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4 The Prairie View Paradox: Age, Race, and the Evolving/Changing Landscape of Student Voting Rights at an HBCU in Texas

The right to participate in the electoral process is the most important hallmark of a representative democracy. The ability of citizens to partake in free and fair local, state, and federal elections empowers them and gives them a voice in choosing the leaders who will create policies that impact their everyday lives. If citizens are prevented from voting for arbitrary reasons, such as race, gender, or special class (such as ‘student’ or ‘veteran’), it undermines the bedrock principle of democracy, that the authority *to* govern comes from the consent *of* the governed.

The United States’ founding principles are contained and celebrated not only in the U.S. Constitution, but also in the Declaration of Independence, in which are found Thomas Jefferson’s well-known notions that all men are created equal and possess inalienable rights to life, liberty, and the pursuit of happiness. However, America’s fidelity to the values espoused by those famous words has proven fickle, especially as it relates to minoritized and marginalized groups, including African Americans.

For centuries, African Americans’ inalienable rights were denied and then treated as though they were up for negotiation and then *renegotiation*, when, for so many other groups, there was no such need, no such question. Throughout the past 400-plus years, African Americans had their life, liberty, and pursuit of happiness severely constrained or outright denied—at the ballot box and elsewhere in the public sphere—through myriad systems of oppression, such as chattel slavery, Jim Crow segregation, convict leasing, redlining, and the prison industrial complex. In response, African Americans have consistently issued a clarion call for the United States to live up to and honor its stated values.

Throughout his leadership of the civil rights movement in the 1950s and 1960s, Martin Luther King, Jr. repeatedly echoed this sentiment. At the 1957 Prayer Pilgrimage in Washington, DC, shortly after the Montgomery Bus Boycott made him a household name, King took both Republican and Democratic officials in the federal government to task for their lack of leadership on voting rights:

This dearth of positive leadership from the federal government is not confined to one particular political party, both ... have betrayed the cause of justice. The Democrats have betrayed it by capitulating to the prejudices and undemocratic practices of the southern Dix-

iecrats. The Republicans have betrayed it by capitulating to the blatant hypocrisy of right wing, reactionary northerners. These men so often have a high blood pressure of words and an anemia of deeds.¹

Perhaps King's most famous and eloquent admonishments came in his "I Have a Dream" speech during the 1963 March on Washington, when he expressed his hope that the United States would "rise up and live out the true meaning of its creed."² King continued his exhortations until the day before his 1968 assassination in Memphis, Tennessee when, in his final public speech, he challenged America to "be true to what you said on paper."³

In this chapter we explore challenges and responses pertaining to the voting rights of college students at Prairie View A&M University (PVAMU), a Historically Black College/University (HBCU) located in Waller County, Texas. As we will discuss below, the paradox that is PVAMU is that, while nearly everyone involved in this case is utterly convinced that it revolves around the ugly specter of racism—the exceptions being some Waller County officials and one federal judge who was openly hostile to PVAMU students—the case was ultimately decided on the age discrimination grounds of the 26th Amendment of the U.S. Constitution rather than the equal protections provided by the 14th Amendment.

Since passage of the 26th Amendment more than 50 years ago, there have been two constants at PVAMU. First, PVAMU's students have repeatedly honored Dr. King's memory as they non-violently fought with Waller County officials for their basic voting rights. By 2006, it had become so onerous for PVAMU students to vote that *Mother Jones* ranked Waller County as ninth among its list of hardest places to (try to) vote in the United States.⁴ In 2013, Rachel Maddow, citing failed efforts by states nationwide to block newly enfranchised college students from voting after the 26th Amendment was passed, called Waller County "the holdout of all holdouts."⁵

Second, the students have shown incredible courage and determination while standing up to powerful Waller County officials, especially given the County's deeply troubled racial past. While the City of Prairie View, with a population of

1 Martin Luther King Jr., *A Testament of Hope: The Essential Writings and Speeches of Martin Luther King, Jr.*, ed. James M. Washington (HarperCollins, 1985), 198.

2 King, *A Testament of Hope*, 219.

3 King, *A Testament of Hope*, 282.

4 Sasha Abramsky, "Just Try Voting Here: 11 of America's Worst Places to Cast a Ballot (or Try)," *Mother Jones*, September/October 2006, <https://www.motherjones.com/politics/2006/09/just-try-voting-here-11-americas-worst-places-cast-ballot-or-try/>.

5 Rachel Maddow, "Assault on Student Voting Rights," *MSNBC*, May 6, 2013, www.youtube.com/watch?v=d4itV4B3E48.

approximately 8,500 people, is majority Black, it has long suffered in rural Waller County, which was majority white for much of its history and which has a long history of racism and violence. Between 1877 and 1950, Waller County tied for sixth among Texas's 254 counties for the most lynchings.⁶

But Waller County's violence and racism are not just in its past. In 2015, Sandra Bland, a 2009 graduate of PVAMU, was found hanged to death in her Waller County jail cell. Bland had been stopped by State Trooper Brian Encina for failing to use her turn signal while driving. When Encina asked Bland to put out her cigarette and Bland refused, the situation escalated to the point when Encina exclaimed, "I will light you up!" and then reached inside the vehicle and forcibly removed Bland from her car and arrested and jailed her on charges of assault. Three days later, Bland was found dead in her Waller County jail cell. While her death was officially ruled a suicide, many locally suspected foul play and expressed suspicions regarding how the police handled her case.⁷

Karen Good Marable, a writer who grew up in Prairie View during the 1970s and 1980s and attended college at Howard University in Washington, D.C., reflected on her childhood in the wake of Sandra Bland's death while Bland was in police custody:

I was not unaware of the racist attitudes that existed in Waller County. As kids, we were cautioned against driving down Field Store Road, because it was "Klan territory." My first white best friend—a thin girl with freckles, who had a ponytail that reached her butt—called me a "nigger" in our first big fight, in the second grade.⁸

The struggle for student voting rights has gone through two major phases. The first phase went from the 1970s through the 1990s and centered on the students' efforts to simply be recognized as residents of Waller County who are legally *eligible* to vote there. The second phase, which began in the early 2000s after PVAMU students seemingly won the first phase, saw the struggle shift to obtaining reasonable

6 Equal Justice Initiative, "Lynching in America: Confronting the Legacy of Racial Terror," 3rd ed., 2017, <https://lynchinginamerica.eji.org/report/>.

7 Tom Rawley, "Sandra Bland's Death Divides Texas County with Ugly History of Racism," *The Washington Post*, July 27, 2015, https://www.washingtonpost.com/national/ugly-history-of-racism-dogs-texas-county-where-sandra-bland-died/2015/07/27/e69ac168-3317-11e5-8353-1215475949f4_story.html; and Tom Dart and John Swaine, "Sandra Bland: Suspicion and Mistrust Flourish Amid Official Inconsistencies," *The Guardian*, July 25, 2015, <https://www.theguardian.com/us-news/2015/jul/25/sandra-bland-suspicion-mistrust-official-inconsistencies>.

8 Karen Good Marable, "Remembering Sandra Bland's Death in the Place I Call Home," *The New Yorker*, July 13, 2016, <https://www.newyorker.com/news/news-desk/remembering-sandra-blands-death-in-the-place-i-call-home>.

access to polling stations located on the college's campus, much like at many predominantly white institutions of higher learning.

This analysis focuses first on the legal action taken by PVAMU (and other) students that culminated with the Supreme Court ruling in *Symm v. United States* (1979), which is the only case dealing with the 26th Amendment on which the Supreme Court has ever ruled.⁹ Next, the chapter examines the period after *Symm*, in which residency challenges were replaced with other forms of disenfranchisement. As will be shown, despite the students' victories in lower courts *as well as* in the 1979 Supreme Court case, officials in Waller County, including then-Waller County tax assessor-collector LeRoy Symm, continued not only to place bureaucratic obstacles in front of the students, but also made legal threats against them, going so far as to arrest 19 of them on tenuous charges of voter fraud. Finally, we will explore access to the polls, and the fight for an accessible polling place on the PVAMU campus. But first, prior to analyzing PVAMU's voting history, we will briefly examine its origins and background.

1 Background to Prairie View A&M University

PVAMU was established in 1876 during the Reconstruction Era, which was the heyday of Black political power in Texas and other southern states. The school exists thanks in large measure to the tireless efforts of African Americans elected to the Texas legislature during the Reconstruction Era, including State Representative William H. Holland from Hempstead in Waller County (about 5 miles from the City of Prairie View), whose efforts on behalf of the college led him to be known as the Father of Prairie View.¹⁰ Holland's efforts helped lead to a provision in the Texas Constitution requiring the establishment of separate colleges for whites and Blacks. Blacks would attend what was then called the Alta Vista Agricultural and Mechanical College of Texas for Colored Youth (Alta Vista for short), which was the first public co-educational institution of higher education in Texas. Alta Vista was named after the former slave plantation on which it was founded.

While Black students would attend Alta Vista, white (male) students would attend the Agricultural and Mechanical College of Texas (later renamed Texas AM University), which would be responsible for the management of Alta Vista. To be sure, Alta Vista was poorly funded and maintained. The federal government's

⁹ Elsewhere, the authors have chronicled the students' extensive civic action, primarily protests and demonstrations, in the City of Prairie View and in Waller County. See note 104 below.

¹⁰ Michael J. Nojeim and Frank D. Jackson, *Down that Road: A Pictorial History of Prairie View A&M University* (Donning Company Publishers, 2011), 20–21.

Second Morrill Act of 1890 designated the school, and 18 other HBCUs, a land grant institution to compel former Confederate states to provide better funding for their segregated institutions of higher education.¹¹

As the institution grew in enrollment and expanded its academic mission, it went from a normal school—that is, a school focused on training Black teachers to work in Texas’ segregated public school system—to a full-fledged institution of higher learning offering a wide range of baccalaureate and graduate degrees. With that came several name changes until finally it was renamed Prairie View A&M University in 1973, which was right around the time PVAMU students began fighting for voting rights in Waller County. In 1984, the Texas Constitution was amended to name PVAMU as one of only three “institutions of the first class,” alongside Texas A&M University and the University of Texas.

Located about an hour northwest of Houston, PVAMU sits on the land of the former Alta Vista Plantation, owned by Confederate colonel Jared E. Kirby, on which more than 150 enslaved African Americans labored during the plantation’s peak, and from whence the College took its original name. Little could these enslaved people have imagined that their descendants could attend a college built for them on the very same land on which they toiled for hours under the blazing sun. Where once they were forcibly held on this land in the slave-owner’s firm grip, where they labored, enslaved and disenfranchised, with their destinies determined by others, now, on this same land, there was built an institution of higher learning where their descendants were free to forge their own futures.

Despite being deprived perennially of adequate funding by the state of Texas, PVAMU now boasts an enrollment of nearly 10,000 students with more than 70 degree-granting programs, including 30 Master’s and six Doctoral programs. In 2021, PVAMU joined only ten other HBCUs nationwide to have earned the prestigious Research 2 Carnegie Classification. It is known for its highly selective architectural, engineering, and nursing programs. According to *Diverse: Issues in Higher Education*, PVAMU is ranked number one nationwide in producing Blacks with Bachelor’s and Master’s degrees in Architecture, number three in producing Blacks with Bachelor’s degrees in Agriculture, and number four in producing Blacks with degrees in Engineering.¹² During segregation, it was more likely

11 Samantha Ketterer, “Enslaved People Toiled at a Plantation where Prairie View A&M Now Stands. Researchers Want to Know their Stories,” *Houston Chronicle*, February 29, 2022, <https://www.houstonchronicle.com/news/houston-texas/education/article/Enslaved-people-toiled-at-a-plantation-where-16833077.php>.

12 “Top 100 Degree Producers—HBCUs 2021–22,” *Diverse: Issues in Higher Education*, <https://top100.diverseeducation.com/HBCUs-2021-2022/>.

than not that a Black nurse in Texas had graduated from PVAMU. But PVAMU also produces productive professionals in many other fields such as juvenile justice, education, psychology, and social work. Since the 1960s, PVAMU has had a highly respected tradition of producing Army and Navy officers who have served their country in multiple wars, contributing no less than six flag officers, including Lt. Gen. Calvin Waller who served as Deputy Commander of U.S. Forces in Operation Desert Storm (the 1990–1991 Persian Gulf War).¹³

PVAMU has a long tradition of enculturating its students with a reverence for the campus' sacred grounds. Unlike many other college campuses around the country, a visitor will never see Prairie View students (or faculty and staff for that matter) walking on the grass. There are no Frisbee games, no impromptu hacky sack competitions, no sunbathers, and certainly no dogs roaming the grounds. Since it is not fully known where all the former slaves were buried or interred on the plantation's grounds, students are taught to respect the memory of the enslaved while revering the land by walking only on sidewalks and in designated areas for fear of walking over an enslaved person's burial site.

It is on this hallowed ground that PVAMU's mostly Black students have struggled for decades to obtain full voting rights in Waller County, Texas, the politics of which were historically dominated by whites. Indeed, PVAMU has a rich history of social and political activism as it relates to voting rights (and other social justice issues).

2 The Right to Vote in Prairie View: Challenges and Responses

PVAMU students historically faced considerable obstacles to cast their ballots in Waller County, despite (or perhaps because of) the passage of the 26th Amendment as well as key legislation such as the Civil Rights Acts, the Voting Rights Act, and the Fair Housing Act. In the early 1970s, tax assessor-collector LeRoy Symm, the elected official who was responsible for administering elections in Waller County, hatched a plan to ostensibly combat voter fraud and ensure that only legal residents of Waller County voted. Part of his plan required only students at PVAMU and no one else in Waller County to fill out a questionnaire regarding their residency status. Symm was first elected in 1956, only two years

¹³ Associated Press, "General Calvin Waller Dies," *The Washington Post*, May 10, 1996, <https://www.washingtonpost.com/archive/local/1996/05/11/gen-calvin-waller-dies/3e4c1eb4-5089-43c5-a18d-d23362478dc6/>.

after the Supreme Court overturned the legality of segregated public schools in *Brown v. Board of Education*, and at the same time as Martin Luther King's historic rise as leader of the Montgomery Bus Boycott, which marked the beginning of the civil rights movement.

Since only students at PVAMU were required to fill out the questionnaire, the tactic was clearly aimed at Black students who had reached voting age in the wake of the 26th Amendment's passage. Symm used student responses on the questionnaire to unilaterally decide which students could register to vote in Waller County. He did this in open defiance of court rulings that favored the students' interests and continued to defend the practice even after the United States attorney General got involved and sued him. Indeed, many civil legal actions pertain to the PVAMU students' struggle for voting rights. The most important and relevant cases are covered here.

***Wilson v. Symm*, March 29, 1972**

In this case, which first involved PVAMU students litigating for their voting rights, Arthur Ray Wilson, a 22-year-old native of Beaumont, TX who had attended then-named Prairie View Agricultural and Mechanical College for four years, filed suit against LeRoy Symm and Bob Bullock, the Texas secretary of state. Wilson was joined by four other student plaintiffs: Randolph Grayson, 29, of Gulfport, MS, Donnie Gene Young, 22, of Houston, TX, Leodies U.A. Simmons, 19, of Weirgate, TX, and Billy Ray Toliver, 27, of Houston, TX.

As the key election official in Waller County, Symm required students to complete a questionnaire, which he used to determine their residency status and hence whether they could register to vote in Waller County. Symm's questionnaire was not formally approved by any Texas State official, nor was it used in any other Texas voting district. This questionnaire asked, in part:

- Do you intend to reside in Waller indefinitely?
- What do you plan to do when you finish your college education?
- Do you have a job or position in Waller County?
- [Do you] Own any home or other property in Waller County?
- [Do you] Belong to a church, club, or some Waller County organization, *other than college related* (emphasis added).¹⁴

¹⁴ *Wilson v. Symm*, 341 F. Supp. 8 (S.D. Tex. 1972). See also *Whatley v. Clark*, 482 F.2d 1230 (1973).

Symm also wanted to know if PVAMU students were married to someone who resided in Waller County.

When Symm denied Wilson and the other four-named plaintiffs' registration applications, they filed suit, claiming such denial was a form of discrimination in violation of the 14th and 26th Amendments. The original student complaint also alleged racial discrimination, but David Richards, a labor and civil rights lawyer who represented the students, dropped this allegation once he encountered Judge James Noel, the presiding judge in U.S. District Court for the Southern District of Texas:

Given that Prairie View was an all-Black college at the time, there loomed a racial component to this battle, for, not surprisingly, all the elected officials were white ...but after a brief exposure to Judge Noel, I withdrew the claim. It was abundantly clear from the court's behavior that he would rule against that claim and exonerate Symm and the county from any racial bias. ... Judge Noel had been so hostile in our early hearings that I knew I was destined to lose in front of him.¹⁵

Richards notes that Judge Noel's decisions were "venomous in nature," as he criticized the plaintiffs (one of whom he accused of violating state laws), one of the lawyers for the plaintiffs (whom he derided as "young and inexperienced"), and Texas State officials like Texas Secretary of State Bob Bullock, whom he said was "utterly lacking in candor and credibility." Later on, he even took a swipe at the federal trial court in Texas' Eastern District, implying its ruling in the *Whitley* case (see below) was incorrect in part because the court was "busy."¹⁶

Richards lamented that he failed to "account for Judge Noel's hostility to the idea of Prairie View students voting."¹⁷

Symm argued that his questionnaire was used merely to determine the students' residency. At that time, Texas had a state law that *presumed* students were not legal residents of the campus wherein they studied and lived, and hence could not register there. Students therefore bore the burden of proving otherwise and Symm claimed that he used the questionnaire as a tool by which students could make their case.

In ruling in Symm's favor, Judge Noel found that Symm acted in "good faith,"¹⁸ using the questionnaire to fulfill his statutory duty in ascertaining the students'

¹⁵ David Richards, *Once Upon a Time in Texas: A Liberal in the Lonestar State* (University of Texas Press, 2002), 155.

¹⁶ Richards, *Once Upon a Time in Texas*, 158–159.

¹⁷ Richards, *Once Upon a Time in Texas*, 157.

¹⁸ *Wilson v. Symm*, 341 F. Supp. 8 (S.D. Tex. 1972).

legal residency status for the purpose of voter registration. In its findings, the court held that:

- The plaintiffs indicated to college officials upon their enrollment that their home was elsewhere than Waller County.
- Symm registered other students, some 40 out of 75 who applied, thus demonstrating a pattern showing more than half of the student registration applications being approved.
- “In no case was the determination attributable to the students’ age or their status as students” and that “the record contains not the slightest suggestion of discrimination on the basis of race.”¹⁹

The students argued that the Texas statute requiring them to prove their residency status at their college address, “even when correctly applied,”²⁰ violated their constitutional rights because it singled them out for special treatment, specifically for exclusion from registering, unless they could prove otherwise. However, Judge Noel relied, in part, on *Carrington v. Rash* in ruling against the students. In *Carrington*, the United States Supreme Court in 1965 determined that Texas violated the equal protection clause of the 14th Amendment when it prohibited all military personnel from registering to vote on the grounds that they were transient residents at their base of deployment. The court held that, while states have the right to establish residency requirements, the State of Texas could not ban *all* military personnel from voting without giving them the chance to show they were permanent residents at their duty assignment. So, Judge Noel reasoned that if the *Carrington* ruling said a special class of people (soldiers, students, etc.) could be excluded from registering to vote on the grounds of the transient nature of their residency so long as they were given a chance to prove otherwise, then what Symm was doing in Waller County with the Prairie View students was “constitutionally unobjectionable”²¹ and did not violate the equal protection clause of the 14th Amendment. So long as students—or other classes of people—are given the chance to show election officials they are indeed bona fide residents, the court ruled they can be presumed to be non-residents.

The District Court also ruled against the students regarding their 26th Amendment argument. The 26th Amendment, ratified on July 1, 1971, reduced the voting age to 18 years for people voting in national and state elections, and outlawed age discrimination in ballot access. But the court found that the students filing suit—

¹⁹ *Wilson v. Symm*, 341 F. Supp. 8 (S.D. Tex. 1972).

²⁰ *Wilson v. Symm*, 341 F. Supp. 8 (S.D. Tex. 1972).

²¹ *Wilson v. Symm*, 341 F. Supp. 8 (S.D. Tex. 1972).

aged 19, 20, 22, 27, and 29—were denied the chance to register in Waller County because of their determined non-residency status and not because of their age. The court concluded that “the presumption of student non-residency is neither irrational nor imprecise,”²² especially since Texas does allow student applicants a chance to prove their residency in Waller County, by virtue of Symm’s questionnaire.

Finally, the court considered the students’ claim that Symm’s actions were contradictory to the one-man-one-vote principle insofar as it requires Prairie View students be allowed to vote in Waller County because that is where the U.S. Census counts them for purposes of representation. However, Judge Noel was unpersuaded by this line of reasoning and said he was “not inclined to embark upon this pioneering endeavor” because he did not want to lead the federal courts into the “nettlesome wonderland of arithmetical abstractions and judicially unmanageable standards.”²³ The court offered that the plaintiffs produced no evidence on this point. This, despite the fact that college students are impacted by local laws, sales taxes, and property taxes.²⁴

***Whatley v. Clark*, August 3, 1973**

According to lawyer Richards, he engaged a colleague to file a suit similar to *Wilson*, what became *Whatley v. Clark*, in the adjacent U.S. District Court for the Eastern District of Texas.²⁵ The suit named T.J. Clark, the Denton County tax assessor, and Bob Bullock, the Texas Secretary of State and chief elections officer, as the main defendants. *Whatley* was like *Wilson* but this time involved students from a predominantly white institution, then named North Texas State University (now called the University of North Texas) in Denton, Texas. The court considered the Texas statute that presumed college students were non-residents of their college-based domicile and ruled that portion of the law unconstitutional. Even though the *Whatley* decision did not involve or consider a formal questionnaire

²² *Wilson v. Symm*, 341 F. Supp. 8 (S.D. Tex. 1972).

²³ *Wilson v. Symm*, 341 F. Supp. 8 (S.D. Tex. 1972).

²⁴ Gale M. Fjetland, “A Statutory Presumption That a Student Is Not a Resident of the Community Where He Is Attending School Violates the Equal Protection Clause of the Fourteenth Amendment,” *Texas Tech Law Review* 5, (1974): 854–855, <https://ttu-ir.tdl.org/items/c4cfcb39-0d92-4496-a4dd-c92452eaab74>.

²⁵ Richards, *Once Upon a Time in Texas*, 156.

like the one Symm used in *Waller*,²⁶ that portion of the Texas State statute on which Symm's questionnaire was at least partially based was ruled unconstitutional.

Having lost the initial decision in *Whatley*, state officials appealed to the U.S. Court of Appeals for the Fifth Circuit—and lost again. Considering the appeal, the Fifth Circuit Court held that “Texas has unquestioned power to restrict the franchise to bona fide residents.”²⁷ But the issue was not whether Texas could verify a voter registrant's residence but rather the *procedures* employed to determine residency. So, the Fifth Circuit Court was asked to consider the constitutionality of the section of Texas law that presumed college students were not residents for the purposes of voter registration unless they could prove otherwise to the satisfaction of state officials. The appellants, Texas State officials, argued that the residence requirement imposed on students in the law was no different from residence requirements imposed on the general populace.

The Fifth Circuit Court disagreed, and for several reasons. First, the federal appeals court questioned why, if students were treated the same, there had to be a separate section in the law carved out just for students. Second, singling out this special class of people—college students—for presumption of non-residence unless they proved otherwise violated their equal protection rights, especially since this additional requirement was not added to the Texas statute until 1967,²⁸ which happened during the Texas legislative session that came right after passage of the Voting Rights Act in 1965,²⁹ yet well before the 26th Amendment was ratified in 1971. Third, the Circuit Court rejected the state's argument that *Carrington*, which, as discussed above, dealt with military personnel, applied since the part of the Texas law the students were challenging in *Whatley* was not part of the statute until two years *after* the *Whatley* ruling, so it could not be used precedentially. *Carrington* did not apply because it did not involve a “presumption of nonresidency,”³⁰ and thus the lower court erred in seeing in *Carrington* a tacit approval of presumption of non-residency for an entire group of people.

26 When students attempted to register, the Denton County Registrar asked them if they intended to make Denton their home indefinitely and if they said no, they were not allowed to register. See Fjetland, “A Statutory Presumption,” 844.

27 *Whatley v. Clark*, 482 F.2d 1230 (5th Cir. 1973).

28 *Whatley v. Clark*, 482 F.2d 1230 (5th Cir. 1973).

29 The Voting Rights Act was signed by President Lyndon Johnson on August 6, 1965. The Texas State Legislature is a part-time legislature that typically meets every odd year for only 150 days from January-May.

30 *Whatley v. Clark*, 482 F.2d 1230 (5th Cir. 1973).

Moreover, and in stark contrast to Judge Noel's ruling, the Fifth Circuit Court found compelling Texas Secretary of State Bullock's testimony in which he conceded that the intention of the Texas statute was only to discourage students from voting.³¹ When he was asked if there were any reason for the law's special classification of students, Bullock testified, "I have yet to find a compelling state reason."³² Indeed, lawyer Richards asserts, "Whatever the reason, [Bullock's] testimony destroyed the state's case."³³

The Fifth Circuit Court found it hard to believe that "a presumption that students are not residents of their college communities is *necessary*"³⁴ to limiting the franchise to bona fide residents, especially since elections in a student's college residence "may have considerably more impact on his life"³⁵ than elections where he previously resided. In other words, the Texas statute that presumed students were not residents in their college town failed the compelling public interest test since there were other, less restrictive methods that could be used to promote so-called "purity of the ballot box."³⁶

***Ballas v. Symm*, May 24, 1974**

Less than a year after Judge Noel issued his ruling in the *Wilson* case, he reiterated his basic findings in *Ballas v. Symm*. Charles Ballas, a white male student at PVAMU, filed a complaint against LeRoy Symm asking for reconsideration of the court's decision in the *Wilson* case. On its face, Judge Noel in the *Ballas* case cited the judicial principle of *res judicata* ('a matter judged') by virtue of his ruling in the *Wilson* case earlier that year. Stating that "the purely legal question of the [Symm] questionnaire's constitutionality was posed and answered in *Wilson*,"³⁷ the judge was not amenable to reversing his own opinion. Even so, the judge considered Ballas' arguments at length since Ballas challenged the constitutionality of Symm's use of the questionnaire not only on grounds similar to *Wilson*, but with two additional points.

First, Ballas asked Judge Noel to reconsider his *Wilson* ruling based on *Whatley*, which came after Judge Noel's *Wilson* decision. But Judge Noel did not accept

³¹ *Whatley v. Clark*, 482 F.2d 1230 (5th Cir. 1973).

³² Richards, *Once Upon a Time in Texas*, 156.

³³ Richards, *Once Upon a Time in Texas*, 157.

³⁴ *Whatley v. Clark*, 482 F.2d 1230 (5th Cir. 1973).

³⁵ *Whatley v. Clark*, 482 F.2d 1230 (5th Cir. 1973).

³⁶ Fjetland, "A Statutory Presumption," 855.

³⁷ *Ballas v. Symm*, 351 F. Supp. 876 (S.D. Tex. 1972).

this and rejected the legal rationales of the *Whatley* ruling altogether. In *Whatley*, the District Court held that the State of Texas placed an unconstitutional burden on students seeking to register using the residence where they attended college. Noel disagreed, first because he asserted that *Whatley* erroneously conflated the meaning of the word “indefinite” in the Texas statute with “permanent” as to a student’s future residential status (thus placing an undue burden of proof on the student applicants). Second, Judge Noel found that the *Whatley* decision incorrectly held that the State of Texas had not sufficiently demonstrated a compelling state interest that required the use of the questionnaire. He reasoned that use of the questionnaire to fulfill the statutory requirement of determining residency status did in fact serve a compelling state interest and did not violate “in any sense whatsoever any right of any plaintiff identified in *Whatley*, *Wilson*, or *Ballas*, guaranteed him under the Equal Protection Clause or under any other provision of the federal constitution.”³⁸

Second, Ballas requested reconsideration of the *Wilson* ruling based on a bulletin issued by Bullock the day after the *Whatley* ruling, which stated, “No county registrar may require any affidavits or questionnaires in addition to the information required on the application for a voter registration certificate.”³⁹ Symm informed Bullock that he would not comply with the order in the bulletin and would instead continue to apply the *Wilson* ruling. In his telling, lawyer Richards said that Judge Noel was “obviously furious,” as Noel summarily dismissed Bullock’s bulletin as “clearly erroneous.”⁴⁰ Moreover, since both the plaintiffs and defendants in *Ballas* agreed that the secretary of state’s bulletin was not binding, he held that the “bulletin is not competent evidence” supporting Ballas’ contention that the questionnaire violated the 14th Amendment’s equal protection clause.⁴¹

Ironically, Judge Noel did in fact order Symm to register Ballas to vote in the upcoming election, but not for the constitutional reasons Ballas cited in his legal briefs, pleadings, and testimony. Although the court held that the plaintiff was not “entitled to relief under the facts of law,”⁴² Judge Noel granted Ballas relief under the Due Process Clause. Specifically, Symm’s letter rejecting Ballas’ registration application stated that Ballas was entitled to appeal Symm’s denial, but “there is no evidence that [Symm] offered or gave [Ballas] the hearing required” under Texas law: “the obvious defect in the defendant’s procedure was defendant’s failure to

³⁸ *Ballas v. Symm*, 351 F. Supp. 876 (S.D. Tex. 1972).

³⁹ *Ballas v. Symm*, 351 F. Supp. 876 (S.D. Tex. 1972).

⁴⁰ *Ballas v. Symm*, 351 F. Supp. 876 (S.D. Tex. 1972) and Richards, *Once Upon a Time in Texas*, 159.

⁴¹ *Ballas v. Symm*, 351 F. Supp. 876 (S.D. Tex. 1972).

⁴² *Ballas v. Symm*, 351 F. Supp. 876 (S.D. Tex. 1972).

afford plaintiff a hearing before rejecting the application,”⁴³ which constitutes a denial of Ballas’ due process rights under the 14th Amendment. So, the court granted Ballas—and no one else because the plaintiff’s request for class action was denied—relief by ordering Symm to provide him with a registration certificate that was valid only for that upcoming election.

Even so, Ballas appealed the ruling and on May 24, 1974, the U.S. Court of Appeals of the Fifth Circuit upheld Judge Noel’s decision.⁴⁴ While acknowledging that the Fifth Circuit *Whitley* ruling rendered the Texas statute presuming college students were non-residents unconstitutional, the federal appeals court also held that “use of the questionnaire to determine the residency is not a violation of the Equal Protection Clause or the Voting Rights Act,” since the questionnaire “does not appear from the record to be an additional test or requirement for voter qualification.”⁴⁵ Rather, the questionnaire was seen only as a means to ascertain residency status: “there is no proof that the questionnaire was used as a device to prevent legal residents from voting.”⁴⁶ Like others in Waller County, students must be residents and the questionnaire was a reasonable way to ascertain their status. As evidenced by the *Symm* litigation described below, that ruling would not be the rule of the land for much longer.

***Symm v. United States*, January 15, 1979**

In 1976, PVAMU student Sydney Hicks took part in a voter registration drive during which nearly 1,000 PVAMU students filled out registration forms, but Symm approved less than 40 of them. Hicks himself ran for Prairie View’s City Council—and won, even though he was denied the chance to vote in his own election. In his 2013 interview with Rachel Maddow, Hicks said, “All we wanted was a part of the American dream, that all citizens have the right to vote.”⁴⁷

That same year, the U.S. attorney general filed suit against the State of Texas, LeRoy Symm, and Waller County, claiming Symm’s use of the questionnaire violated the 14th Amendment’s equal protection clause as well as the voting rights guaranteed in the 15th and 26th Amendments. A three-judge panel of the U.S. District Court for the Southern District of Texas considered the challenge, and ruled

⁴³ *Ballas v. Symm*, 351 F. Supp. 876 (S.D. Tex. 1972).

⁴⁴ *Ballas v. Symm*, 494 F.2d 1167 (5th Cir. 1974).

⁴⁵ *Ballas v. Symm*, 494 F.2d 1167 (5th Cir. 1974).

⁴⁶ *Ballas v. Symm*, 494 F.2d 1167 (5th Cir. 1974).

⁴⁷ Rachel Maddow, “Assault on Student Voting Rights.”

that Symm's practices, including how he used the questionnaire, violated PVAMU students' 26th Amendment rights.

Before the U.S. Supreme Court finally decided this case, Symm had not only continued his open defiance of the *Whatley* ruling (see above), but also the directives of the Texas secretary of state, who by 1975 had been given clear statutory authority to prohibit the use of the questionnaire. In its filing, the United States did not object to Symm's use of the questionnaire *per se*, but claimed the form's use was part of a pattern intended to deprive students living at PVAMU of their voting rights. Indeed, John Hill, then-Texas secretary of state, asked the court to enjoin Symm from continuing his use of the questionnaire in open defiance of Hill's instructions, and in defiance of an Emergency Rule issued by then-Texas state attorney General Mark White.⁴⁸

The District Court found Symm's position utterly unconvincing, and for several reasons. The United States, represented by the U.S. Attorney General, showed that, of the 70 voting registrars in Texas counties that had institutions of higher learning, only Symm continued to presume that college students were non-residents, despite such presumption having been ruled unconstitutional. Moreover, no other Texas registrar subjected students in their jurisdictions "to any more rigorous scrutiny" than others applying to register to vote.⁴⁹ For instance, students from the University of Texas were not subjected to additional scrutiny like that imposed on PVAMU students by Symm. Based on evidence presented by the United States and on testimony given by Symm and his deputies, the court found that "it appears that only Prairie View students or persons with addresses on the campus have been issued the Symm questionnaire and that others not known to Symm are not required to complete the questionnaire."⁵⁰

While the court explained that "the case that controls this controversy is *Whatley v. Clark*,"⁵¹ it went on to cite multiple cases, at the federal level but also at the state level, including Texas, which were consistent with *Whatley* in reaching "virtually identical conclusions" and applying the same legal reasoning.⁵² For instance, federal cases in Kentucky and Vermont struck down state officials' practice of requiring students to fill out questionnaires or provide additional proof of their domicile. Supreme Courts in California and New Jersey reached sim-

48 *United States v. State of Texas*, 445 F. Supp. 1245 (S.D. Tex. 1978). In early 1976, Mr. White and some of his assistants traveled to PVAMU to assist students in registering to vote: at least one student testified that White's staff was helpful.

49 *United States v. State of Texas*, 445 F. Supp. 1245 (S.D. Tex. 1978).

50 *United States v. State of Texas*, 445 F. Supp. 1245 (S.D. Tex. 1978).

51 *United States v. State of Texas*, 445 F. Supp. 1245 (S.D. Tex. 1978).

52 *United States v. State of Texas*, 445 F. Supp. 1245 (S.D. Tex. 1978).

ilar conclusions, as did courts in Pennsylvania, Mississippi, and Michigan. Ruling in favor of the United States, the court held that “Symm’s position is inconsistent both with the Twenty-Sixth Amendment cases discussed above, and also with the relevant Texas cases.”⁵³ In one 1939 Texas case, a state appeals court ruled that a student attending college away from the county where they resided before college *may* retain residency in that county. The “obvious inference,” the court in *Symm v. United States* stated, is that students may also lose that residency and instead become residents of the place where they are attending college.⁵⁴ Two other Texas cases the court cited are worth noting: one involved a student who left his parents’ home to attend college and another considered a woman who left her parents’ home for a part-time job. In both cases, even though the new domiciles were obviously not permanent or even ‘indefinite,’ the two individuals *lost* their residency status in the county of their parents’ domicile, thus raising the question as to where the individuals could register to vote. In ruling against Symm, the court said that Mr. Symm’s conduct was “inconsistent with the philosophy and trend” of many of the previous cases, while also “directly in contravention to the holdings and language” of others.⁵⁵

Symm appealed, but in *Symm v. United States* (1979) the Supreme Court affirmed the lower court’s ruling that using the questionnaire violated students’ voting rights under the 26th Amendment. This was a landmark ruling because it was the first time the Supreme Court decided a case involving the 26th Amendment. But the Supreme Court merely stated, “The judgment is affirmed.”⁵⁶ No majority opinion was issued along with the judgment upholding the District Court’s original ruling. Nevertheless, such a summary affirmance has precedential value and is binding precedent.⁵⁷ It was a historic victory for the long-suffering student population at PVAMU and while college students across the country unknowingly enjoyed the fruits of the PVAMU students’ victory, one might conclude that the fight was over and PVAMU students could rest on their laurels. Alas, Waller County officials continued to present obstacles to PVAMU students attempting to vote locally. The new obstacles ranged from redistricting shenanigans, arrests, intimidation, and even the threat of violence.

⁵³ *United States v. State of Texas*, 445 F. Supp. 1245 (S.D. Tex. 1978).

⁵⁴ *United States v. State of Texas*, 445 F. Supp. 1245 (S.D. Tex. 1978).

⁵⁵ *United States v. State of Texas*, 445 F. Supp. 1245 (S.D. Tex. 1978).

⁵⁶ *Symm v. U.S.*, 439 U.S. 1105 (1979).

⁵⁷ See Yael Bromberg, “Youth Voting Rights and the Unfulfilled Promise of the Twenty-Sixth Amendment,” *University of Pennsylvania Journal of Constitutional Law* 21 (2019): 1105, 1134.

3 Post-Symm Disenfranchisement: Intimidation, Threats, and the PV-19

In 1980, PVAMU's campus was divided into three separate precincts through gerrymandering to dilute the students' voting strength. The gerrymander was so severe that if students moved across the street from one campus dormitory to another, they were placed into a different voting district:⁵⁸ few, if any, students would realize the minor address change put them in a different district, which necessitated them having to re-register to vote. In an interview with the *Texas Observer*, Frank Jackson, a PVAMU graduate who would later go on to elected positions in Waller County and the City of Prairie View, and who became PVAMU's assistant vice chancellor for state relations, said, "They had us carved up like a Christmas turkey."⁵⁹ After assistance from the Department of Justice, the entire university was included in one voting precinct in 1990.⁶⁰

As recently as the 1990s, Black candidates for public office in Waller County were rare. However, in 1992 Frank Jackson ran for Waller County Commissioner against a white 16-year incumbent, while another Black candidate, Ellery Stevenson, ran for Waller County Constable.⁶¹ The Waller County Commissioners Court is the managerial or executive governing body of the county and acts as the administrative arm of the Texas State government. It consists of five elected officials, four commissioners, and the county judge, who presides over the Commissioners Court as the spokesperson and ceremonial head. Waller County commissioners

58 Kerry Breen, "Midterm Elections 2018: Once Again, Voting Controversies Surface at Prairie View A&M," *Pavement Pieces*, November 2, 2018, <https://pavementpieces.com/once-again-voting-controversies-surface-at-prairie-view-am/>; and Alexa Ura, "Texas' Oldest Black University was Built on a Former Plantation. Its Students Still Fight a Legacy of Voter Suppression," *Texas Tribune*, February 25, 2021, <https://www.texastribune.org/2021/02/25/waller-county-texas-voter-suppression/>.

59 Patrick Michels, "The Interview: Frank Jackson," *Texas Observer*, June 20, 2016, <https://www.texasobserver.org/prairie-view-mayor-frank-jackson-interview/>.

60 Peniel Joseph, Expert Report, *Allen v. Waller* (S.D. Tex.) (dated July 30, 2019, Pls. Trial Exhibit 155), available at <https://www.courthousenews.com/wp-content/uploads/2020/10/prairie-view-expert.pdf> (describing history of efforts to secure voting rights in Waller County, including those by students, and the history of racial discrimination in voting in Waller County and its specific impact on Black Prairie View students and Prairie View voters). Also see, Rodney Ellis, "Jim Crow Goes to College," *New York Times*, April 27, 1992, <https://www.nytimes.com/1992/04/27/opinion/jim-crow-goes-to-college.html>.

61 Ellis, "Jim Crow Goes to College" and Peniel Joseph, Expert Report, *Allen v. Waller* (S.D. Tex.) (dated July 30, 2019, Pls. Trial Exhibit 155).

hold significant policy-making authority in areas such as the county's budget, roads, and taxes.⁶²

It is important to note that at this point the 5,000 PVAMU students could wield substantial power in shaping local politics in a county that had very few, if any, Black public officials.⁶³ While both Jackson and Stevenson would go on to win their races, it was not before significant legal and political battles involving PVAMU students, who could effectively tip the balance in these elections, were settled.

Two weeks before the run-off elections in the spring of 1992, 19 Prairie View students were indicted on charges of illegal voting during the March primaries. Five of the 19 students were also additionally indicted on felony charges of aggravated perjury, which, if they were convicted, could have resulted in prison time. Waller County District Attorney A.M. "Buddy" McCaig accused these five students of voting once in their home county of record and once in Waller County.⁶⁴

To many, including Jackson, the indictments resulted from miscommunication between the county elections administrator, the students, and the university.⁶⁵ Students frequently move dormitories during their time at the university. If the county mails a voter registration card to the dormitory where the student previously lived, and if the student does not know to pick up the card from that previous dormitory, then the voter registration card gets returned, and the student is removed from the Waller County voter rolls. Because they did not receive their registration cards by mail, many students signed an affidavit at the polls asserting they had registered to vote. However, when the county checked their records, and the students were not on the voter rolls, they were criminally charged.⁶⁶

Additionally, it appears with more than three decades of hindsight that some of these indictments could have been avoided with further due diligence from county officials. Carl Moore Jr. was one of the five students indicted on charges of illegal voting and aggravated perjury because he allegedly voted in two separate

62 Waller County, "About Commissioners Court," <https://www.co.waller.tx.us/page/CommCourt>About>.

63 Mark Langford, "Black Student Voters Allege Harassment in Texas," *UPI*, April 19, 1991, <https://www.upi.com/Archives/1992/04/19/Black-student-voters-allege-harassment-in-Texas/7349703656000/>.

64 Chandra Baty, "Prairie View 19 Face Arraignment: Students to Plead Not Guilty of Election Fraud," *The Panther*, May 1, 1992, <https://digitalcommons.pvamu.edu/cgi/viewcontent.cgi?article=1402&context=pv-panther-newspapers>.

65 Baty, "Prairie View 19 Face Arraignment."

66 Baty, "Prairie View 19 Face Arraignment" and Ellis, "Jim Crow Goes to College."

elections in two separate counties. Waller County officials failed to realize that Moore's father, also named Carl Moore, was the person who voted in the other county.⁶⁷

Jackson recalled Moore's parents came from Beaumont, Texas, about two hours east of Prairie View, to see then university president Julius Becton, and prove that Carl Moore Jr. did not vote once in his hometown and then again in Prairie View. According to Jackson, Moore's father, Carl Moore Sr., produced evidence that he was the Carl Moore who voted in Beaumont, not his son, Carl Moore Jr.⁶⁸ "But nobody did the correlation," Jackson said, "they just charged the kid with voting twice. He was facing about ten years in prison. But that was to put the spirit of fear into the students."⁶⁹

The wider student community rallied for the 'Prairie View 19,' including by demonstrating at the courthouse the morning of the grand jury session, and by leading a march of hundreds of students who walked and drove caravan-style to Hempstead, shutting down Highway 290, a major thoroughfare which stretches from Houston to Austin. A PVAMU communications student participating in the march reported, "It felt good to be part of a unified effort to improve the rights of students at Prairie View."⁷⁰

During the uproar, McCaig defended his actions by stating that the "permanent residents" of Waller County did not want their legally cast votes to be "diluted by someone who is not a legal voter." McCaig continued, asserting the citizens felt it was: "bad enough being forced to accept the fact that transient students living in a dormitory for a couple of semesters, paying no property taxes, have a right to vote in Waller County (when they should be voting at home) without having county citizens put up with illegal voting on top of that."⁷¹ As it concerned Frank Jackson, McCaig questioned whether Jackson was using his position as a university employee to campaign on officially state-sanctioned business. As a veteran, elected official, university employee, and volunteer fire chief, Mr. Jackson has had an esteemed career as a public servant who has long championed students' voting rights. After graduating from PVAMU in 1973, he was commissioned

⁶⁷ Langford, "Black Student Voters Allege Harassment in Texas."

⁶⁸ Langford, "Black Student Voters Allege Harassment in Texas."

⁶⁹ Frank Jackson, interview by Seamus Heady, July 21, 2023; see also Seamus Heady and Mariia Pankova, "Panthers Vote: The Civic Legacy of Prairie View A&M University," Open Society University Network, January 2025, 19:49, <https://vimeo.com/1059082662>.

⁷⁰ Michell Johnson, "Students March in Protest," *The Panther*, April 6, 1992, 1, <https://digitalcommons.pvamu.edu/cgi/viewcontent.cgi?article=1391&context=pv-panther-newspapers>.

⁷¹ Albert M. McCaig, "McCaig on the Prairie View 19," *The Panther*, May 6, 1992, 7, <https://digitalcommons.pvamu.edu/cgi/viewcontent.cgi?article=1402&context=pv-panther-newspapers>.

as an Ensign in the U.S. Navy, from which he retired as a captain. He returned to work at PVAMU where, over a decades-long career, he held many positions, including government relations officer and vice chancellor for state relations. From the 1990s to the 2010s, he was repeatedly elected to City Council and then as mayor while also serving the City of Prairie View as fire chief. McCaig argued Jackson was deliberately spreading misinformation and “spurring unrest” among the students without a “factual basis.” Despite this accusation and veiled threat, Mr. Jackson retained his position at PVAMU.⁷²

Indeed, this type of accusation, and the underlying threat that goes with it, helps explain why PVAMU officials have historically been reluctant to wade too heavily into student grievances regarding their voting rights in Waller County. Aside from a posting found in one of the university’s webpages announcing the occurrence of a student-led demonstration, there is little record of university officials making strong public stances on behalf of the students. Years later, Jackson reported that the ‘Prairie View 19’ received public support from political scientists Mack Jones, who himself was expelled for participating in sit-ins at Southern University as an undergraduate, and Dr. Imari Obadele, who was one of the founders of the Republic of New Afrika.⁷³

The university’s passive approach did not change as the years went on. Priscilla Barbour, the former President of the Student Government Association and one of the primary participants in voting rights activism on campus in the early 2010s, said, “All student-led efforts were truly student-led and students had to see them through from start to finish.”⁷⁴ As a public institution that’s been intentionally starved of state funding, surely university officials must have care as they navigate the prickly thicket involving state and local politicians, on whose largesse the university greatly depends.

But McCaig was not the only person whose ire Jackson drew. The editor of the *Texas Advocate*, Mary Levy, wrote that Jackson needed “a horse-whipping for misconstruing the facts,”⁷⁵ a threat whose violent imagery no doubt was intended to strike fear in the hearts of Mr. Jackson and PVAMU’s Black students as they were reminded of the horrors their enslaved ancestors were forced to endure.

72 McCaig, “McCaig on the Prairie View 19,” 7.

73 Mack H. Jones, interview by Jewel Prestage and Twiley Barker, Louie B. Nunn Center for Oral History, University of Kentucky Libraries, July 15, 1994.

74 Jonathan Becker and Erin Cannan, “Institution as Citizen: Colleges and Universities as Actors in Defense of Student Voting Rights,” *The Rutgers University Law Review* 74, no. 4 (Summer 2022): 1905.

75 Baty, “Prairie View 19 Face Arraignment.”

Jackson responded to these assertions of wrongdoing, arguing that for Levy and McCaig to refer to the students as “transient” and not actual residents of Waller County “is absurd and reflects the mind of a bigot [and it is] unethical and grossly unfair for Mary Levy and Albert (Buddy) McCaig, Jr. to paint a negative picture of these citizens and then turn around and become the first in line to meet dignitaries on campus or to eat bread from the students’ table.”⁷⁶ The charges were dropped after intervention by the United States Department of Justice, citing lack of evidence. However, the indictments drew a long shadow: according to local activist Dwayne Charleston, many of the students chose not to exercise their right to vote in subsequent elections out of fear of being arrested and facing criminal charges.

Those fears were further affirmed in the county a decade later. In the fall of 2003, Waller County District Attorney Oliver Kitzman wrote to the county elections administrator, Lela Loewe, saying:

Serious inquiries have come to my office this year concerning the actual application of the terms domicile and residency in elections in Waller County. ... Incorrect information about what constitutes residency (and feigned residency) has deprived Waller Countians of fair elections on many occasions in the recent past. Numerous constituents urge me to do something about this. It’s my duty to do so, and I will.⁷⁷

Days later, D.A. Kitzman wrote an op-ed in the *Waller Times* threatening to bring criminal charges against any student who did not meet his definition of legal residency.⁷⁸ In effect, D.A. Kitzman sought to negate or nullify all the previously discussed court rulings and continued to insist that Prairie View students were not citizens of Waller County and, therefore, were ineligible to vote in local elections. The timing of these threats was peculiar, as a Prairie View student was running for a seat on the Waller County Commissioner’s Court in the upcoming spring elections.⁷⁹

76 Frank D. Jackson, “Jackson Affirms Commitment to Prairie View Community,” *The Panther*, May 6, 1992, <https://digitalcommons.pvamu.edu/cgi/viewcontent.cgi?article=1402&context=pv-panther-newspapers>.

77 Billy Drago, “DA, State at Odds on Student Voting,” *Chron*, January 7, 2004, <https://www.chron.com/neighborhood/article/DA-state-at-odds-on-student-voting-9787811.php>.

78 Barbara Ramirez, “Panthers Defy Intimidation, Weather to Assert Voting Rights,” *The Panther*, January 21, 2004, <https://digitalcommons.pvamu.edu/cgi/viewcontent.cgi?article=1689&context=pv-panther-newspapers>.

79 Breen, “Midterm Elections 2018” and Emmanuel Felton, “Black Students in Texas Filed A Voting Rights Suit but Didn’t Get an Answer in Time,” *BuzzFeed*, October 30, 2020, <https://www.buzzfeednews.com/article/emmanuelfelton/trump-judges-voting-rights-texas-black-students>.

Despite affirmations from state leadership, including then-secretary of state Gregg Abbott, that the students had the right to vote in the county,⁸⁰ D.A. Kitzman refused to back down. Subsequently the Prairie View NAACP, along with Prairie View undergraduate students Brian Rowland, Neothies Lindley, and Vivian Spikes, filed a lawsuit, alleging Kitzman's statements were akin to voter intimidation. They took to the streets, marching seven miles from PVAMU's main campus to the Waller County courthouse to protest D.A. Kitzman's actions, and initiated an economic boycott of local businesses in the county.⁸¹ The Department of Justice opened an investigation, and the county prosecutor ultimately relented and issued a formal apology to the students:

I have come to realize that, although it was never my intention, my actions and statements beginning with the letter I sent to Waller County Election Administrator Lela Loewe in November and continuing with my response to the Attorney General opinion earlier this month, taken in the historical context in which they occurred, have been understandably perceived by some PVAMU students as threatening. I want the PVAMU community to know that I apologize, and I welcome them as participants in the democratic institutions in Waller County.⁸²

4 From Eligibility to Access

Despite Kitzman's 2004 apology over the eligibility issue, the county then moved to limit Prairie View students' access to the polls during the 2004 primary elections by restricting early voting hours on campus to six hours on a single day during spring break, when the vast majority of students would be out of town. Another emergency lawsuit was filed and the county reverted to its original plan for early voting hours. Kitzman's change in early voting hours was not cleared with the Department of Justice, as required by the pre-clearance provision of the Voting Rights Act of 1965.⁸³ Texas, along with other states and some counties

⁸⁰ Greg Abbott, "Opinion No. GA-0141," Texas Attorney General, February 4, 2004.12, <https://www.texasattorneygeneral.gov/sites/default/files/opinion-files/opinion/2004/ga0141.pdf>.

⁸¹ Ramirez, "Panthers Defy Intimidation" and Nikki Easter, "Students, Community Supporters Boycott Local Businesses," *The Panther*, January 21, 2004.

⁸² Terry Kliever, "Waller County DA Apologizes in Vote Flap," *Houston Chronicle*, February 25, 2004, <https://www.chron.com/news/houston-texas/article/waller-county-da-apologizes-in-vote-flap-1957246.php>.

⁸³ Peniel Joseph, Expert Report, *Allen v. Waller* (S.D. Tex.) (dated July 30, 2019, Pls. Trial Exhibit 155), and Breen, "Midterm Elections 2018." In its 2018 *Shelby v. Holder* ruling, this provision of the Voting Rights Act was struck down as unconstitutional by the Supreme Court.

and municipalities,⁸⁴ was subject to this pre-clearance requirement due to a history of systematic and intentional voter suppression of African American voters in specific jurisdictions. Any change Texas wanted to make to its voting practices, such as early voting hours, the number of polling places, or voter registration requirements, had to be approved by the federal government. This sudden removal of voting access was a direct violation of the pre-clearance provision. More litigation ensued and the county officials honored the previously approved early voting arrangement.

Towards the late 2000s, issues arose again during the period leading up to and after the 2008 presidential election, which saw Barack Obama win a historical election making him the first Black man to win the White House. This understandably created a groundswell of voter registration interest among PVAMU's mostly Black student population.

Many students were registered to vote in the county using Voluntary Deputy Registrars (VDRs). In Texas, VDRs are responsible for registering voters, are appointed by county voter registrars, and according to the Office of the Texas Secretary of State, are "charged with increasing voter registration in the state."⁸⁵ But Waller County election officials rejected 'incomplete' voter registrations, many resulting from students forgetting to write down their zip code correctly and/or using outdated registration paperwork. For the students whose registrations the county rejected, the county required VDRs to locate and personally notify the applicants of the rejection. Waller County officials also capped the number of new registrations any VDR could submit for approval, hampering the success of get-out-the-vote initiatives that sought to register Black collegians on PVAMU's campus.⁸⁶

Additionally, prior to the 2008 presidential primaries Waller County planned to reduce its early polling locations from six to one, citing budgetary constraints. This change in polling locations left the county with a lone early voting location, seven miles from PVAMU's campus, creating a prohibitive access issue. Many stu-

⁸⁴ This provision covered some states in their entirety, most of which are in the Deep South, including Alabama, Georgia, Louisiana, Mississippi, and South Carolina. However, counties and municipalities from across the country were also covered, such as Kings County, NY, Monroe County, FL, Clyde Township, MI, and 40 of North Carolina's 100 counties. See U.S. Department of Justice, "Jurisdictions Previously Covered by Section 5," updated May 17, 2023, <https://www.justice.gov/crt/jurisdictions-previously-covered-section-5>.

⁸⁵ Texas Secretary of State, "Volunteer Deputy Registrars," <https://www.sos.state.tx.us/elections/laws/volunteer-deputy-registrars.shtml>.

⁸⁶ Consent Decree, *United States v. Waller County, TX*, Case 4:08-CV-03022 (S.D. Tex. 2008), <https://www.justice.gov/crt/case-document/file/1096926/dl?inline>.

dents do not have reliable transportation, and the city and county do not possess public transit, thus creating an impediment to participation. More importantly, the Department of Justice did not approve any of the aforementioned changes as required by section 5 of the Voting Rights Act of 1965, which was still in force at the time. Students marched 7.2 miles from campus to the lone early voting polling in Waller County. Once again, the Department of Justice got involved and entered a consent decree with Waller County, mandating that any change the county sought to make to its registration practices, polling locations, early voting hours, or other changes must be cleared by the Department of Justice. Additionally, in agreeing to the terms of federal oversight, Waller County formally acknowledged that the denial of hundreds of applications from primarily PVAMU students for not using the most updated paperwork or because of other minute errors had not been pre-approved by the Department of Justice. Election officials had to justify denying any voter registration per the 2008 consent decree terms until 2012.⁸⁷

Waller County's decisions to limit early voting on PVAMU's campus continued. In the spring of 2012 and 2013, the closest polling place for PVAMU students was at the City of Prairie View Community Center. This location is just less than a mile from student dorms, and many students do not have automotive transportation. Additionally, this location created an additional barrier of access for students with physical disabilities who did not have cars.⁸⁸ Much like in 1992, 2004, and 2008, the students used the one consistent weapon in their arsenal: public protest. Ultimately in the summer of 2013, then-SGA president Priscilla Barbour wrote a letter to Texas Secretary of State John Steen for assistance in securing a polling place on PVAMU's campus. Barbour later remarked, "We've seen the [Waller County] community use the campus for a variety of things. Why not use this as an opportunity to bridge the community and the University to come together and vote?"⁸⁹ After assistance from Steen and True The Vote, a conservative organization with focus on stopping voter fraud with origins in the Tea Party movement, the students were finally able to vote on campus in the Memorial Student Center in 2013.⁹⁰

⁸⁷ Consent Decree, *United States v. Waller County, TX*, Case 4:08-CV-03022 (S.D. Tex. 2008).

⁸⁸ Reeve Hamilton, "Student Leader Demands On-Campus Polling Place," *The Texas Tribune*, July 31, 2013, <https://www.texastribune.org/2013/07/31/prairie-view-m-students-demand-campus-voting/>.

⁸⁹ Priscilla Barbour Randle, interviewed by Seamus Heady, April 5, 2024; and Heady and Pankova, "Panthers Vote."

⁹⁰ Reeve Hamilton, "Unlikely Coalition Brings On-Campus Voting Location to Prairie View," *The Texas Tribune*, September 30, 2013, <https://www.texastribune.org/2013/09/30/prairie-view-campus-gets-long-awaited-voting-locat/>.

5 The Struggle Continues: More Recent Developments

In the fall of 2018, the students found themselves back in the headlines and back in the courtroom with yet another lawsuit. Following in the footsteps of previous students, Jayla Allen, along with half a dozen other students, filed a federal civil rights lawsuit against Waller County and its leadership, alleging their 14th, 15th, and 26th Amendment constitutional rights had been violated.⁹¹

The students sought more access to early voting on campus, which the county refused to provide, citing budgeting concerns. Data from the 2018 primaries in March illustrated that 64% of Prairie View students who voted in the election overwhelmingly utilized early voting, compared with 43% of Waller County voters who utilized early voting in the March primaries.⁹² Yet, during the first week of early voting before the November 2018 elections, there were no early voting sites or opportunities in Prairie View. During the second week of early voting, the City of Prairie View had only two early voting locations, the Memorial Student Center (colloquially known as the ‘MSC’) on campus, and the Waller County Community Center. The Waller County Community Center is located less than a mile from campus but is rarely used because, according to the plaintiffs, “most students receive their mail on campus.” The MSC had early voting for three days from 8 a.m.–5 p.m. from October 29–31, 2018. There were no weekend hours for early voting anywhere in Prairie View. There were no evening hours (i.e., after 5:00 p.m.) for early voting at the MSC during the limited hours that early voting was available on campus.⁹³

By contrast, the majority-white City of Waller, whose population was less than half that of the City of Prairie View and had half of the eligible voting-age population of the City of Prairie View, had early voting sites for all 11 days of early voting, which included opportunities to vote during the evenings and on weekends. The City of Brookshire, which had a lower share of voters eligible to vote than the City of Prairie View, had 12 days of early voting, including evenings and weekend hours. The City of Hempstead, whose numerical population is lower than the City of Prairie View’s, had 12 days of early voting, including opportunities to vote during weekends and one day of evening accessibility at the Waller County court-

⁹¹ *Allen v Waller County*, 472 F. Supp. 3d 351 (S.D. Tex. 2020), <https://casetext.com/case/allen-v-waller-cnty>.

⁹² *Allen v Waller County*, 472 F. Supp. 3d 351 (S.D. Tex. 2020).

⁹³ *Allen v Waller County*, 472 F. Supp. 3d 351 (S.D. Tex. 2020).



Figure 1: Student leaders Jayla Allen and Jessica Purnell at a protest in Prairie View, Texas, October, 2018. Photo courtesy of Prairie View A&M University.

house.⁹⁴ A few days before the start of early voting, PVAMU students packed a Waller County Commissioners Court meeting, where County Judge Trey Duhon, who is white and head of the Waller County Commissioners Court, acknowledged, “I do think there is an inequity,” referring to the disparity in early voting locations and the limited access students have compared with other areas of the county.⁹⁵ Despite this concession, Waller County leadership did not approve additional early voting hours on campus for Prairie View students.⁹⁶

This prompted Allen and fellow students Joshua Muhammad, Treasure Smith, Damon Johnson, and Raul Sanchez to sue Waller County Elections Administrator Christy Eason and the Waller County Commissioners Court, including the head of the Commissioners Court, Judge Duhon.⁹⁷ The students reached out to the NAACP’s Legal Defense Fund (LDF), which responded positively to their request for assistance. Given its previous work in Texas, particularly in the 2012–2013 period

⁹⁴ *Allen v. Waller County*, 472 F. Supp. 3d 351 (S.D. Tex. 2020).

⁹⁵ Ura, “Texas’ Oldest Black University.”

⁹⁶ Ura, “Texas’ Oldest Black University.”

⁹⁷ *Allen v. Waller County*, 472 F. Supp. 3d 351 (S.D. Tex. 2020).

when the NAACP challenged Texas' restrictive photo ID law, which was implemented immediately after the *Shelby* ruling overturned the Civil Rights Act's pre-clearance requirement, the NAACP was receptive to the students' request. "When people from PV call, I answer," said Leah Aden, who is currently the LDF's Director of Litigation and who served as its deputy director during the *Allen* case. "I am not aware of any other group of students at a university that has been serially mistreated using various stratagems by a state or local government over decades," she said.⁹⁸ Aden asked, "Why would you do that in a place where you have some of the most active voters in all the county? These are citizens of the country. These are registered voters of the county. Why wouldn't you be putting resources into voting access where past practice shows those opportunities were actually being used?"⁹⁹

Only after this lawsuit had been filed did the county expand the hours of the three on-campus voting days from 7 a.m. to 7 p.m., after previously scheduling early voting at the MSC from 8–5 p.m., and open a Sunday polling place at Prairie View City Hall.¹⁰⁰ The county argued publicly and in court filings that the early voting plan had been approved by both the Republican and Democratic Party Chairs of Waller County, and previously the Chair of the Waller County Democratic Party had asked that early voting on campus be pushed to the second week of early voting, so that it would not coincide with PVAMU's homecoming festivities.¹⁰¹ Conceding that Waller County had a well-documented issue with student voting rights and voter suppression, Duhon said,

I understand how this looks. I can understand and appreciate the perception for someone who knows the history of Waller County. I just wish people would take the time to learn the facts and the truth today. This isn't your grandfather's or great-grandfather's county, not even close. It kills me to be painted with a brush that I had nothing to do with.¹⁰²

⁹⁸ Leah Aden, interview with the authors, January 31, 2025, and email exchanges, February 13, 2025.

⁹⁹ Leah Aden, interview with the authors, January 31, 2025, and email exchanges, February 13, 2025.

¹⁰⁰ Matt Zdun, "Waller County Expands Early Voting for Prairie View A&M Students," *The Texas Tribune*, October 25, 2018, <https://www.texastribune.org/2018/10/25/waller-county-expands-early-voting-prairie-view-m-students/>. See also Amy Gardner, "In Rural Texas, Black Students' Fight for Voting Access Conjures a Painful Past," *The Washington Post*, September 24, 2019, https://www.washingtonpost.com/politics/in-rural-texas-black-students-fight-for-voting-access-conjures-a-painful-past/2019/09/24/fa18e880-ca69-11e9-a1fe-ca46e8d573c0_story.html.

¹⁰¹ Ura, "Texas' Oldest Black University."

¹⁰² Gardner, "In Rural Texas."

Duhon insisted the issue with access to the polls was not the result of racism but merely a county not flush with financial resources trying to do the best it could to provide polling places to its citizens. While defending himself from charges of racism, Duhon again admitted, “I think there’s always been this fear that if all the students voted, and they voted in a certain way, they could take over the county.”¹⁰³

In 2022, four years after initially filing her lawsuit and long after she graduated, Jayla Allen lost her lawsuit: despite the federal judge being impressed with testimony by Ms. Allen and the other students, the court ruled in favor of Waller County, saying the students had not proved that their constitutional rights were violated. Judge Charles Eskridge, a Trump appointee, wrote in his ruling that, “At best, Plaintiffs establish a mere inconvenience imposed on PVAMU students with respect to the early voting schedule for the 2018 general election. ... In reality, it’s rather doubtful that the early voting locations and hours provided by Waller County to PVAMU students can be understood as creating any incremental inconvenience at all.”¹⁰⁴

6 Conclusion

Ever since the arrival of enslaved Africans on the North American continent more than 400 years ago, racial progress in the United States has not been linear; a rip-tide of white supremacist racial revanchism follows every wave of racial progress. Perhaps no place exemplifies this phenomenon more than Waller County, Texas. Despite orders from Texas State officials, Supreme Court rulings, federal investigations, indictments, and endless marches, it feels as if Waller County, Texas, is stuck in an endless loop of students having their rights affirmed by America’s legal institutions and the county quickly adopting new nefarious mechanisms to deny students their constitutional rights. In the late 1960s/early 1970s, it was the residency questionnaire used by LeRoy Symm, then severe gerrymandering, which evolved into indicting students for ‘illegally voting’ in the spring of 1992, which ultimately evolved to the present day with students engaged in a contentious battle to secure access to polling options on campus that are as equitable

¹⁰³ Gardner, “In Rural Texas.”

¹⁰⁴ For a more in-depth examination of the most recent installment of PVAMU students fighting for their voting rights, please see Alexander Goodwin, Ronald Goodwin, and Michael J. Nojeim, “The ‘Political Science Posse’: Voting Rights and Student Activism at Prairie View A&M University,” in *The Quest for Justice at Prairie View A&M University*, ed. Will Guzman and William Hoston (Texas Tech University Press, forthcoming).

as those found elsewhere in the county. Racism, covert or overt, has been the animating factor in most of these cases.



Figure 2: PVAMU Students march in a protest, 2020. Photo courtesy of Prairie View A&M University.

The result has been the same: Prairie View students in Waller County face significant obstacles to casting their votes. As the United States currently navigates one of the most trying periods of its history, this trend of progress and subsequent racial retrenchment seems destined to continue: the only question is not if but when another chapter in the ongoing saga between Waller County versus PVAMU students will be written.

Despite their struggles in accessing voting rights, or perhaps because of them, students at Prairie View A&M University have, for more than a half century, demonstrated a pattern of extraordinary resilience and courage. They have repeatedly stood up and fought against the obstacles that have been placed in front of them, and done so despite being targeted by local officials in a region well known for its ugly, violent, racist past. According to Dr. Melanye Price, who graduated from PVAMU in 1995 and who now serves as the university's Endowed Professor of Political Science and Director of the Ruth J. Simmons Race and Justice Center, it is as if PVAMU students have, for decades proclaimed, "we're never going to stop trying, we're never going to stop suing you, we're

never going to stop protesting, we're never going stop registering."¹⁰⁵ Their brave efforts serve as a remarkable example, not only for students elsewhere, but for all who want to engage in social justice.

Indeed, consider some of the PVAMU students who engaged in the most recent struggle. Jayla Allen finished a master's degree in African American Diaspora Studies at Columbia University, currently works as a restorative justice practitioner in New York City, and plans to enter law school in the fall of 2025. Other students from Jayla's time, known as the Political Science Posse (because most of them were Political Science majors), supported the cause by engaging in organizing protests and marches. They remark that their experiences have left them committed to a life in pursuit of social justice.¹⁰⁶ For example, Maydrian-Strozier Lowe was one of the protest leaders in the 2018 period and he is now a civil rights attorney working with the NAACP. Kendric Jones was elected—and still serves as—a member of the Waller County Commissioners Court. Nathan Alexander was elected to Prairie View's City Council and is one of the youngest ever to be elected to a city council in Texas. He left that position and is now finishing law school at the University of Texas. Another Posse member, Kirsten Budwine, works as an attorney for the Texas Civil Rights Project after graduating from the University of Texas Law School, and Maia Young recently completed her law degree at the University of Vermont along with a master's in restorative justice. These students carry on a hopeful legacy of striving for what is right and serve as an inspirational example for others. Perhaps LDF attorney Aden said it best:

I think [students at PVAMU] have so much to teach this country about how it treats its citizens. I think it's such an example of what Black people do in the face of racial discrimination. ... And the ways the students have responded in terms of running for office, resisting efforts to criminalize their ability to participate politically, registering students, advocating for accessible cites to vote, constantly talking about the value of political participation and much more ... that is so impressive [because Prairie View students] can teach other students how to engage in the face of obstacles, but also engage in a way that affirmatively moves Black people forward.¹⁰⁷

¹⁰⁵ Melanye Price, interviewed by Seamus Heady, July 21, 2023; and Heady and Pankova, "Panthers Vote."

¹⁰⁶ See Goodwin, Goodwin, and Nojeim, "The 'Political Science Posse.'"

¹⁰⁷ Leah Aden, interview with the authors, January 31, 2025, and email exchanges, February 13, 2025.

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