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Review Of "The Battle For The Black Ballot: Smith V. Allwright And The Defeat Of The Texas All-White Primary" By C. L. Zelden

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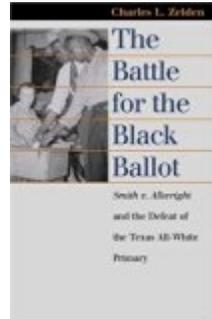
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Charles L. Zelden. *The Battle for the Black Ballot: Smith v. Allwright and the Defeat of the Texas All-White Primary*. Lawrence: University Press of Kansas, 2004. 168 pp. \$29.95 (cloth), ISBN 978-0-7006-1339-7; \$12.95 (paper), ISBN 978-0-7006-1340-3.

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From 1890 to the 1965 Voting Rights Act, Southern Democratic parties used several legal devices to suppress black voting—the best known being the poll tax and the literacy test. But as black Southerners' levels of income and educational attainment grew, Democratic officials added the white primary to their panoply of interlocking exclusions. The fictive theory of these elections held that they were unofficial and private, no different from electing officers of a country club that so happened to restrict its membership to whites. These were, however, the real public elections. The South was still a one-party region, a circumstance that did not begin to change until 1964, when Barry Goldwater captured the Deep South.

It was the great genius of the NAACP's national and regional leadership to grasp that white supremacy's weakest spot, in the courts, was this newer device—not the older poll tax or literacy test. These hoary measures could always be defended in the courts as race-neutral, even if everyone knew they were not. Their defenders passed them off as good government requirements that voters demonstrate some personal virtue. So said President William Howard Taft in his Inaugural Address. But the statutory requirement that a voter be white was likely to crumble before the 14th and 15th Amendments. It was an explicitly racial requirement—just like the grandfather clause, which the Supreme Court struck down in 1915. The Court had always taken textual color-blindness very seriously. If the NAACP's lawyers could show that the Democratic party primary was always the only election that mattered in a state, and if the NAACP could also show that administration of the primary depended on official assistance, then the Supreme Court would likely nullify it as an affront to the 14th and 15th Amendments. Setting up such empirical demonstrations took time and

strategy. But the facts were on the NAACP's side. No Southern state could really hide its role in administering the white primary as long as there were elections and as long as there was only one party running a state.

How the white primary was killed in the State of Texas (and therefore in other states) by the Court's 1944 decision, *Smith v. Allwright*, is the story of this excellent little volume. Zelden is not the first scholar to offer a full study of the Texas white primary—that honor falls to Darlene Clark Hine. Nor is this the last book that can be written, since a future study could well cover the comparative politics of the primary's operation throughout the region. But this volume nicely complements Hine's pioneering work. Hine's strength was her handling of the grassroots planning and struggle in Texas; Zelden's *forte* is making the litigation come alive—the lawyering, the judicial decision-making, and, most important, Thurgood Marshall's legal craftsmanship. Although this series by the University Press of Kansas comprises books without footnotes, it is very clear from the text that Zelden's knowledge of the legal history is exceptionally, if not uniquely, deep.

Not only does Zelden tell the entire legal story extremely well, he usefully casts it in the simple conceptual distinction, drawn from game theory, between “one-shot” and “repeat player” litigation. The former kind of litigator often has a short-run, movement-building goal. Winning, legally or constitutionally, may be less important than framing political choices for attentive citizens in ways that will get them participating. “Repeat player” litigators will have little interest in prompting collective action until they win. They want, instead, to first actually change law by gradually bringing judges to the

point where they must finally break from precedent altogether. Repeat litigation is meant to draw judges up to that precipice. Zelden shows that it was this type of litigation strategy that killed the white primary.

In short, Zelden's book is fine civil rights history. It is also a theoretically informed case study of group litigation for social change that can be read with considerable profit by analysts of how and when the legal process and political conflict overlap.

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