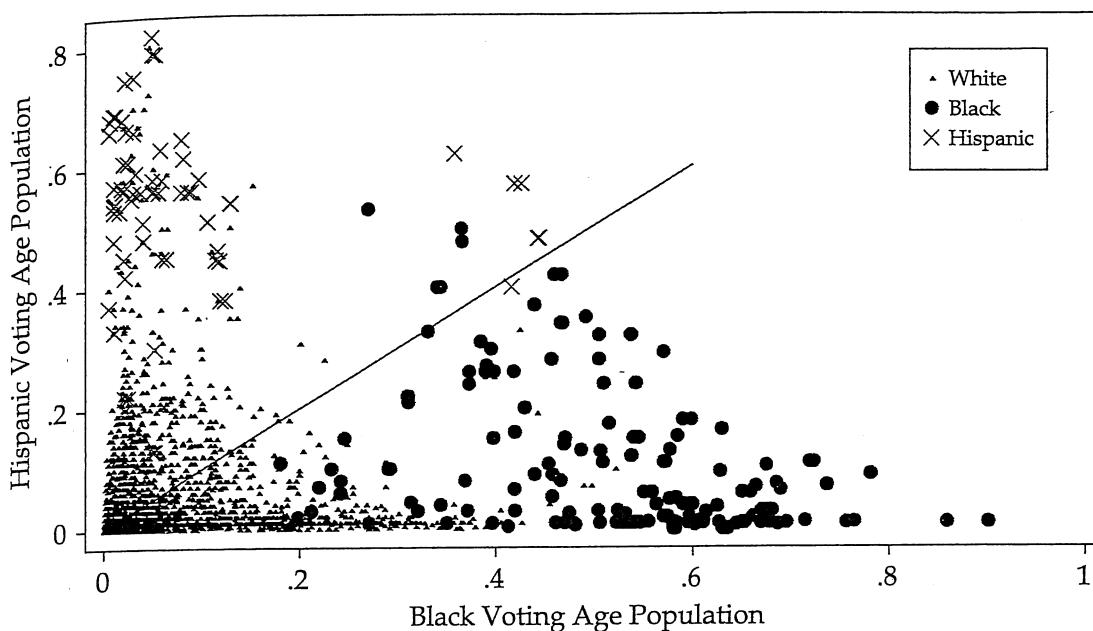
Hispanics, however, ranges between 58 and 76 percent HVAP over the four time frame with an average of 66 percent. Electing Latinos was easier than electing blacks thirty years ago, but is more difficult today.

These patterns may reflect a number of underlying causes: greater white resistance to voting for Latino candidates, less cohesive voting among Latino voters, or greater disparities between voting age population and actual Latino voters, due perhaps to differences in citizenship rates. Whatever the cause, it is clear that at the moment more Hispanic voters are needed, as a percentage of total district population, to elect Hispanic representatives than black voters are needed to elect black representatives.

Intergroup Substitution

We next examine the relationship between combinations of black and Hispanic voters and the probability of electing a representative from one of these groups to office. As a first look at the data, figure 4.7 shows the BVAP and HVAP combina-

FIGURE 4.7 / Race of Representative Elected, 1975 to 2000



Source: Authors' compilations.

tions of all elections in our data set, along with the type of representative elected. A 45-degree line has been included; above the line the district has more Hispanic than black voters, and vice versa for districts below the line.

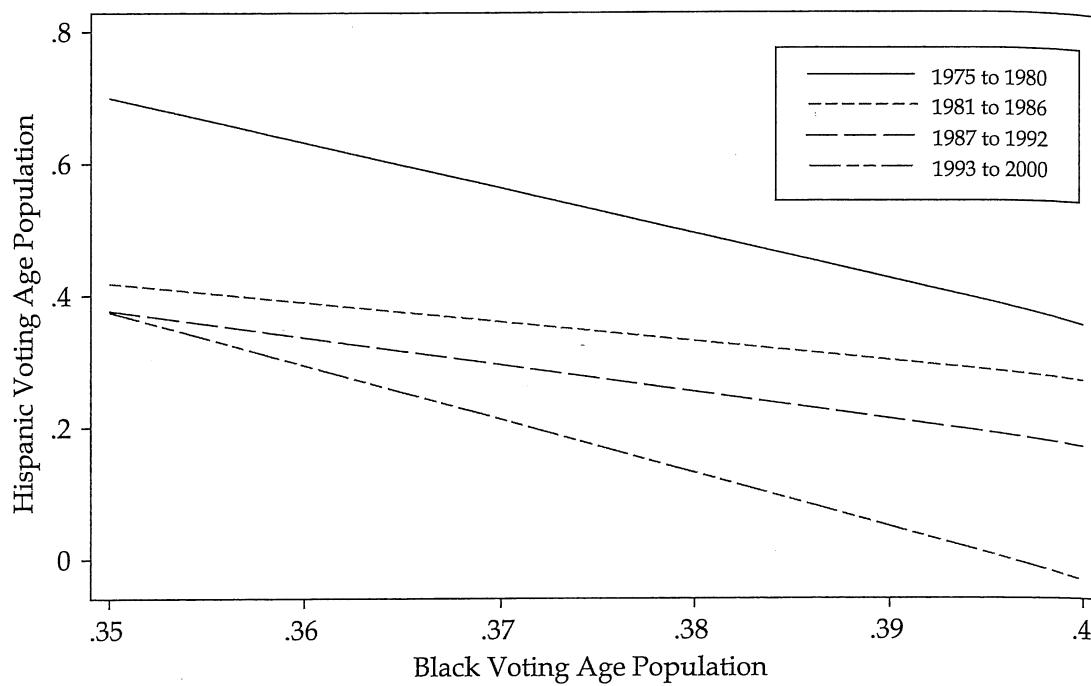
One notices first that there is relatively little mixing of the black and Hispanic election regions. Only seven elections saw a black representative elected from a district with more Hispanic than black voters.⁵ Conversely, only in five elections did a Hispanic representative win office in a district with more black than Hispanic voters.⁶ And in only one of all these cases was the other minority group actually a majority within the district.⁷

We investigated these issues further by running a simple probit regression on the election of a black Democrat to office, using both BVAP and HVAP as independent variables, then repeated this procedure with the election of a Hispanic Democrat as the dependent variable. We found, surprisingly, that adding Hispanic voters to a heavily black district does help a black representative get elected. This pattern does not hold in reverse, however. That is, black voters do not give Hispanic candidates an extra boost at election time. We term this surprising because it is generally accepted that Hispanic voters are less liberal than black voters. If this is true, then blacks should vote for Hispanic candidates at higher rates simply because they are less likely to be tempted to vote for any Republican candidate who is on the ballot as well.

As for the significance of adding Hispanic voters to a black district, figure 4.8 shows the combinations of BVAP and HVAP that give a black candidate a 50 percent

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FIGURE 4.8 / Combinations of BVAP and HVAP that Yield a 50 Percent Probability of Electing a Black Democrat



Source: Authors' compilations.

chance of winning in each of the four periods. Two features are worth noting. First, the magnitude of the trade-off is not great; depending on the period, one needs between 20 percent and 40 percent more Hispanic voters to compensate for the 5 percent reduction in the number of black voters, for a ratio of somewhere between 4 to 1 and 8 to 1. Second, the exact terms of this trade-off have changed over time, but overall the lines move down and to the left from one period to the next. This is another measure of the trends toward decreasing electoral polarization, making it easier for black candidates to attain office.

SUBSTANTIVE REPRESENTATION

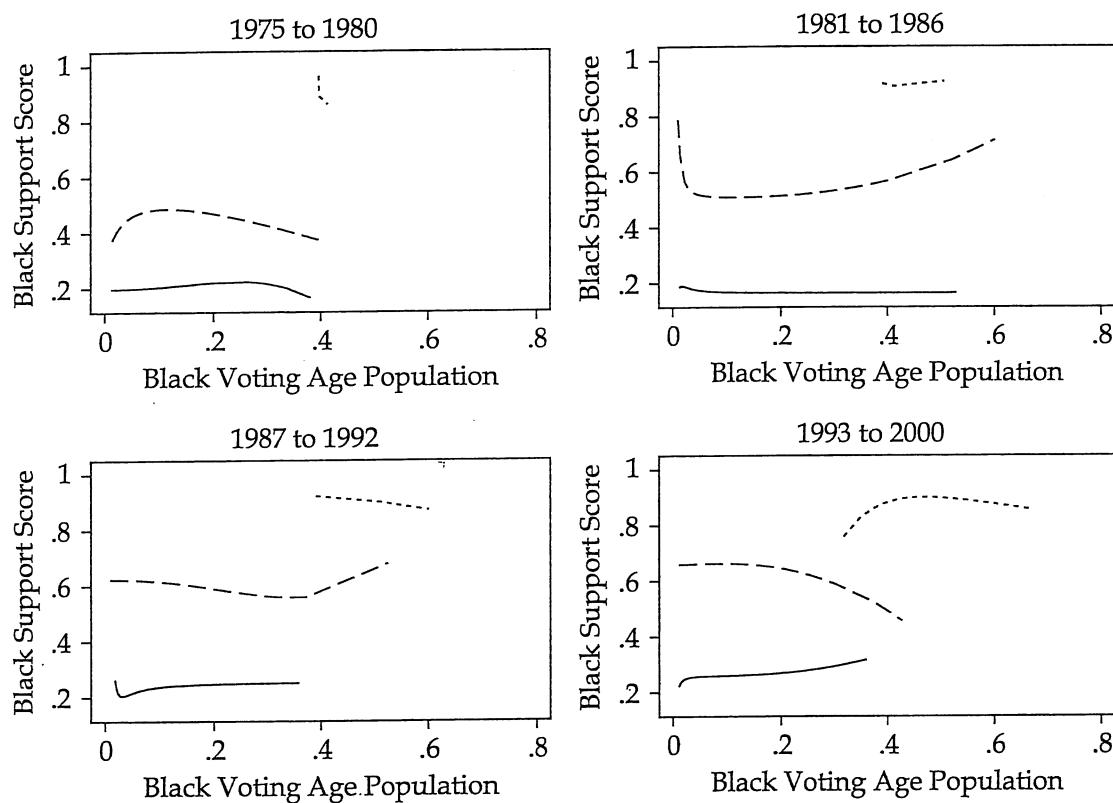
For our measure of substantive representation we started with all *Congressional Quarterly* key votes taken during this period. For each roll call we tabulated the aye and nay votes, coding all abstentions, absences, and pairs as missing data. We then determined which position was taken by the majority of the minority representatives who cast a valid vote and coded that as a vote in the pro-minority direction. Finally, we calculated the support score for each member and each Congress as the percentage of times that member voted with the majority of the minority representatives.⁸

Black

Support scores as a function of the district black voting age population are shown for southern representatives for each of the four time periods in figure 4.9. The relation between BVAP and support has been estimated using a "fractional polynomial" fit, a standard method for summarizing a possibly nonlinear relationship between two variables.⁹ In each graph, the uppermost line represents black Democrats, the next down is white Democrats, and the bottom is Republicans.

As evident in the figure, the support scores are relatively constant within each representative type; the major source of variation is found across types. White Democrats at higher levels of BVAP do seem to become more liberal in the second and third groups, but reverse this trend a bit in the fourth. However, in all cases 95 percent confidence bands show that the null hypothesis of a constant function within each group cannot be rejected, so these apparent trends may be due merely to chance.

FIGURE 4.9 / Black Support Scores for Different Types of Representatives, Southern States

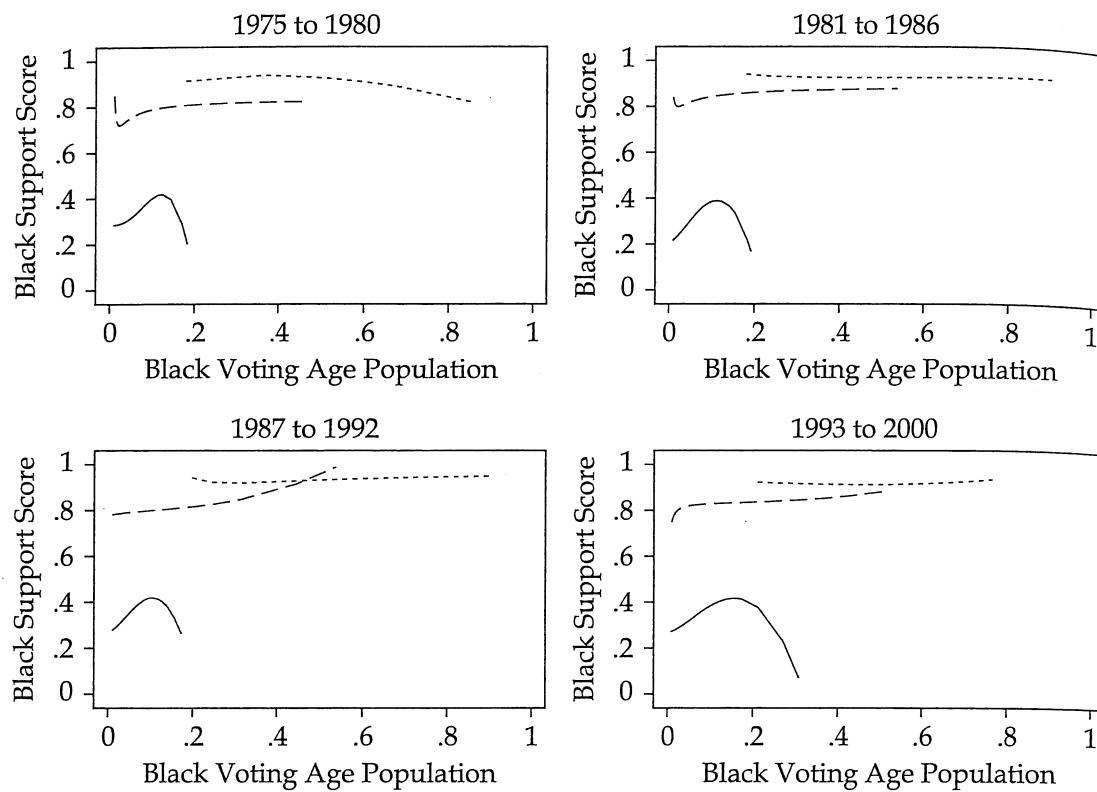


Source: Authors' compilations.

Note: ---- Black Democrat, - - - White Democrat, — Republican.

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FIGURE 4.10 / Black Support Scores for Different Types of Representatives, Nonsouthern States



Source: Authors' compilations.

Note: ---- Black Democrat, - - - White Democrat, — Republican.

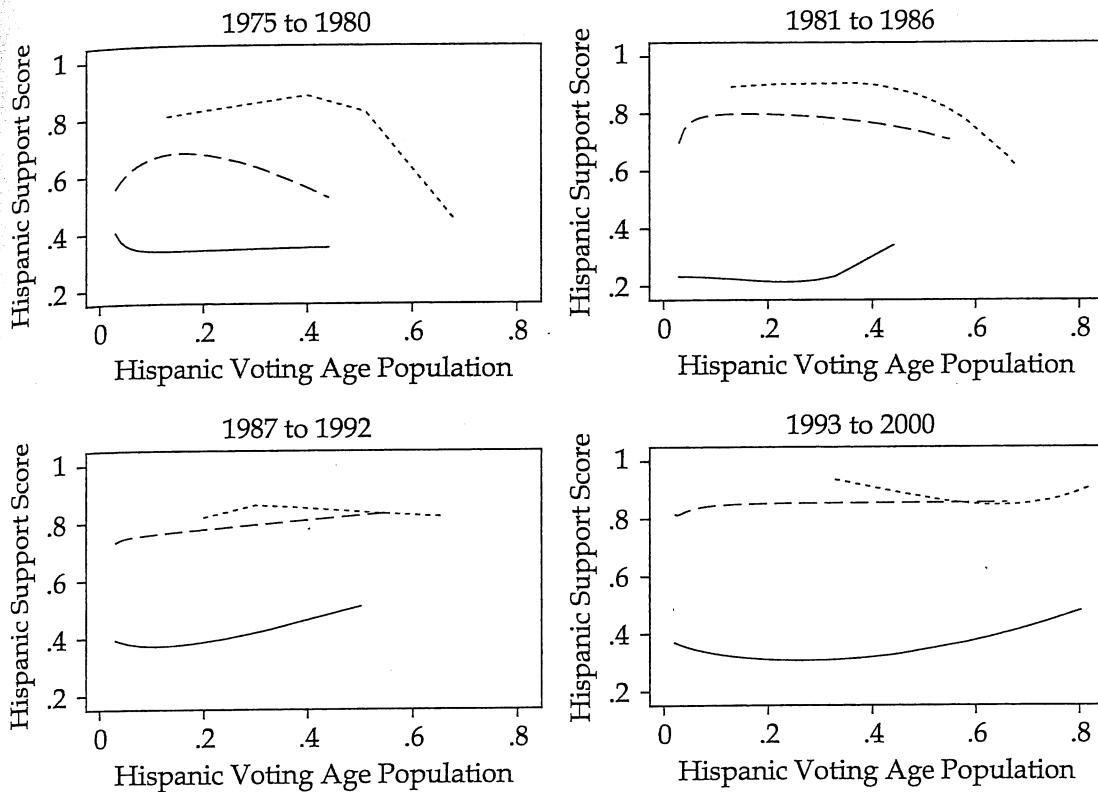
The Republicans and black Democrats have fairly constant support scores across all periods; the biggest change comes from white Democrats, whose average support scores are 45.3 percent, 52.6 percent, 59.8 percent, and 64.3 percent in the four periods, respectively. In the early part of the period studied, then, it would be more or less correct to say that white legislators of either party did a poor job of representing black interests in the South. By the end of the period, though, white Democrat support scores were significantly closer to those of black Democrats than to Republicans.

The voting patterns for representatives from districts outside the South shown in figure 4.10, again, demonstrate no such trend. White Democrats uniformly support the black Democrat position on roll calls, and Republicans do not.

Latino

In contrast to southern blacks, the evolution of Hispanic support scores in figure 4.11 is again much less dramatic. White Democrats have by and large sup-

FIGURE 4.11 / Hispanic Support Scores for Different Types of Representatives



Source: Authors' compilations.

Note: ---- Hispanic Democrat, - - White Democrat, — Republican.

ported Latino issue positions, with averages of 59.2 percent, 72.1 percent, 73.1 percent and 79.6 percent in the four periods. Note too that Latino Democrats themselves are a bit less cohesive than blacks are: their average Hispanic support score is 84.0 percent, against average black support scores of 91.2 percent for black Democrats.

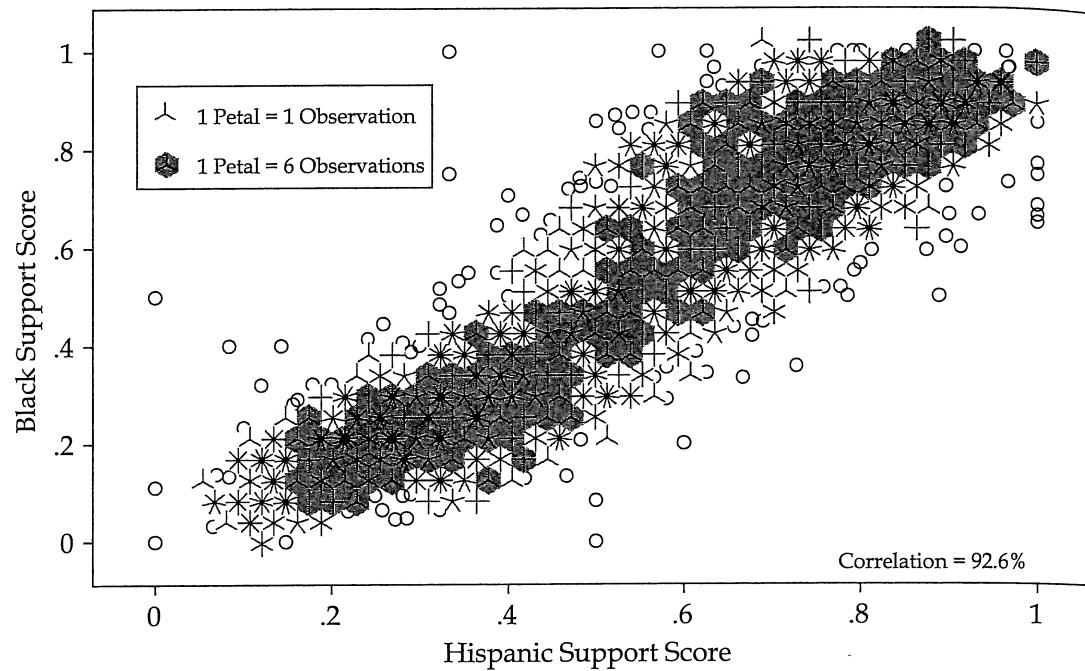
Complementarities

These observations raise questions of complementarities; that is, the degree to which Latino and black support scores coincide. To begin with, figure 4.12 shows a "sunflower" plot of members' Hispanic and black support scores. It is clear that the two correlate highly: specifically, at 92.6 percent.

Looking at cross-minority support, black Democrats vote for Hispanic-favored legislation at the same rate as Hispanic Democrats. On the other hand, Hispanic Democrats trail the average black Democrat in supporting the black-preferred position on roll calls, though this gap has been closing over time. It is also interesting to examine the relative positions of black and Hispanic Democrats in the

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FIGURE 4.12 / Black and Hispanic Support Scores, 1975 to 2000



Source: Authors' compilations.

spectrum of all Democratic representatives. Figure 4.13 uses first-dimension Poole and Rosenthal DW-Nominate scores to place each representative on a general liberal-conservative scale, with lower scores indicating that the member has a more liberal voting record.

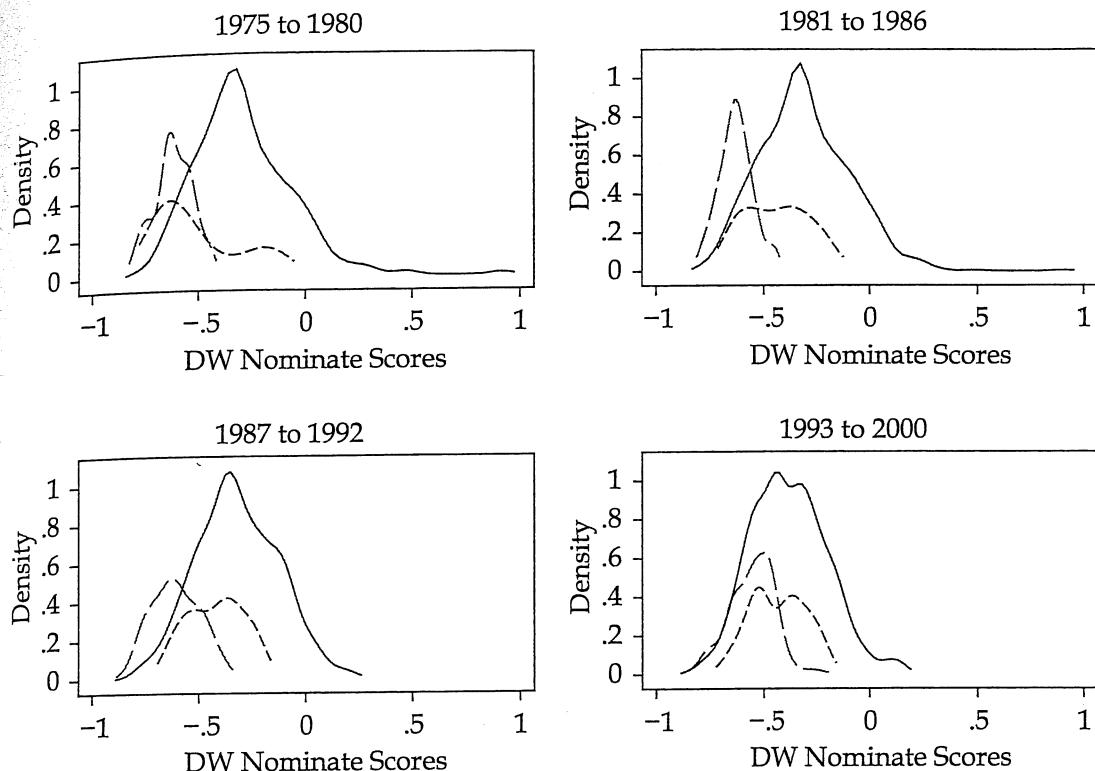
Although both groups start at the liberal fringe of the Democratic party, first the Hispanic Democrats, and more recently black Democrats as well, have drifted more toward the middle of the party's mainstream. This may be partially due to the moderation of these members, but it is mostly due to the fact that Congress is polarizing in general, with all Democrats becoming relatively more liberal in their votes.

MAXIMIZATION

We now turn to the question of how one would draw districts to maximize either descriptive or substantive minority representation. If these are the same, then we can conclude that no trade-off exists between these two objectives; otherwise there is a trade-off.

To begin with, we define the "hazard rate" as the increase in the number of Republicans elected as one creates more and more majority-minority districts. This serves as a proxy for the costs in terms of substantive representation of

FIGURE 4.13 / Relative Position of Black and Hispanic Democrats



Source: Authors' compilations.

Note: ---- Hispanic Democrats, - - - Black Democrats, — All Democrats.

increasing minorities' descriptive representation. Trade-offs between the two types of representation, then, are associated with high hazard rates.

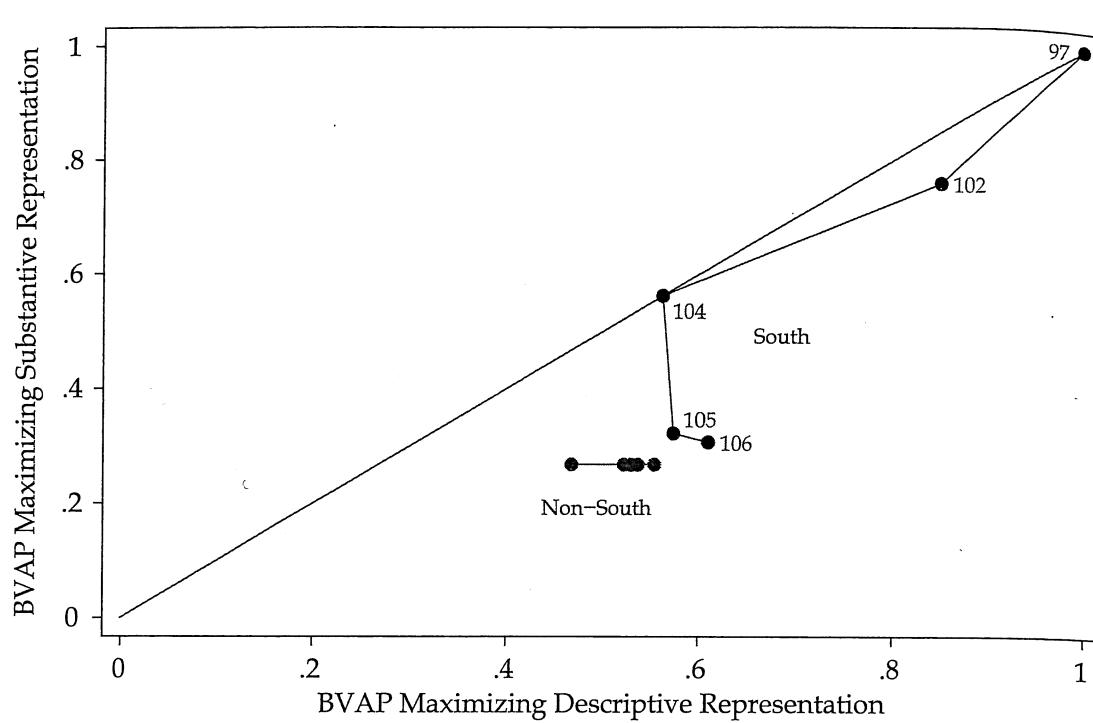
Black Voters and Representation

The trends in section 2 established that, over the period studied, the hazard rate for electing Republicans in the South rose significantly, especially at low levels of BVAP. At the same time, black candidates found it easier to gain office, with the point of equal opportunity falling significantly below 50 percent BVAP by the year 2000. And the relative penalty for electing a Republican as opposed to a white Democrat rose as well: at first there was not much to choose between different types of white representatives, but by the end of the period white Democrats took roll call positions significantly more friendly to blacks' point of view than Republicans did.

We calculated optimal concentrations of black voters to maximize both descriptive and substantive representation for a state with an overall BVAP of 25 percent, and present the results in figure 4.14.¹⁰ Each point in the graph represents a region and congress. The horizontal axis gives the BVAP that maximizes descriptive repre-

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FIGURE 4.14 / Maximizing Black Representation, 1974 to 2000



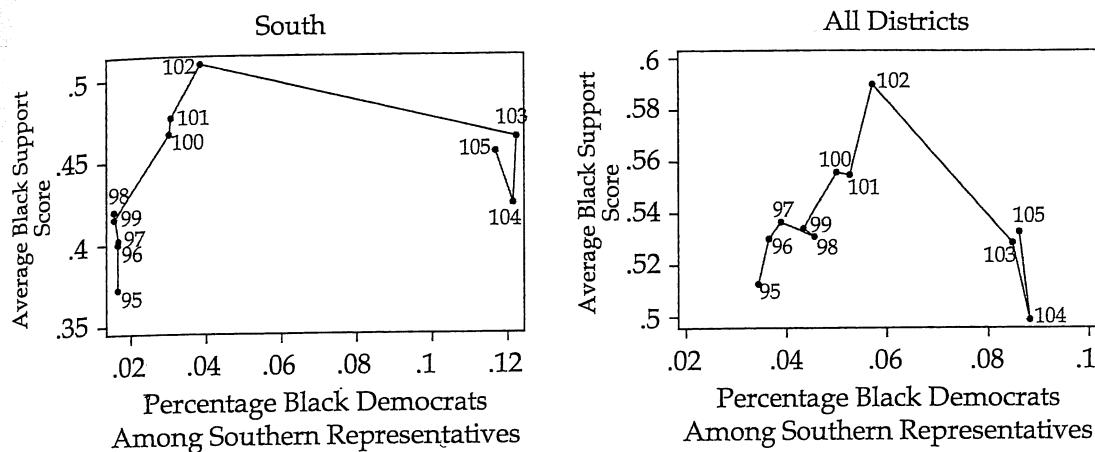
Source: Authors' compilations.

sentation (the expected number of black candidates elected to office), and the vertical axis, the BVAP that maximizes substantive representation (the average black support score). Also shown is a 45-degree line. If there is no descriptive-substantive trade-off, then points would fall on this line, indicating that the same concentration of minority voters maximizes both objective functions. Points that fall below this line indicate that one would concentrate black voters more heavily to maximize the number of black representatives elected to office, as opposed to maximizing legislative support in Congress.

Beginning with states outside the South, the recipe to maximize substantive representation has always been to spread black voters out evenly across all districts; hence, all these points lie on the 25 percent mark on the vertical axis. Maximizing descriptive representation always entails greater concentrations of black voters, with the exact number ranging between 40 percent and 60 percent. The story is much the same if we were to look only at eastern states, except that descriptive representation is maximized at higher levels of BVAP (from about 50 percent to 70 percent, depending on the Congress), due to the fact that a number of liberal white Democrats still represented heavily black districts in the East throughout the period.

The most interesting result comes with the southern districts. Until the 104th Congress (1995–1996), the maximization points fall almost exactly on the 45-degree line, indicating that the same districting strategies maximized both substantive and descriptive representation. The degree of concentration did change over time, from

FIGURE 4.15 / Emergence of Pareto Frontier



Source: Authors' compilations.

near 100 percent in the mid-1970s to about 58 percent in the mid-1990s, but the two numbers tracked each other almost exactly.

Now, however, substantive representation is maximized by constructing districts with only about 33 percent BVAP, whereas descriptive representation is still maximized at about 57 percent. Thus a sharp difference between the two objectives has emerged in the past decade, due mainly to increased Republican success in southern congressional races.

This discussion implies that a Pareto frontier has emerged, to use the language of economics. Whereas before gains in substantive and descriptive representation went hand in hand, that is, an increase in one should now come at the cost of some decrease in the other. We examine this possibility by simply graphing the actual levels of descriptive and substantive representation for both the South and the nation as a whole during our sample period. The results are given in figure 4.15.

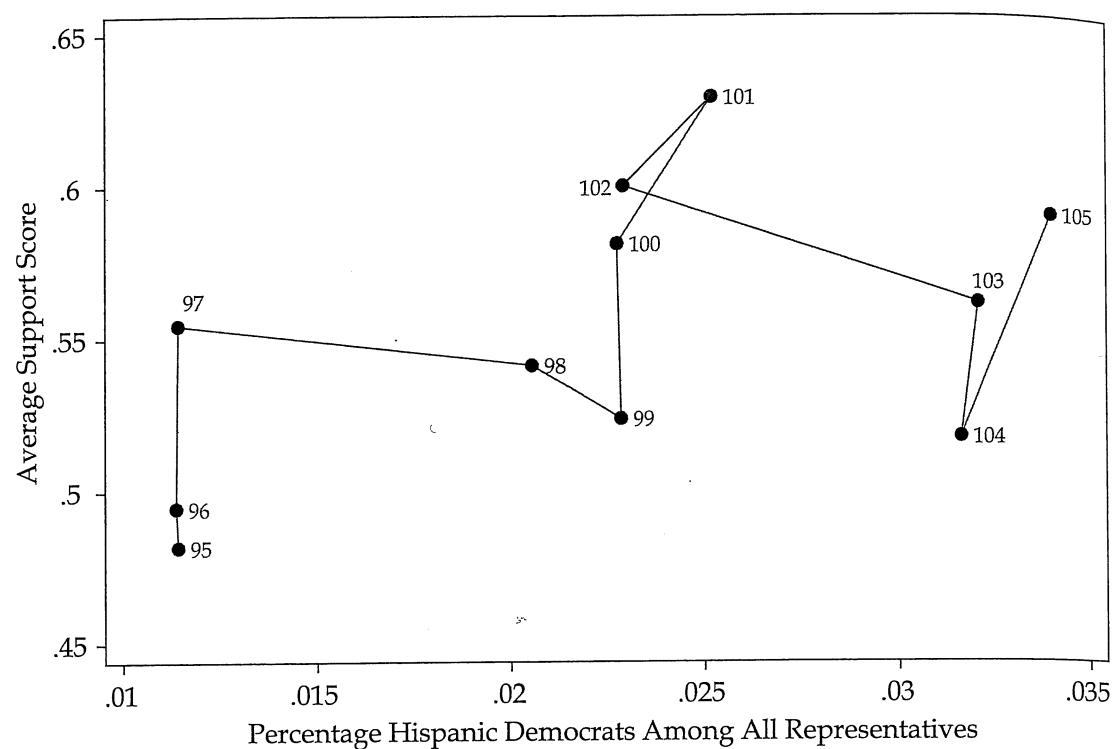
As indicated, a frontier does seem to be emerging at both the regional and national levels. Until the 102nd Congress, blacks made solid gains in both types of representation almost every election. But since that time, gains in descriptive representation have come at the expense of substantive representation. It is important to note, by the way, that the first Congress for which this is apparent is the 103rd, which was the Congress immediately after the 1990s redistricting, but before Newt Gingrich's Republican Revolution in the 1994 midterm elections. These figures, then, give much direct evidence in favor of the proposition that we are now living in a world of trade-offs.

Latino Voters and Representation

Again, the patterns for Latino maximization differ from those for blacks. Descriptive representation throughout the period is maximized at 80 percent HVAP, whereas

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FIGURE 4.16 / Hispanic Substantive and Descriptive Representation, 1974 to 2000



Source: Authors' compilations.

substantive representation is maximized by an equal distribution of voters across districts. Thus the trade-off between these two objectives has been larger than for black representation.

Interestingly, the summary of actual descriptive and substantive Hispanic representation in figure 4.16 yields a stair-step pattern. First the average Hispanic support scores increase, as in the 95th through 97th Congresses, the 99th through 102nd, and 103rd to 105th. Then the levels of Hispanic descriptive representation increase, causing a decline in levels of substantive representation, as between the 97th and 99th and 102nd to 103rd. Then the increasing overall support begins again.

Another way to describe these patterns is as a ratchet effect: each type of representation increases at each interval, leading to higher levels of both over time. We see a moving frontier; there are trade-offs in representation but the terms of these trade-offs have moved in a positive direction.

CONCLUSION

The goal of this chapter was to review trends in the representation of minority interests from 1974 to 2000. We examined changes in the electability of black and

Hispanic representatives and their support on roll call votes in Congress. We also investigated the question, crucial for current debates over the impact of the Voting Rights Act, of whether a trade-off exists between these two goals. We found that, with the single exception of blacks in the South before the 1990s, this trade-off does exist for both black and Latino representation.

Regarding electability, we found that it used to be more difficult for blacks to win office in the South than in other regions. Now, however, the electoral patterns are nearly indistinguishable. As for Hispanics, it is always been relatively difficult for them to gain office, with no trends whatsoever apparent over the period studied.

On substantive representation, again, only blacks in the South early in the period showed a significant gap in voting patterns between white Democrats and minorities. Republicans, on the other hand, are uniformly unsupportive of minority-preferred policies.

This fact, coupled with the rising hazard rate of electing Republicans means that majority black districts are no longer optimal to maximize black substantive representation in the South. As for blacks outside the South and Hispanics in all regions, majority-minority districts have always been the key to electoral success but are never effective in securing the greatest number of votes for minority policy positions.

NOTES

1. The plan passed with the concurrence of forty-four out of the forty-five black state legislators.
2. Southern states are Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia. Eastern states are Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and West Virginia. "West" indicates all other states.
3. It might be argued that these patterns are in fact due to the creation of majority-minority districts in the South, skewing the results toward the election of fewer black representatives overall. However, a simple regression analysis shows that, even with this factor taken into account, the regional coefficient on the South is still negative and significant, indicating that, indeed, it is harder to elect black representatives in the South than elsewhere.
4. The research supporting these findings is summarized in Richard Pildes (2002).
5. These include Tucker and Millender-McDonald from the CA 37th, Charles Rangel from the NY 15th, and Maxine Waters from the CA 35th.
6. These were Badillo and Garcia, both from the NY 21st.
7. This was Millender-McDonald in the election to the 106th Congress. At this point she was an incumbent, having first been elected from a district with nearly equal black and Hispanic populations that had changed demographically during the 1990s.

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8. We also calculated support scores taking into account the degree of unanimity among the minority representatives; this variant had only a minimal impact on our final results.
9. The lines in the graphs were generated using Stata's fpfit command.
10. The algorithm for these calculations is given in Charles Cameron, David Epstein, and Sharyn O'Halloran (1996).

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