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FOCUS

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POLITICAL TRENDLETTER®

Perspective

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Registration Reform Can Expand the Electorate

As we approach the 25th Anniversary of the Voting Rights Act of 1965, celebrate the release of Nelson Mandela in South Africa, and salute the sweep of democracy through central and Eastern Europe, it is fitting that our own Congress is now considering major reforms to make voter registration more accessible to all Americans. On February 6, 1990, the U.S. House of Representatives passed H.R. 2190, the National Voter Registration Act, with bipartisan support, by a comfortable margin of 289 to 132. A similar bill, S. 874, is pending in the U.S. Senate.

The House bill, affecting only federal elections, contains a "motor voter" provision that allows automatic voter registration when individuals apply for or renew their drivers' licenses. It also would make registration by mail (currently allowed in only half the states) possible in all states and would provide for agency-based registration. The bill would prohibit a practice now allowed in most states, namely purging the rolls of citizens who did not vote in the prior general election. However, states would be required every four years to transfer the names of voters with unverified or inaccurate addresses to an inactive list (but not completely off the rolls).

Proponents of reform argue that many registration systems have served as barriers to voter participation. They maintain that the reforms contained in H.R. 2190 would result in a significant rise in registration rates nationally.

The bill's opponents are concerned about the additional administrative costs of changing current state systems to accommodate new federal procedures. They also cite expanded bureaucracy, the infringement of states' rights to regulate the voting process, and the potential for fraud if the reforms are adopted. But supporters of the bill assert that several states have already instituted efficient, cost-effective registration procedures like those contained in H.R. 2190 with no reported growth in voter fraud.

The National Coalition on Black Voter Participation and its member organizations support the legislation as a step in the right direction, while recognizing it is not a panacea for nonvoting behavior. Mail registration forms that are valid statewide could reduce the number of confrontations between black citizens and biased or recalcitrant registrars as well as lessen the reliance on special deputy registrars to reach unregistered blacks.

Nevertheless, some advocates for minority voters are concerned that while H.R. 2190's "motor voter" provision would succeed in adding middle-class voters to the rolls, its mandatory purge provisions could remove large numbers of low-income citizens who, compared to the general population, vote less often, move more frequently, and are less likely to possess a driver's license.

Therefore, it is important that the bill's mandatory agency-based provisions extend beyond motor vehicle departments to include other state agencies, including welfare offices, public schools, and libraries, that directly serve minority communities. Furthermore, we could not support a registration reform bill that could be interpreted as superceding or limiting any provisions of the Voting Rights Act of 1965, as amended.

The road ahead for reform legislation will be rocky. The Senate bill has yet to generate significant bipartisan support, and the Bush administration has raised the issues of costs and fraud while hinting at a presidential veto. This is unfortunate. At a time when citizens around the world are acknowledging the vitality of democracy, it would be ironic indeed if the Bush administration and members of Congress opposed reasonable efforts to expand the electorate and thereby strengthen democracy in our country. ■

Eddie N. Williams, president of the Joint Center, Sonia R. Jarvis, executive director of the National Coalition on Black Voter Participation, Inc.

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Virginia's Son Celebrates Freedom

America's First Elected Black Governor Envisions a Crime-Free Future With Accessible Education and Affordable Housing

by L. Douglas Wilder

Editor's Note: Following is the inaugural address Governor L. Douglas Wilder delivered on January 13, 1990, at the state capitol in Richmond.

We gather here today for what is both a culmination and a continuation of the democratic process. Four years ago, I stood on this spot to assume the second-highest office in the commonwealth. Today, because of your faith in our efforts, I stand before you as chief executive of this state. And now—in keeping with the sanctioned privilege extended to all governors—it is my honor to address the people of this commonwealth, and to express to my fellow citizens the profound gratitude and deep sense of purpose that I feel in fulfilling your expectations.

Candor and honesty would have me admit to you that I was not blessed with the foresight to know that this moment was in the offing when I stood here in 1985. Having been tested in the political crucible of trial and cross-examination, I have been rendered a verdict by having had delivered unto me the greatest outpouring of votes ever accorded any candidate for this great office. For that, I shall be eternally grateful. And—be assured—I shall demonstrate that gratitude during the next four years by being a governor who will be beholden to but one special interest: the welfare of Virginians, all Virginians.

But my gratitude is not of such recent origin. It is said, "To whom much is given, much shall be expected." I will be the first to admit that I have been the beneficiary of much through no endeavors of my own. While I have indeed worked hard and performed to the best of my abilities, I have also had a few breaks along the way.

Indeed, in every walk—in every period of my life—there have been many more deserving and justly entitled to the fruits that wholesome opportunities present. And yet, for many, those chances never came and the bell of fulfillment never tolled for them. Providence indeed has directed my course. And I shall remain ever mindful of my good fortune.

In recent years, Virginia too has been blessed with good fortune. The progress and the prosperity we have enjoyed during this period has enabled us to reclaim the respected achievements of times past. In looking to our accomplishments in education, economic development, the environment, employment, housing, or transportation, we find that Virginia ranks among those states in the vanguard of forward-looking movement.

Not surprisingly, the ensuing pride in seeing our state climb in rank among our sister states in the nation and in preeminence among the Southern states, causes Virginians everywhere to feel good about our cause, our mission, and our success in forging Virginia's New Mainstream.

The commitment to looking ahead and not behind—of building rather than destroying; of bringing people together rather than pitting them against each other—also calls for me to address you with measured sobriety in facing conditions in the commonwealth today, and I will comment further in that regard when I address the General Assembly on Monday.

But for this moment, let me assure you that I do not intend to participate in bringing to a halt the momentum to which people of Virginia have grown accustomed, supported and enjoyed. Cicero, in parting observation, noted that "A commonwealth is not any collection of human beings...but an assembly of people joined in agreement on justice and partnership for the common good, and a community where civility must reign and all must live peacefully together." And we know what happened to Cicero's Rome, which could not pass on the heritage of its past to the people of its future. But we have done so; we can do so. And we shall do so. . . .

At this time—and in the place where so many great names in American history have trod—we renew this celebration of freedom in the full and certain knowledge that with it comes great responsibility. Without question, much tighter economic times which loom in the days ahead will test to the fullest our ability to make hard decisions, to lead, and to govern. But progress will be possible. Opportunity can be expanded. Freedom can be increased.

Resources employed in the past for the finer things in life can be—and will have to be—deployed for the more serious of our needs. For we know that freedom is but a word for the man or woman who needs and cannot find a job. Freedom—as it has been written—is a dream deferred when it "dries up like a raisin in the sun, and stinks like rotten meat."

Freedom is meaningless when a woman's right to choose is regulated outside the dictates of her own faith and conscience. Freedom is impotent when there is intolerance to those who hold moral and political beliefs different from our own. Freedom is restricted when labor and management cannot reach agreements. Freedom is impossible for the uneducated who try to live in today's complex world. Freedom is restrained for business and industry

when our network of transportation is allowed to deteriorate. Freedom for the police is denied when their resources are unduly limited. Freedom for the people is assaulted when lawful authority is abused. Freedom for the next generation is mortgaged when we destroy our environment. And—as has been proven throughout recorded history—freedom is nowhere to be found when the people are overtaxed and over-regulated.

As we salute the idea of freedom today, let us pledge to extend that same freedom to others tomorrow. Let us fulfill the perfect promise of freedom and liberty left as a legacy for us by those who founded this commonwealth. And let us likewise be thankful that—while our country gave birth to a freedom long denied and delayed for all who loved freedom—the belief in these dreams held by those forebears was passed from generation to generation, and spawned the seeds that propagated the will and the desire to achieve.

We are on hallowed ground today, and the steps we take from this place must be steps of honor. The words we issue must be words of wisdom. The laws we pass must be laws of mercy and justice. And the faith we possess must be true to the Almighty. In meeting these challenges—and they will be difficult—I ask your help and that of God.

I do not shrink from the enormity of the task. In six million Virginians, there is endless courage and enormous strength—in the coming years, we will need it all. As we all know, as complexities of human relationships increase, the power to govern them also increases. The proper use of that power must always be subordinated to the public good, and that shall be uppermost in the hearts and minds of those to whom those powers are justly delegated by the people.

We shall not pause; we shall not rest upon laurels. For we have not fulfilled our destinies. In the coming years, we must persist and make every citizen of our commonwealth the subject of our interest and concern. We must insist that every agency of our government utilize every proper and effective instrument to carry out the will of the people—for, as with any democracy, the will of the people is supreme.

An administration can only be effective when it works for the people, all of the people. Our prosperity can continue only if our leaders and private citizens alike stay constantly advised of all of the relevant facts. In turn, we can expect to receive your support—as well as your constructive criticism—when you receive true information from those of us who serve as your trustees.

I am undaunted by that which lies ahead, as we have shown at other points in our history what we can accomplish when we fearlessly face the future. We have—and we shall—shun the defects of destruction, and shall work to achieve the highest degree of improvement in our status of which we are capable. We have a common concern, and we share the responsibility.

I see a Virginia of hope and happiness, of mothers and fathers building and nurturing families in those hearthstones where the cradle of childhood is rocked with wholesome expectation for the future—a future in which an education is within intellectual and financial reach; a future in which adequate and affordable housing is possible; a future in which nothing is impossible. I see a place where crime is not only reduced and our streets and neighborhoods are safe, but the root causes thereof—illiteracy, poverty, joblessness—are stamped out. I see a Virginia where the homeless can find shelter, where hunger cannot and does not stalk those unable to fend for themselves.

We must set priorities in the coming years. Specifically, we must be partners in working toward a revived economy—a healthy and thriving economy that provides equal opportunity for all Virginians. While the flow may have slowed, Virginia's New Mainstream is far from drying up. It shall be the task of this administration to ensure that a rising tide of prosperity and opportunity is possible in the future.

Some describe conditions in our commonwealth today in dismal terms. And yet, one must question the resolve and the reserve of those who are not called upon to make sacrifices greater than those who have preceded us. Despite our economic slowdown, we are living in the best of times. And they can be even better. And they will be better.

If you will forgive me a moment of nostalgia, we mark today not a victory of party or the accomplishments of an individual, but the triumph of an idea—an idea as old as America, as old as the God who looks out for us all. It is the idea expressed so eloquently from this great commonwealth by those who gave shape to the greatest nation ever known: Jefferson, Madison, Mason, and their able colleagues.

The idea that all men and women are created equal, that they are endowed by their Creator with certain inalienable rights: the right to life, liberty, and the pursuit of happiness. The idea that shows forth in the concepts of freedom and opportunity—not only in Virginia, but more recently in the fresh, new winds of Eastern Europe and the tumult of Panama.

If these words about freedom are to be heard at all today, I hope they will be heard by the young people of this Commonwealth. I want them to know that oppression can be lifted; that discrimination can be eliminated; that poverty need not be binding; that disability can be overcome; and that the offer of opportunity in a free society carries with it the requirement of hard work, the rejection of drugs and other false highs, and a willingness to work with others whatever their color or national origin.

We have come far, but we have far to go. We have done much, but we have much to do. I ask for your energy, for your understanding, for your dedication, for your patience and, yes, for your prayers.

Four years ago, I said to the people of Virginia that I was proud to be a Virginian. I did not think then that my pride could possibly be greater. And, in theory, it isn't. But in reality, that pride does burst forth, and lifts my voice and my spirit to proclaim, "I am a son of Virginia."

I thank you all. And may God be ever with us. ■

February 1990

JCPS

POLITICAL TRENDLETTER®

Inside This Issue:

- **Congressional leaders introduce legislation to restore judicial protections from employment discrimination that were struck down by the Supreme Court**
- **Federal Communication Commission policies which foster minority ownership of broadcast stations will be reviewed by the Supreme Court**
- **Wisconsin Governor Thompson seeks to set up a two-tier welfare system whereby recipients arriving from other states may not receive the Wisconsin rate for welfare until after living there for six months**
- **Across the Nation looks at a mayoral election in Oakland, California, and congressional contests in New Mexico and North Carolina**

A Rights Bill to Overturn High Court Rulings

On February 7, The Civil Rights Act of 1990 (CRA 1990) was introduced in both houses of Congress. The measure is primarily aimed at reversing last June's Supreme Court rulings that seriously limited the protections available to victims of employment discrimination under civil rights laws (see July 1989 *Focus*, "The Reagan Court: Turning Back the Clock"). The chief sponsors of the two identical versions of the bill, H.R. 4000 and S.2104, are Rep. **AUGUSTUS HAWKINS** (D-Calif.) and Sen. **EDWARD KENNEDY** (D-Mass.). They chair the congressional committees responsible for legislation involving discrimination in the workplace. Launched with strong bipartisan support, the legislation presently has 122 cosponsors in the House and 38 in the Senate as well as the backing of major civil rights groups.

"This legislation is necessary to prevent a retreat from the goal of equal justice and equal opportunity for all our people," says Hawkins. "For more than a quarter century, Congress, the courts, and a consensus of the American people have marched together toward that goal. Last year, the nation's highest court broke ranks with that democratic ideal and broke faith with that national commitment."

The main provisions of the Civil Rights Act of 1990 follow.

Discrimination and Racial Harassment on the Job

In *Patterson v. McLean Credit Union*, the Supreme Court upheld the principle that a statute enacted in 1866, known as Section 1981, bans intentional race discrimination in the making of contracts. The Court ruled, however, that Section 1981 does not apply to the terms and conditions of the contract while the employee is on the job. As a result, an employee who had been insulted, harassed, or assigned demeaning work because of his or her race is left with no redress in the courts. The CRA 1990 would counter this by amending the original statute to reaffirm the rights of employees to enjoy all benefits, privileges, terms, and conditions established in employment contracts.

Burden of Proof to Shift Back Onto Employer

In *Wards Cove Packing Co. v. Atonio*, the Supreme Court overruled an 18-year precedent set in its unanimous *Griggs v. Duke Power Co.* decision. *Griggs* ruled that under Title VII of the Civil Rights Act of 1964, the burden of proof was on employers—rather than affected workers—to prove that employment practices which have the effect of disproportionately excluding minorities or women in hiring or promotions were required by business necessity. The Court's *Ward Cove* ruling shifted the burden of proof onto employees, saddling victims of discrimination with the difficult and expensive task of proving that their employer's practices are unjustified. The Civil Rights Act of 1990 would restore the *Griggs* rule.

Limits on After-the-Fact Challenges to Court Orders

In *Martin v. Wilks*, the Court allowed white fire-fighters to challenge a Birmingham, Alabama, consent decree which had established an affirmative action plan for municipal workers, even though the fire-fighters had not challenged the plan while it was being litigated. The CRA 1990 would strictly limit separate, after-the-fact challenges

while ensuring that anyone who might be adversely affected by a proposed court order would be notified immediately and would have an opportunity to challenge it.

Other provisions of the CRA 1990 would reinforce the principle that employment discrimination under any circumstances is illegal, and amend Title VII of the Civil Rights Act of 1964 to afford women as well as religious and ethnic minorities the same rights as racial minorities to recover money damages for harassment on the job. The bill would specifically leave affirmative action laws and regulations unchanged, however, and would not address the issue of racial quotas.

The proposed legislation is on a fast track in both bodies of Congress, with House and Senate hearings scheduled to begin this month. Meanwhile, a struggle over the bill is developing between Congress and the White House. The Bush administration, which initially argued that no corrective action was warranted by the Court's June rulings, has been prompted by the Hawkins-Kennedy initiative to put forward its own bill drafted by the Justice Department. The administration bill deals with the *Patterson* case and with the High Court's *Lorance v. AT&T Technologies* decision, which limits the time frame in which discrimination charges may be brought against a seniority system. Testifying before Rep. Augustus Hawkins' Education and Labor Committee on Capitol Hill in February, Deputy Attorney General DONALD AYER asserted that the administration's bill is adequate because *Wards Cove, Martin v. Wilks,* and other Supreme Court decisions of last June should remain intact.

Reaction from the civil rights community was sharp and immediate. BENJAMIN HOOKS, head of the NAACP and chair of the Leadership Conference on Civil Rights (LCCR), rejected the administration's bill as a half measure. LCCR, a broad, national coalition of organizations, last year led the effort to block the administration's nomination of **WILLIAM LUCAS** as assistant attorney general for civil rights. It strongly supports the Hawkins-Kennedy bill and is certain to resist any attempts to dilute or delay the measure.

High Court to Review FCC's Minority Programs

After the Supreme Court ruled last year in *City of Richmond v. J.A. Croson Co.* to sharply narrow the allowable justifications for local and state minority business set-aside programs, many observers predicted it would soon begin overturning federal minority business programs as well. They may turn out to have been right. Last month the Court agreed to review two cases during this session—*Metro Broadcasting Inc. v. Federal Communications Commission* (FCC) and *Astroline Communications Company v. Shurberg Broadcasting*—in which two of the FCC's three policies on minority licensing and ownership of broadcast stations have been called into question. Observers are waiting to see if the Supreme Court will agree with an appeals court panel which last year ruled one of the FCC policies unconstitutional on the basis of *Croson.*

The FCC's comparative licensing policy, established in 1973 in response to an appeals court mandate, considers the minority make-up of applicant firms as one of several factors during hearings to award licenses for new television and radio channels. A second policy, known as the distress sale policy and established in 1978, applies only to the sale of existing stations threatened with losing their licenses. Under this policy, stations are allowed to sell their facilities at 75 percent of market value if the purchaser is a minority firm.

The comparative licensing policy was upheld last year by the D.C. Circuit Court of Appeals, but will be reviewed by the Supreme Court in the *Metro* case. A different panel of the same appeals court, however, last year ruled against the distress sale policy, a decision that will be reviewed in the *Astroline* appeal. As yet unchallenged is a third FCC policy, also begun in 1978, which grants favorable tax status to the sale of any station to a minority buyer. All three policies were established after the courts and Congress found that the sale and transfer of broadcast stations were being tightly controlled by an old-boy network of white male executives.

The *Metro* case has grown out of the appeals court decision that the FCC was justified in denying Metro Broadcasting Inc. a license to operate a new UHF television station in Orlando, Florida. The FCC awarded the license instead to Rainbow Broadcasting, a firm which it found to be Metro's equal in background and experience but superior in its minority representation. Rainbow is owned by three Hispanics, two of them women, while all but one of Metro's nine male owners are white. Because the minority make-up of license applicants is only one of several criteria the FCC considers when reviewing requests for station licenses, the appellate panel concluded that the review policy is consistent with the flexible approach to affirmative action upheld by the Supreme Court's 1980 *Fullilove v. Klutznick* ruling. Unlike the Richmond set-aside program that was struck down by *Croson*, the federal set-aside program upheld by *Fullilove* did not use fixed numerical remedies.

However, in an apparently contradictory ruling by the same D.C. appeals court, a different judicial panel ruled that *Croson* does disqualify the FCC's distress sale policy as unconstitutional. The distress sale case arose when **ALAN SHURBERG,** who is white, challenged the FCC's rejection in 1984 of his request for a license to run WHCT-TV, a station in Hartford, Connecticut. The station's then-owner, Faith Center, was faced with having its li-

cense revoked by the FCC. Faith Center was allowed to make a special distress sale to minority-owned Astroline Communications Company, whose general partner, **RICHARD P. RAMIREZ,** is Hispanic. The appeals court ruled in favor of Shurberg, concluding that the FCC's distress sale policy was "not narrowly tailored to remedy past discrimination or to promote programming diversity," an echo of the *Croson* ruling.

Congress has always supported the FCC minority policies, voting in the last three years' appropriations bills to bar the FCC from changing the policies which in 1986 it announced it would consider doing. The Bush administration at first supported keeping the policies, joining the FCC in a court brief last autumn that defended their use. But on February 9, 1990, the Justice Department, acting independently from the FCC, made clear it was returning to the Reagan White House's position, urging the Supreme Court to overturn the minority licensing policy. The administration is expected to issue a follow-up brief urging that the distress sale policy be overturned as well. "The Justice Department did a flip-flop on the FCC's policies," says JAMES WINSTON, executive director of the National Association of Black Owned Broadcasters, "which shows that this is not about law but about politics. The Justice Department's last brief leaves the impression that President Bush's promise of a 'kinder, gentler nation' is not being born out in his concern for minorities."

However the Supreme Court decides these cases, minority ownership in broadcast stations remains very low, accounting for fewer than 300 (2.6 percent) of the 11,500 commercial radio and television outlets now in operation. Out of roughly 9,000 licenses issued since 1978, only 38 have come into minority hands through distress sales. By contrast, the FCC's minority licensing and tax policies, which still stand, are often cited as responsible for much of the growth in minority ownership, including the dramatic increases that took place between 1976 and 1981. According to Winston, the number of black-owned radio stations grew nearly five-fold during those five years alone, from 30 to 141. Although the FCC's tax policy is not now being challenged, a negative ruling by the Supreme Court could lead to its dissolution as well. Few people would argue that the old-boy club of white male media executives has afforded many opportunities to minorities over the last two decades. In Senate testimony on the issue last September, Winston observed that without the FCC's tax policy, "minority purchasers might as well disconnect their telephones, because they will never get another call to purchase a station."

Wisconsin Tries for Two-Tier Welfare

Wisconsin's Republican Governor TOMMY THOMPSON is seeking to establish an unprecedented two-tier welfare system that would no longer pay recipients who have relocated from other states the Wisconsin welfare rate on their arrival. Until they have remained in Wisconsin for six months, these "welfare migrants" would receive Aid for Families with Dependent Children (AFDC) payments at their home state's rate. No other state has attempted such a measure before now.

In 1986, Governor Thompson won election by focusing much of his campaign platform on the migrant welfare issue. The governor's critics charge that his plan is primarily aimed at keeping out welfare recipients from Illinois, which borders Wisconsin and pays AFDC families about $150 less per month than Wisconsin.

Thompson proposes to start the two-tier system as an experiment in three or four Wisconsin counties bordering Illinois. If it proves successful there, he would seek to establish it statewide. In order to move forward with the plan, he must first secure a waiver from U.S. Department of Health and Human Services (HHS) regulations. Then he would have to convince the Wisconsin legislature to pass enabling legislation. So far, the governor's lobbying of HHS to gain the Department's waiver has proved fruitless. Thompson has enlisted the support of an unlikely ally in **JOSEPH STROHL,** a Democrat and the majority leader in the state senate who has promised to back legislation establishing a two-tier system. Some local observers see Strohl's involvement as a way of positioning himself for an election challenge against Republican U.S. Senator **ROBERT KASTEN** in 1992.

Thompson has turned Wisconsin into what some are calling a "welfare battleground." In 1987, he cut the state's AFDC budget by six percent, and for the last three years he has slapped a freeze on any funding increases for the program. He has also instituted a controversial "Learnfare" program, in which a family's AFDC payments are entirely cut off if a child from the family fails to attend school. About 2,200 families are sanctioned each month under Learnfare, more than three-fourths of them in Milwaukee. As for the two-tier plan, "it means malicious welfare bashing" says black state Senator GARY GEORGE, cochair of the Wisconsin legislature's powerful Joint Finance Committee. "The plan is racially motivated because it's designed to discourage blacks from moving into the state from Illinois," says George. His district encompasses the predominantly black northern section of Milwaukee which contains a large percentage of welfare recipients. George is in a strong position to block any two-tier welfare bill because such a measure would go before his committee. The senator is not alone in opposing the Thompson plan. A coalition of church groups, social advocacy organizations, the state legal services program, and the Milwaukee public school system all oppose it and have threatened court action if it is enacted.

Across the Nation

CALIFORNIA: After serving three terms as mayor of Oakland, LIONEL WILSON, 74, will face serious opposition in his 1990 bid for reelection. Five black challengers—all Democrats—have entered this year's mayoral race to unseat the city's first black chief executive. During his 13-year tenure, Wilson's only significant competition up to now had come from city council member WILSON RILES JR. who challenged him in 1985. Riles is running again this year, along with state assemblyman ELIHU HARRIS, city council member LEO BAZILE, college administrator DEZIE WOODS-JONES, and 1968 Olympic track gold medalist JIM HINES.

Local analysts view the contest as a three-way race among the mayor, Riles, and Harris. Mayor Wilson may gain from the prestige and name recognition that go with being mayor for 13 years. He is credited with having opened up City Hall to the people of Oakland after it had been dominated for years by a white power structure (47 percent of the city is black). But Wilson's three-term incumbency could prove to be a double-edged sword. Some of his former supporters, including Elihu Harris, feel Wilson has been in office too long and say it's time for a change. The mayor's advancing age—he will be 75 by the primary—may also be a factor among some voters.

Wilson Riles, often thought of as the conscience of the city council, is an advocate of affordable housing and protecting residential neighborhoods against downtown development. He also fought to have the city designated a Nuclear Free Zone. Riles has been on the council for 10 years; he garnered 31 percent of the vote in the last mayoral election, and he has built up strong name recognition.

Not as visible as either Riles or Mayor Wilson is Elihu Harris, an attorney who has served 12 years in the California Assembly. Although Harris's district takes in about 70 percent of Oakland, critics charge he has not been able to use his Judiciary Committee chairmanship to respond to his constituents' bread and butter issues. The committee has been a powerful tool for raising money, however, as Harris has raised more than the mayor and Riles combined—much of it from California's legal community.

Whoever emerges as the victor, the next mayor will have to deal with the city's continuing recovery from last year's devastating earthquake and with corruption in the city's school system. Residents of the poor black neighborhood bisected by the Route 880 bridge which collapsed during the quake are demanding that the bridge be rebuilt elsewhere. And the public school system has been scandalized by the recent arrests of 13 of the system's employees for fraud, nepotism, payroll padding, embezzlement, and theft.

NEW MEXICO: Black Democratic state treasurer JAMES LEWIS is seeking to challenge incumbent Republican STEVEN H. SCHIFF for his 1st Congressional District seat. A former treasurer of Bernalillo County (which includes Albuquerque) and university administrator, Lewis will have his work cut out for him if he is to win a seat in Congress. First, Lewis will have to defeat Secretary of State REBECCA VIGIL-GIRON, who is Hispanic, in the June 5 Democratic primary. This may not be easy since the district is nearly 40 percent Hispanic and only about two percent black.

Even if Lewis wins the primary, defeating Schiff in the general election will be difficult in a district that has voted Republican in the last four presidential elections and that returned former Republican Congressman MANUEL LUJAN (now Secretary of the Interior) to office for 20 years. Schiff's high profile as a law-and-order district attorney aided him in his 1988 race. In that race, he narrowly beat well-funded Democratic attorney TOM UDALL, the nephew of Rep. MORRIS UDALL (D-Ariz.), winning 51 percent of the vote.

Lewis believes Schiff can be beaten this year because he's a first-termer who was elected by a slim margin. Furthermore, although the state is only two percent black, Lewis has built broad coalitions. He has hooked into a network of political contacts through his membership in numerous clubs and associations, ranging from the American G.I. Forum (a mainly Hispanic organization) to the Temple Albert Men's Club (a Jewish group). As a Democrat, Lewis has been able to appeal to a broad spectrum of the electorate, including many Republicans. In fact, in his statewide election to treasurer in 1986, he even polled more votes than Republican Governor GARREY CARRUTHERS.

NORTH CAROLINA: Ever since the nasty and expensive 1984 Senate campaign, the Democratic Party has had a tough time finding candidates to challenge incumbent Republican Senator **JESSE HELMS,** whose term expires this year. In the 1984 race, Helms beat former Democratic Governor JAMES HUNT by 52 percent to 48 percent. **This year, Hunt has declined a rematch with the arch-conservative three-termer. So far, four Democrats have decided to enter the fray, including HARVEY GANTT, the former black mayor of Charlotte.**

Gantt became Charlotte's first black mayor in 1983 and was reelected in 1985. In 1987 he lost to white Republican SUE MYRICK, in a third-term bid. Before 1983, Gantt had served as a city councilman and mayor pro tem. After leaving office, he returned to Gantt Huberman Architects, a firm he cofounded in 1971.

Although no black politician has ever been elected statewide in North Carolina, Gantt's chances to win the Democratic senatorial nomination are strong. Blacks constitute 31 percent of the state's registered Democrats, and Gantt has already proven his cross-racial voter appeal (Charlotte is only 25 percent black). Given what promises to be a crowded primary field, Gantt may benefit from North Carolina's newly revised primary election law which only requires that a candidate win a 40 percent plurality to become the nominee (instead of 50 percent-plus-one to avoid a run-off election). The law is pending at the Justice Department for preclearance in accordance with Section 5 of the Voting Rights Act.

In a general election, Gantt would be helped by a high turnout among North Carolina's 23 percent black population. Helms has an abysmal voting record on civil rights, South African sanctions, funding for social programs, and other issues of importance to black Americans. In an attempt to curry favor among black voters, the senator recently hired former civil rights activist JAMES MEREDITH as an aide on his staff (see October 1989 TrendLetter). But that is unlikely to blunt black opposition. In each of his three previous elections Helms received less than five percent of the black vote.

Moreover, Gantt could do well among North Carolina's white voters. With the end of the Reagan presidency and the waning of the conservative movement, Helms' espousal of right-wing issues may no longer have the edge it had when he ran with RONALD REAGAN on the ballot in '84. Gantt, on the other hand, intends to run on issues that hit closer to home—like education, health care, reproductive rights, day care, and the drug problem. Gantt says Helms is beatable because, in his view, he is out of step with the times. "Helms is more popular with right-wing dictators than he is with voters in North Carolina," says Gantt. The voters will let us know if he's right on election day.

Court Ruling Favors Minority Set-Asides

King County, Washington, Set-Aside Program for Minorities and Women, Revised to Meet the Supreme Court's Croson *Standards, Is Upheld*

by Pamela Joshi

On December 6, 1989, U.S. District Judge William L. Dwyer handed down a decision that upheld the constitutionality of the minority and women business set-aside program of King County, Washington (which encompasses the city of Seattle). The ruling in *Coral Construction* v. *King County* is believed to mark the first time a set-aside program has been upheld by a federal court after being revised to meet the standards set by last January's U.S Supreme Court decision in *City of Richmond* v. *J.A. Croson Co.*

In the *Croson* decision, the Supreme Court overturned a Richmond set-aside program that required at least 30 percent of the dollar amount of each prime city construction contract to be subcontracted out to minority firms (see *Focus,* January-February 1989). However, the Court did not declare set-asides as such unconstitutional.

The plaintiffs in the *King County* case were the white-owned Coral Construction Company, based in Portland, and the Oregon chapter of the Associated General Contractors. Last October, the plaintiffs challenged the King County set-aside program on the grounds that it violated Coral's Fourteenth Amendment equal protection rights. Coral Construction was the lowest bidder on a $180,000 county guardrail construction contract that was awarded to an Asian-owned company instead.

Judge Dwyer, citing *Croson,* upheld the King County set-aside program because it met the Supreme Court's strict scrutiny standards for state and local minority set-aside programs. King County ensures minority and female participation in county contracting through a flexible program tailored to meet the standards established by the Supreme Court in *Croson.*

The first standard that a state or local government must meet is providing evidence of past discrimination to justify a compelling state interest in applying a remedy. This may be accomplished by providing specific incidents or practices of discrimination, by demonstrating that the local government was a passive participant in a system which practices discrimination, or through statistical evidence of underutilization of minority- and women-owned firms. (Some jurisdictions are commissioning statistical disparity studies to justify their set-asides.)

In the *King County* case, the District Court was provided evidence that contractors refused to hire minority- and women-owned businesses even when they had made the lowest bids on contracts. These businesses were also required to meet more stringent subcontracting terms than white-owned firms. Furthermore, King County was found to have been a passive participant in discrimination because it commissioned contracts from companies that practiced racial and gender discrimination.

Under the second standard set by the Supreme Court, a jurisdiction must have carefully considered race-neutral alternatives before implementing minority set-asides. King County officials had investigated other remedies, such as reducing bonding requirements and offering direct financial assistance. These could not be used because they are illegal under Washington state law.

The third standard requires minority set-aside programs to be narrowly tailored to address the identified discrimination. King County's program satisfied that standard because it was specifically based on the number of available minority firms in the relevant market.

In *King County,* the district court also had to rule on the women-owned business program, an issue not addressed by *Croson.* Historically, women-owned businesses have been subject to a much less stringent standard of review than that applied in *Croson.* In *King County,* the district court felt the women's set-aside program was based on enough evidence of past discrimination to be held constitutional.

Although the ruling in *King County* is seen as a glimmer of hope in the civil rights community, its value as a precedent is being viewed with caution. Tyrone Press, chief of investigations and research at the Minority Business Enterprise Legal Defense and Education Fund, views the decision as encouraging, but he cites two reasons why it does not establish a set-aside model that could be used by other jurisdictions. First, the case was appealed on December 28, 1989, to the Ninth Circuit Court of Appeals and has yet to be ruled on. Second, a fact-finding disparity study, commissioned by King County to document discrimination in accordance with *Croson,* was not considered in the decision.

Despite the positive ruling in *King County,* the *Croson* ruling continues to be used to strike down set-aside programs. So far, at least eight set-aside programs have been deemed unconstitutional, approximately 33 are under court challenge, and about 20 state and local jurisdictions have voluntarily suspended their programs. Nevertheless, advocates of these programs hope *King County* will be the first of many decisions that will uphold the principle of group-sensitive remedies for past discrimination, thus vindicating the set-aside concept. ■

Ms. Joshi is a research assistant at the Joint Center.

Is a New Yardstick Needed to Measure Poverty?

Revisions in the Method of Measuring Poverty Could Mean a Big Change in the Number of Americans Considered Poor, Affecting Eligibility for Social Programs

by Joyce E. Allen and Margaret C. Simms

After two decades of anti-poverty programs, the number of poor people in America has grown, according to official federal government statistics. In 1969, the number living below the poverty line was just over 24 million (12.1 percent of the population), while in 1988 it was 31.9 million (13.1 percent). Although the proportion of black Americans in poverty (33 percent) remained constant, their number climbed from 7.1 to 9.4 million during that period. A debate has been going on in the nation's capitol over whether the increase in the number of poor Americans reflects the apparent intractability of poverty or whether the trend has resulted simply from the way poverty is measured.

Measuring poverty is important because eligibility for many federal programs (including the Food Stamp Program, the Commodity Supplemental Food Program, and child nutrition programs) is based in part on the official poverty level. A change in how poverty is measured could affect the amount of money Congress budgets for programs essential to the economic well-being of millions of Americans. The debate has taken on greater significance because the Bush administration wants to increase funding next year for federal studies to improve the quality of economic statistics. One of these studies would seek to develop new poverty income guidelines.

Origin of the Poverty Thresholds

The present definition of poverty is often considered to be obsolete because it is based on living standards and conditions that existed more than 20 years ago. In the mid-1960s, while the War on Poverty was being declared, Mollie Orshansky, an official at the Social Security Administration, developed a method for measuring poverty and for estimating the number of people in poverty. Orshansky's concept was based on the cost of a minimally adequate diet, one that would sustain an individual or family for a limited period of time.

The cost of this "economy" diet or food budget was estimated and then combined with information from a 1955 survey of consumption expenditures of American households. Since the survey indicated that the typical family spent one-third of its annual budget on food, the economy food plan was multiplied by three to determine the poverty thresholds, that is, the money income limits to be used in identifying families or individuals who were poor. The economy food budget varied depending on household size and composition (age and sex of members).

With slight modifications, the Orshansky thresholds were adopted in 1969 by the Bureau of the Budget (now the Office of Management and Budget) as the official measure of poverty. Except for annual updates to adjust for inflation as measured by the consumer price index and for minor technical adjustments in 1981, the Orshansky method has remained unchanged since it was adopted.

This method of measuring poverty has always generated controversy because it has several shortcomings. For example, it is based on a food budget designed for emergency food needs. Further, the consumption survey it relies on excludes homeless families and individuals, almost all of whom are likely to be poor.

The controversy over how poverty should be measured has heated up with the release of two reports last October. In one report, *Money Income and Poverty Status in the United States: 1988,* the U.S. Bureau of the Census published alternative estimates of the number of Americans in poverty. This marked the first time that alternative estimates have been included in this annual report. The alternative estimates, which are based on the dollar value of noncash benefits and a revised price index, show fewer people in poverty than the official estimate.

The second report, *Alternative Measures of Poverty,* which was prepared for the Joint Economic Committee of Congress (JEC), indicates that the poverty population may have increased more dramatically in the past 20 years than the official numbers show. Unlike the Census Bureau report, the JEC report takes into account changes in consumption patterns for housing and child care. Using their updated poverty thresholds, which were based on new data on family consumption patterns, the authors of the JEC report estimate that the poverty rate was 24.1 percent in 1987, as opposed to the official rate of 13.5 percent.

Dr. Allen is a senior research associate and Dr. Simms is a deputy director of research at the Joint Center.

Given these two reports, resolving contradictions in the way we measure poverty has become an immediate public policy concern. While most of the attention has focused on noncash benefits, other major weaknesses in the current method may need to be examined. In particular, changes that have taken place in the cost of living and in living standards since the official definition of poverty was adopted two decades ago may need to be reconsidered.

Counting Noncash Benefits

The official measurement of poverty is based on cash income only, an approach that may have been more credible before the noncash (in-kind) public assistance programs of the 1960s were established. Since the War on Poverty was launched, the poor have received more and more public assistance in the form of noncash benefits, such as food stamps and Medicaid. The value of this assistance is not included in measuring a family's income.

In fiscal year 1969, approximately 52 percent of all federal public assistance was in cash and the remainder was in goods and services such as food, medical care, and housing. By fiscal year 1988, because of tremendous growth in Medicaid and the Food Stamp Program, cash accounted for only 29 percent of federal public assistance benefits while goods and services made up the remaining 71 percent.

Since in-kind benefits are an important part of the "safety net" that exists for the poor, it has often been suggested that these benefits be included when calculating whether or not a person is poor. Clearly, fewer people would be considered in poverty if the value of their in-kind benefits were taken into account. The Census Bureau estimates that the poverty rate would have been 2.6 percentage points lower in 1988 (10.5 instead of 13.1 percent) if certain in-kind benefits including Medicaid coverage, food stamps, free and reduced-price school lunches, and rent subsidies were counted (see table).

However, blacks are differentially affected if those in-kind benefits are counted as income. For example, their poverty rate would have been 6.8 percentage points lower in 1988 (24.8 instead of 31.6 percent) due to their relatively heavy reliance on noncash benefits as compared to the general population. Similarly, the poverty rate for black children would have been nine percentage points lower as compared to 2.9 percentage points lower for white children.

A number of unresolved issues surround the valuation of in-kind benefits. Among them are deciding which in-kind benefits should be included in the definition of income and finding the most appropriate methodology for placing a dollar value on them. Two techniques for valuing in-kind benefits used by the Census Bureau are the market-value approach and the recipient-value approach. These alternative techniques yield different poverty rates.

The market-value approach tends to result in the largest reduction in rates of poverty. Market value is based on the private sector (or market) price of the goods and services received. The recipient-value approach, by contrast, is based on the program participant's own valuation of the benefit. Theoretically, this second approach reflects recipients' subjective valuation of the amount of cash they would be willing to accept in place of their in-kind benefits.

Differences Between Official and Alternative Estimates of Poverty, 1988
(Impact of Including Noncash Benefits in Income)

Persons	Poverty Rates: Official[1]	Poverty Rates: Alternative[2]	Percentage Point Decline
All	13.1%	10.5%	2.6
White	10.1	8.3	1.8
Black	31.6	24.8	6.8
Hispanic	26.8	22.0	4.8
Related Children Under 18			
All	19.6	15.5	4.1
White	14.4	11.5	2.9
Black	44.1	35.1	9.0
Hispanic	37.8	30.5	7.3

[1] Official estimates are based on cash income only.
[2] Alternative estimates are based on cash income plus the value of noncash benefits such as food stamps, school lunches, rent subsidies and Medicare coverage. The value of noncash benefits was estimated based on the market value approach, except for medical services.

Source: U.S. Bureau of the Census, 1989.

The valuation of medical benefits poses special problems. For example, under one method of valuing medical benefits, the more medical services a Medicaid recipient receives, the richer he or she would appear to be, because that person's estimated income would include the value of medical services received by beneficiaries and paid for by the government. Given the difficulty of placing a cash value on medical benefits, some researchers suggest that they not be included as an in-kind benefit.

Changes in Minimum Living Standards

Living standards and price levels have changed significantly since the official way of measuring poverty was first adopted. After all, the consumption data used to produce Orshansky's "one-third food, two-thirds other goods and services" formula are now 35 years old. As income has increased for the average family over the years, and as the cost of other essentials has grown, the proportion of income that is spent on food has decreased.

Given this trend, some analysts, including Orshansky herself, have urged that the multiplier be adjusted over time to reflect changing consumption patterns. For example, some researchers contend that a proportion of "one-fifth food" is probably more plausible today, which suggests that a multiplier greater than three (perhaps as high as four or five) should be used to estimate the corre-

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Is a New Yardstick Needed?

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sponding household budget. This would mean that the poverty thresholds would be significantly higher and that more people would be classified as being in poverty. Child care is another example of how consumption patterns have changed over time. Once only a small proportion of family budgets, it now constitutes an essential cost for many families. Yet this change is not reflected in the current poverty thresholds.

Since the poverty thresholds are updated annually to reflect price changes, an ongoing issue is how best to measure these changes. The Labor Department concluded in the early 1980s that the Consumer Price Index used in the 1970s to update the poverty thresholds gave too much weight to housing in estimating the cost of living for the average family. Thus, in 1983, the Bureau of Labor Statistics began to use an alternative method for estimating changes in the cost of living, one that uses the rental value of housing. However, the alternative method was not projected backward to the middle 1970s. If it had been, the alternative poverty rate would be lower than the official one. For example, the overall poverty rate for 1988 would be 11.6 percent, instead of 13.1 percent and the rate for blacks would be 29.1 percent rather than 31.6 percent. Some critics of the current way of measuring poverty argue that the alternative method, with its rental value, should have been projected backward and that the official measure of poverty should incorporate this change.

Revising the Poverty Line

Given the nation's continuing concern about poverty, it seems fairly clear that something should be done to change the poverty thresholds that are used to measure our progress over time. The question is, what should be done? To the extent that our attempts to measure poverty are based on a desire to identify those in need and to assist them, it may be appropriate to include some noncash benefits when measuring income. However, to the extent that we are also attempting to define a minimally adequate standard, it would also be necessary to revisit methods of estimating the cost and standard of living.

Clearly, if we include housing subsidies in the income side we need to adjust upward our thresholds for the changes in the proportion of income that must be spent on housing (estimated to be as high as 50 percent of income for some poor families). If we expect mothers to work, especially those at the low end of the income scale, we should include the cost of child care in the family budget. In any case, the "correction" that may be necessary requires more than just a quick fix. ■

Join Us at Our 20th Anniversary Dinner

The Joint Center for Political Studies will celebrate its 20th Anniversary at this year's annual dinner on Wednesday, April 4, 1990, to be held at the Washington Hilton Hotel here in the nation's capital. Virginia Governor L. Douglas Wilder will be honored at the event.

David T. Kearns, chairman and chief executive officer of Xerox Corporation, is the national dinner chairman, and Robert B. Washington, Jr., managing partner of the law firm of Laxalt, Washington, Perito & Dubuc, is chairing the General Dinner Committee.

Sponsors' tables of 10 seats each are priced at $5,000; patrons' tables of 10 are $2,500; and individual tickets are $250. For further information or to make reservations, please call Alfreda Edwards at 202—626-3555.

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