# "Our Very Pronounced Theory of Equal Rights to All": Race, Citizenship, and Populism in the South Texas Borderlands

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On May 11, 1896, a "copper-colored" man with "dark eyes, straight black hair, and high cheek bones" walked into the federal courthouse in San Antonio, Texas, and applied for American citizenship. He was Ricardo Rodriguez, an illiterate thirty-seven-year-old laborer who spoke no English. A native of Guanajuato, Mexico, he had lived in Texas since 1883. By all he accounts was an industrious, law-abiding man with only one stated reason for desiring citizenship: "because he lived here."[1]

There to contest Rodriguez's application were the Populist attorney Theodore J. McMinn and the Republican attorney Andrew Jackson Evans. Both men were familiar figures in the courtroom of the presiding judge, Thomas S. Maxey, a Democrat appointed to the bench in 1888 by President Grover Cleveland. Intent upon making a test case of Rodriguez's application, the attorneys filed an amicus brief challenging the application on the grounds that Rodriguez was not white and therefore ineligible for citizenship under American immigration law. The case held enormous implications not only for immigrants but also for thousands of Mexican Americans in Texas and the Southwest. It also would have far-reaching political reverberations, as Mexicanos constituted an important voting constituency of the Democratic party.[2]

Two broad categories of scholars have studied *In re Rodriguez*. One group has been concerned primarily with what the case reveals about the history of race in the United States. The relatively recent recognition that race has no meaningful biological basis and is socially (and legally) constructed has led them to examine the case through new cultural studies and critical race theory. They have considered *Rodriguez* in the context of the body of immigration laws and jurisprudence of the era, hoping to explain the sources and nature of racism.

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[1] On Ricardo Rodriquez, his application for citizenship, and the case surrounding it, see Arnoldo De León, In re Ricardo Rodriguez: *An Attempt at Chicano Disfranchisement in San Antonio, 1896–1897* (San Antonio, 1979), reprinted without footnotes in *En Aquel Entonces: Readings in Mexican-American History,* ed. Manuel G. Gonzales and Cynthia M. Gonzales (Bloomington, 2000), 57–63. *In re Rodriguez,* 81 F. 337, 338, 345 (1897).

[2] The text of the attorney's amicus brief can be found in *In re Rodriguez,* 81 F. 337. On Thomas S. Maxey, see *Handbook of Texas Online,* s.v. "Maxey, Thomas Sheldon," http://tshaonline.org/handbook/online/articles/fma86. I use the terms *Mexicanos* or *ethnic Mexicans* to refer to people of Mexican ancestry, regardless of their country of birth. I use *Mexican Americans* and *Tejanos* interchangeably to refer to Texas-born people of Mexican ancestry. In Texas in the 1890s people of Mexican descent, including Tejanos, usually referred to themselves as *Mexicans* or *Mexicanos* regardless of their place of birth, although they sometimes employed terms such as *Mexicano-Texano*.

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Their studies examine changing ideas about "whiteness" and how the concept was constructed by law and in society. The vocabulary of race used by lawyers and judges constitutes the centerpiece of these studies, and court records have often served as "texts," albeit with scholars paying limited attention to the historical events that gave rise to them. In these scholars' hands, *Rodriguez* becomes another chapter in the story of how racialized thinking was on the rise during the Gilded Age, but the specific political dynamics of the case receive short shrift.[3]

The second (and somewhat overlapping) category encompasses Chicano studies scholars who have primarily emphasized the civil rights aspects of the case. In the 1970s the historian Arnoldo De León characterized *Rodriguez* as "a form of legal discrimination against Chicanos" that "sought to curb privileges clearly guaranteed by the law." Scholars in this category have paid more attention to politics, and in their works McMinn and his Populist cohort receive the lion's share of attention—and criticism. In his pioneering work *Occupied America,* for example, Rodolfo Acuña claimed that Texas Populists "pushed for the disenfranchisement of all Mexicans." Acuña accused Populists of "attacking Mexicans and threatening to deport them," and he charged that "the Populists made Mexicans their scapegoats, popularizing crass racist arguments." More recently, Martha Menchaca has elaborated upon these themes, depicting *Rodriguez* as the centerpiece of a concerted campaign by the People's party to persecute and exclude Mexicanos. "The party's specific target became Mexican immigrants and their children," she asserts. Claiming that Populists wanted to employ cheap immigrant labor on their farms, she explains that Mexicanos "needed to be denied political rights if they were to be converted into a permanent peonage class." Such interpretations have been based on syllogistic reasoning: McMinn employed racial arguments aimed at barring Mexicans from becoming naturalized citizens; McMinn was a Populist; therefore, the Populist party was anti-Mexican. Such reductive logic has produced a distorted view of Populism that is now part of the historiographical record—an interpretation suggesting that Populist racial liberalism was a mirage.[4]

A third category of scholars—historians of Populism—have completely overlooked *Rodriguez*. Despite forty years of robust historiographical debate over the party's racial record, scholars have virtually neglected the subject of Populism and race vis-à-vis Mexicanos. Such neglect is particularly surprising given historians' growing recognition of the potential that the study of groups outside the black-white binary holds for enhancing understanding of race in the United States. This article is my attempt to remedy that shortcoming. In south Texas, a region where Populism faced daunting challenges, the largest insurgent political movement in U.S. history struggled to live up to its professed creed of "equal rights to all and special

[3] For scholarship that fits into the first historiographical category, see Ian F. Haney López, *White by Law: The Legal Construction of Race* (New York, 1996), 61; George A. Martinez, "The Legal Construction of Race: Mexican-Americans and Whiteness," *Harvard Latino Law Review,* 2 (Fall 1997), 321–47; Matthew Frye Jacobson, *Whiteness of a Different Color: European Immigrants and the Alchemy of Race* (Cambridge, Mass., 1998), 229–30; Neil Foley, *The White Scourge: Mexicans, Blacks, and Poor Whites in Texas Cotton Culture* (Berkeley, 1997), 106–7; Evelyn Nakano Glenn, *Unequal Freedom: How Race and Gender Shaped American Citizenship and Labor* (Cambridge, Mass., 2002), 159; Mae M. Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton, 2004), 53–54; Ariela S. Gross, *What Blood Won't Tell: A History of Race on Trial in America* (New York, 2007), 257–59; Laura E. Gómez, *Manifest Destinies: The Making of the Mexican American Race* (New York, 2007), 139–43; and Gregory Rodriguez, *Mongrels, Bastards, Orphans, and Vagabonds: Mexican Immigration and the Future of Race in America* (New York, 2007), 169.

[4] De León, In re Ricardo Rodriguez, 63; Rodolfo Acuña, *Occupied America: A History of Chicanos* (New York, 1981), 44; Martha Menchaca, *Naturalizing Mexican Immigrants: A Texas History* (Austin, 2011), 103, 107. For another example of scholarship that fits in the second historiographical category, see Fernando V. Padilla, "Early Chicano Legal Recognition: 1846–1897," *Journal of Popular Culture,* 13 (Spring 1980), 564–74.

privileges for none." Although they succeeded to a degree that has heretofore been unrecognized by scholars, Populists ultimately fell short of their goal of bringing large numbers of Mexicanos into their coalition. Populists' successes and eventual failure reveal the cultural, ideological, and political constraints under which they labored and shed light on why reform was so difficult to achieve at the turn of the twentieth century.[5]

Besides Ricardo Rodriguez, the central figure in the *Rodriguez* drama was Theodore McMinn. Born the son of a millwright in Logansport, Indiana, in 1845, McMinn worked his way up from blacksmithing to clerking and finally to law school. Choosing a career in journalism over law, he worked for the *St. Louis Globe-Democrat* and the *Springfield (MO) Herald,* served as an agent of the St. Louis Livestock Exchange, and helped found the National Cattle and Horse Growers Association. After moving to San Antonio in 1887 he managed the literary bureau of the San Antonio and Aransas Pass Railroad and worked as an agent for the Southwestern Immigration Association, finally returning to journalism as the editor of the *San Antonio Times*. As a muckraking reporter McMinn published exposés of every type of subversive behavior from gambling dens to political corruption. Fired from the newspaper for unspecified "political reasons," he resumed his legal career, once even arguing a case before the U.S. Supreme Court. In 1891 he joined the new People's party (the Populists), serving on the platform committee at the founding convention of the Texas branch. He was also an accomplished operatic tenor, always in demand for public performances, and he earned a public reputation as a poet in San Antonio. A New York newspaper reporter who interviewed McMinn in 1890, prior to his appearance before the U.S. Supreme Court, described him as possessing "an air of great energy, firm resolution, and tremendous reserve power." These qualities colored his politics as well. Throughout his checkered career, the outspoken, idealistic, mercurial McMinn won friends and admirers easily.[6]

[5] For an overview of the literature that moves outside the black-white binary, see Nancy A. Hewitt, "Introduction," in *Beyond Black and White: Race, Ethnicity, and Gender in the U.S. South and Southwest,* ed. Stephanie Cole and Allison M. Parker (College Station, 2004), xi–xxx. On the Farmers's Alliance, which transitioned to the People's party (commonly known as the Populist party), see Robert C. McMath Jr., *Populist Vanguard: A History of the Southern Farmers' Alliance* (Chapel Hill, 1975); Lawrence Goodwyn, *Democratic Promise: The Populist Moment in America* (New York, 1976); Bruce Palmer, *"Man over Money": The Southern Populist Critique of American Capitalism* (Chapel Hill, 2010); Norman Pollack, *The Just Polity: Populism, Law, and Human Welfare* (Urbana, 1987); Gene Clanton, *Populism: The Humane Preference in America, 1890–1900* (Boston, 1991); Robert C. McMath Jr., *American Populism: A Social History, 1877–1898* (New York, 1993); Matthew Hild, *Greenbackers, Knights of Labor, and Populists: Farmer-Labor Insurgency in the Late Nineteenth-Century South* (Athens, Ga., 2007); and Charles Postel, *The Populist Vision* (Oxford, 2009).

[6] For Theodore J. McMinn in the 1860 Cass County, Indiana, census, see U.S. Department of the Interior, Census Office, *Population Schedules of the Eighth Census, 1860* (microfilm, 307 reels, National Archives Microfilm Publications, 1965), reel 247, p. 446, http://archive.org/details/populationschedu247unit; "Church Entertainments," *St. Louis Globe-Democrat,* Dec. 27, 1878, p. 4; "The Sanctuaries," *ibid.*, Jan. 12, 1879, p. 4; "Grand Testimonial Concert," *ibid.*, Jan. 26, 1879, p. 5; "Amusement Notes," *ibid.*, Jan. 29, 1879, p. 4; "Jew and Gentile," *ibid.*, Jan. 31, 1879, p. 4; "Greeley's Gift," *ibid.*, Jan. 29, 1880, p. 8; "The Concert," *ibid.*, Oct. 27, 1888, p. 11; "The River Excursion," *ibid.*, Oct. 29, 1881, p. 10; "Club Doings," *ibid.*, March 9, 1882, p. 7; "United Hebrews," *ibid.*, May 25, 1882, p. 10; "A Saturday Evening Sail," *ibid.*, June 18, 1882, p. 3; "The Theaters," *ibid.*, Jan. 14, 1883, p. 9; "Picnics and Excursions," *ibid.*, June 15, 1883, p. 10; "The Merchants' Exchange Excursion," *ibid.*, June 17, 1883, p. 8; "Bank Briefs," *ibid.*, July 24, 1883, p. 7; "The Cattlemen's Convention," *ibid.*, Nov. 9, 1884, p. 11; "Church Dedication," *ibid.*, Oct. 24, 1885, p. 11; "John O'Day on His Muscle," *ibid.*, Jan. 4, 1887, p. 4; "Society News," *ibid.*, Feb. 5, 1887, p. 10; "Citizens' Association," *San Antonio Daily Express,* Oct. 27, 1887, p. 5; "Edward Ignatius Coyle Again," *ibid.*, Feb. 28, 1884, p. 4; "About Immigration," *ibid.*, March 9, 1888, p. 5; "Every One Talks Texas," *ibid.*, May 11, 1888, p. 8; "Texas Talk," *ibid.*, May 25, 1888, p. 3; "City News," *ibid.*, June 3, p. 7; "Beeville Buzzings," *ibid.*, June 21, 1888, p. 3; "City News," *ibid.*, July 21, 1888, p. 5; "The Bald Knob King," *ibid.*, Aug. 24, 1888, p. 5; "Interesting Services," *ibid.*, Jan. 8, 1889, p. 5; "A Case of Dissolution," *ibid.*, Aug. 7, 1889, p. 5; "City News," *ibid.*, May 9, 1890, p. 5; "The National Capital," *ibid.*, May 21, 1890, p. 1; "Second Days' Session of the Cattle and Horse Growers," *Atchison (KS) Daily Champion,* Nov. 25, 1885, p. 1; "Struggles in Deep Water,"

A multitalented but mercurial reformer, Theodore J. McMinn was a founder of the Texas People's party and a Populist party nominee for Congress in 1892, the Texas Supreme Court in 1896, and for governor in 1900. His "friend of the court" brief opposing Ricardo Rodriguez's application for U.S. citizenship led to the landmark case *In re Rodriguez,* which defined Mexicans as white for purposes of immigration law. *Redrawn by Devon Nowlin from* Galveston Daily News, *Aug. 9, 1896, p. 1.*

Joining McMinn in court the day Rodriguez filed his citizenship application was Andrew Jackson Evans, a sixty-four-year-old Republican. He had enjoyed a career more conventional

*Rocky Mountain News,* Aug. 30, 1888, p. 2; "An Opinion and Proposition," *ibid.*, Aug. 31, 1888, p. 3; "The Great Concert," *San Antonio Daily Light,* Oct. 26, 1888, p. 8; "The Bond Injunction," *ibid.*, Aug. 6, 1889, p. 1; "Programme," *ibid.*, Sept. 20, 1889, p. 1; "City Local News," *ibid.*, May 4, 1889, p. 5; "Criminal Code Sustained," *ibid.*, May 15, 1891, p. 1. "The Texas Code," *ibid.*, Dec. 26, 1890, p. 3; "Populist County Convention," *ibid.*, Dec. 26, 1892, p. 1; "Labor Day Celebration," *ibid.*, Aug. 21, 1893, p. 1. On McMinn's appointment as managing editor of the *San Antonio Times,* see "Director's Meeting," *San Antonio Daily Times,* Dec. 12, 1888, p. 2. "Budget of Briefs," *Logansport Journal,* March 13, 1883, p. 8. "On the Rounds," *Logansport Reporter,* May 29, 1890, p. 1; "A Celebrated Case," *Fitchburg Daily Sentinel,* Dec. 19, 1890, p. 7; "Lawyers Fined," *Galveston Daily News,* Oct. 17, 1889, p. 6; "Texas Criminal Code," *ibid.*, April 17, 1890, p. 3; "San Antonio Siftings," *ibid.*, May 15, 1892, p. 5; "Duncan's Death Knell," *ibid.*, May 16, 1890, p. 3; "Duncan's Case," *ibid.*, May 21, 1890, p. 1; "Dick Duncan's Case," *ibid.*, May 24, 1890, p. 1; "Austin," *ibid.*, Aug. 5, 1890, p. 10; "The Dick Duncan Case," *ibid.*, Sept. 25, 1890, p. 11; "Langston's Lament," *ibid.*, Nov. 16, 1890, p. 1; "Dick Duncan Case," *ibid.*, Dec. 19, 1890, p. 1; "Got the Drop on Him," *ibid.*, April 4, 1892, p. 3; "State Political Record," *ibid.*, July 3, 1892, p. 13; "The Bexar County War," *ibid.*, Sept. 11, 1892, p. 8; "Judge Paschal's Canvass," *ibid.*, Sept. 18, 1892, p. 14; "Congressional Situation," *ibid.*, Sept. 25, 1892, p. 6; "Politics at the Iron City," *ibid.*, Oct. 3, 1892, p. 1; "Texans Registered," *ibid.*, Aug. 20, 1893, p. 2; "A Populist Opening," *ibid.*, Oct. 8, 1894, p. 4; "T. J. McMinn," *ibid.*, Aug. 9, 1896, p. 2; "The People's Party," *Dallas Morning News,* Aug. 18, 1891, p. 1; "The Closing Day," *ibid.*, Aug. 9, 1896, p. 2; Randall Lionel Waller, "The Callaghan Machine and San Antonio Politics, 1885–1912" (master's thesis, Texas Tech University, 1974), 80–81; T. C. Crawford, "Great Issues at Stake," *New-York Daily Tribune,* Dec. 7, 1890, p. 7.

than McMinn's, serving as a legislator, state judge, and U.S. district attorney. Evans ultimately faded from view after the initial flurry of publicity over the case calmed.[7]

*Rodriguez* unfolded against the complex backdrop of a south Texas politics in which Mexicanos had long been active despite Anglos' exercise of ultimate authority. In most parts of the region after the Mexican-American War of 1846–1848, that tenuous balance of political power had been accomplished by creating a "peace structure": "an arrangement that allow[ed] the victors to maintain law and order without the constant use of force." In practical terms this meant that the newly arrived Anglo elites reached an accommodation with the old Tejano leadership in which Tejano elites helped deliver votes from the Mexicano majority in exchange for a share of the lesser appointive and elective positions, while Anglo elites usually monopolized the more important offices. The ability of Tejano politicos to deliver patronage and public jobs, combined with the influence that large ranch owners and industrialists wielded over their employees, meant that ordinary Mexicano voters often had compelling interests in voting for certain candidates or tickets. In short, a system of "patronage democracy," akin to the machine politics found in many large northeastern cities, evolved in many parts of south Texas. Although political reformers criticized such a system, the arrangement did keep constituents politically engaged and voting in their own self-interest.[8]

Patronage democracy came under increasing stress in the last quarter of the nineteenth century. In 1875 the first railroad tied San Antonio to points north, and in the early 1880s railroads reached the Rio Grande at Laredo from two directions. Moreover, by 1888 south Texas became linked to central Mexico by rail. With the railroads came jolting social and economic change. The influx of American capital and Anglo merchants, lawyers, and industrialists created jobs but also accelerated dispossession among Tejano landowners. In the last decades of the nineteenth century the percentage of Mexicanos who were manual laborers nearly doubled, while the percentages of landowners and skilled laborers fell by half. Among the large numbers of unskilled laborers were newly arrived Mexican immigrants, who were more likely to be poor, illiterate, and unfamiliar with American laws and political culture. Their votes would be easy to manipulate, should the need (and the opportunity) arise. Thus, the more unsavory elements of bossism came to the fore in the 1880s. Increasingly, south Texas politics looked less like patronage democracy and more like simple corruption.[9]

Numerically, most Mexicanos and Anglos were Democrats, although in all the major cities of south Texas there were enough Republicans (mostly northern or European émigrés) to make political processes interesting. Local politics was often factionalized, with a numerically inferior Democratic faction sometimes allying with Republicans in opposition to a larger competing Democratic faction. Mexicanos rarely voted as an ethnic bloc; rather they could be found in varying numbers in all factions. Elections usually revolved around local issues, personal loyalties, and patronage. Neither of the major statewide party organizations appealed specifically

[7] *Handbook of Texas Online,* s.v. "Evans, Andrew Jackson," http://tshaonline.org/handbook/online/articles/fev30.

[8] Arnoldo De León, *The Tejano Community, 1836–1900* (Albuquerque, 1982), 23–49; David Montejano, *Anglos and Mexicans in the Making of Texas, 1836–1986* (Austin, 1987), 34, 39–41; Arnoldo De León and Kenneth L. Stewart, *Not Room Enough: Mexicans, Anglos, and Socioeconomic Change in Texas, 1850–1900* (Albuquerque, 1993), 40–42, 51–53. On patronage democracy, see Cecelia F. Bucki, "Workers and Politics in the Immigrant City in the Early Twentieth-Century United States," *International Labor and Working-Class History,* 48 (Fall 1995), 28–48, esp. 31.

[9] Roberto Ramón Calderón, "Mexican Politics in the American Era, 1846–1900: Laredo, Texas" (Ph.D. diss., University of California, Los Angeles, 1993), 560–63, 667–78, 742, 781; De León, *Tejano Community,* 24, 25; Montejano, *Anglos and Mexicans in the Making of Texas,* 58, 73, 94–99, 107, 129–33; Armando C. Alonzo, *Tejano Legacy: Rancheros and Settlers in South Texas, 1734–1900* (Albuquerque, 1998), 125; De León and Stewart, *Not Room Enough,* 57–58.

to Mexicanos or attempted to integrate Mexicano leaders into the party structures. By the 1890s the numbers of Tejanos with political influence were waning almost everywhere in the region, and voter turnout was declining.[10]

Given the history of south Texas politics, the Populist party faced significant obstacles in the region. The Farmers' Alliance, the Knights of Labor, and the Greenback movement—important precursors of Populism—had never gained much of a foothold south of San Antonio, so Populism would have to be less homegrown and more transplanted there. In some ways Populists faced challenges in that region similar to those they had confronted in the plantation districts of east Texas. Like southern planters and their associates, wealthy south Texas Anglo ranchers, merchants, and industrialists would find little to appreciate in the Populist platform. Like African American sharecroppers, an impoverished, often-illiterate, easily manipulated Mexicano laboring population would have to be educated on Populist principles, be motivated to go to the polls, cast their votes freely, and have them counted fairly. Populism's strong association with evangelical Protestantism and the identification of some Populist leaders with prohibition presented further challenges to securing Mexicano votes.[11]

Added to this volatile political mix was a relatively new trend: the rise of blatant voter fraud in the region beginning in the mid-1880s. Following a bloody election riot between contending factions in Laredo in 1886, the *Galveston Daily News* opined that along the border "a fair election is hardly possible" and that even in the interior cities "votes are purchased, illegal voting practiced, and the people of Texas cheated of their choice by election frauds." The newspaper noted that "only in the last two or three years . . . the extent of these frauds has been suspected," and it called for reforms at the state level. By the 1890s corrupt elections had become a statewide issue. Observers commonly referred to the "Rio Grande and Harrison County vote," recognizing that the combination of stolen Mexicano votes in south Texas and stolen black votes in east Texas kept the Democrats in power.[12]

Despite these obstacles, Populists in south Texas courted Mexicanos, just as their east Texas counterparts sought African American support, largely by stressing shared economic interests; sometimes they found a receptive audience. One Populist reported from Yoakum in 1894 that he had organized "a populist club entirely of Mexicans" and bragged that Populism was "growing down here." From Uvalde, the Populist county chairman reported that "the Mexican voters here had formed themselves into a club (90 in all) for the purpose of all voting . . . the Populas tickett." South Texas Populists, certain that Tejanos were "ready for revolt," urged the party to send Spanish-language speakers and campaign literature to the region.[13]

[10] Alonzo, *Tejano Legacy,* 125; Calderón, "Mexican Politics in the American Era," 677–78; De León and Stewart, *Not Room Enough,* 53.

[11] On Texas Populism, see Roscoe C. Martin, *The People's Party in Texas: A Study in Third Party Politics* (Austin, 1933); Donna A. Barnes, *Farmers in Rebellion: The Rise and Fall of the Southern Farmers Alliance and People's Party in Texas* (Austin, 1984); Gregg Cantrell, "'A Host of Sturdy Patriots': The Texas Populists," in *The Texas Left: The Radical Roots of Lone Star Liberalism,* ed. David O'Donald Cullen and Kyle G. Wilkison (College Station, 2010), 53–73. On south Texas bossism system in the 1890s and the twentieth century, see Evan Anders, *Boss Rule in South Texas: The Progressive Era* (Austin, 1982).

[12] "Can Fair Elections Be Secured?" *Galveston Daily News,* April 14, 1886, p. 4; "On the Mexican Border," *San Antonio Daily Express,* Nov. 20, 1888, p. 7; "Divide and Detach," *Dallas Morning News,* Jan. 20, 1896, p. 4; "The Mexican Vote," *ibid.*, May 14, 1896, p. 9. Harrison County, in east Texas, had a large black population. See Worth Robert Miller, "Harrison County Methods: Election Fraud in Late Nineteenth-Century Texas," *Locus: Regional and Local History,* 7 (Spring 1995), 111–28.

[13] "Populist News," *Dallas Texas Advance,* July 28, 1894, p. 5; J. W. Sansom to Vachel Weldon, Oct. 10, 1894, box 3E470, Vachel Weldon Collection (Dolph Briscoe Center for American History, University of Texas at Austin); "Help Needed Badly," *Dallas Southern Mercury,* May 14, 1896, p. 11.

In Wilson County, immediately southeast of San Antonio, Populism received a boost when Vicente F. Carvajal, a Tejano from an old and respected family, joined the party. The press commented that the Populists were "making great efforts to 'corral' the Mexicans" but predicted failure because "Mexicans are democrats by nature and have always voted that ticket and probably always will." When local Populists from the town of Stockdale met in 1894 to elect delegates for their upcoming county convention, several advocated placing "some influential Mexican" on the county ticket, but this idea met resistance from one Anglo who walked out of the meeting in protest. Dr. R. F. Johnson, "a leading Populist," rose to defend Carvajal's candidacy for county clerk, reminding the gathering that Carvajal "was an American citizen by birth" whose "father had fought with the heroes of San Jacinto." Carvajal was "well qualified for the office" and wielded "considerable influence among his people," Johnson asserted, but "still many present would not consent" to his nomination. Clearly, Wilson County Populists faced a conundrum: Carvajal's Democratic opponent was "one of the most popular men in the county," and with Mexicanos constituting one-quarter of the electorate, the white nominees wanted Carvajal on the ticket, "as it gives them a better chance." Ultimately, they nominated Carvajal, and during that fall "Mexican orators" campaigned locally for the People's party, challenging Democrats to debates. Two weeks before the election one observer noted that "the Mexicans here are all Populists" and that Carvajal could muster five hundred Mexicano votes. The Populist ticket won in November, forging a viable multiethnic coalition in Wilson County.[14]

Local Populist organizations garnered support sufficient to carry Wilson, Frio, Gonzales, Karnes, DeWitt, Live Oak, and Medina Counties for the party's 1892 gubernatorial candidate, Thomas L. Nugent. Two years later, despite the Republicans fielding of a gubernatorial candidate, the Populist party still managed to carry Wilson, Bandera, Gonzales, Karnes, Dimmit, Lavaca, and Goliad Counties, and in conjunction with Republicans they deprived Democrats of majorities in twelve others. In all, Democrats polled a majority in only seventeen of thirty-six south Texas counties. Meanwhile, San Antonio Populists elected the former policeman John A. O'Connor to represent Bexar County in the Texas House of Representatives. Popular with Democrats and undoubtedly helped by Mexicano votes—perhaps even that of Ricardo Rodriguez—O'Connor became a leader of the party's legislative caucus and greatly bolstered Populism in San Antonio.[15]

Populist victories never occurred in the Rio Grande Valley. An 1894 congressional race vividly illustrated the problem, and because it is the only such race in which the opposition candidate's papers survive, it offers an intriguing glimpse into the world of border politics. Twenty-nine counties constituted the Eleventh Congressional District, encompassing most of south

[14] On Wilson County, Texas, see *Wilson County Historical Society,* http://www.wilsoncountyhistory.org. "Cotton Plenty and Prices down," *Galveston Daily News,* Sept. 21, 1893, p. 1; "Populists and Mexicans," *ibid.*, May 2, 1894, p. 2; "Wilson County Populists," *ibid.*, May 6, 1894; "Wilson County Campaign," *ibid.*, Sept. 21, 1894, p. 6; Louis d'Autin Zubaga to Weldon, Oct. 15, 1894, box 3E470, Weldon Collection; A. R. Stevenson and V. F. Carvajal to Weldon, Oct. 19, 1894, *ibid.*; George W. Smith, *Biennial Report of the Secretary of State of the State of Texas, 1892* (Austin, 1893), 92–98; George W. Smith, *Biennial Report of the Secretary of State of the State of Texas, 1894* (Austin, 1895), 249–52; "Floresville," *San Antonio Light,* Nov. 15, 1893, p. 6. "Vicente F. Carvajal," *Wilson County Historical Society,* http://www.wilsoncountyhistory.org/Documents/VICENTE%20F.%20CARVAJAL.pdf. J. Marvin Hunter, ed., *Trail Drivers of Texas* (1924; Austin, 1985), 549–51.

[15] Smith, *Biennial Report of the Secretary of State of the State of Texas, 1892,* 92–98; Smith, *Biennial Report of the Secretary of State of the State of Texas, 1894,* 249–52. On the San Antonio Populist John A. O'Connor, see Frank W. Johnson, *A History of Texas and Texans,* ed. Eugene C. Barker (5 vols., Chicago, 1914), V, 2248; E. H. Loughery, *Texas State Government, A Volume of Biographical Sketches and Passing Comment* (Austin, 1897), 87–88; "A Comedy of Errors," *Galveston Daily News,* Oct. 14, 1894, p. 8; and "Prominent Members of the Legislature," *San Antonio Daily Express,* Jan. 23, 1897, p. 4.

Texas below San Antonio and stretching northeastward as far as Wharton County (heavily populated by blacks) southwest of Houston. Populist and Republican leaders in the region could read the results from 1892, when the Democratic candidate William Crain polled half the vote while the Populists and Republicans each took about one-quarter. Clearly this district was vulnerable. In 1894 the Populists and Republicans united behind the independent candidate Vachel Weldon. Fusionist leaders knew that Weldon held some Populist views, and they felt confident about victory. They summoned the charismatic mulatto Populist John B. Rayner to organize the black vote in the upper counties, and he soon arrived in the district and began working his oratorical magic.[16]

Weldon's forces knew what to expect along the Rio Grande—the usual lopsided turnout created by Democratic political machines there. It was not just that Tejano citizens allegedly could be cajoled, manipulated, or bribed to vote Democratic; to cast a vote, a person did not have to be an American citizen at all. Texas law allowed an immigrant merely to sign a form declaring his intention to become a citizen, and that form could be used as proof of voter eligibility; actually petitioning a court for naturalization could wait indefinitely. The relative ease with which the immigrant vote could be fraudulently manipulated led one of Weldon's allies to warn him: "you must look out for the lower Riogrande[;] there is where they will knife [you] if they can." Weldon's attorney in Brownsville explained the situation: "We understand here that these counties are to be colonized by Mexicans in Crain's interest," but he believed that $1,000 properly spent could "counteract" the Democrats' plans. Vicente Carvajal also knew what was required: preprinted party ballots to hand to voters at the polls and "about five influencial men at every box, on the river, where they are all Mexicans, these men have to have about 4 gall of whiskey at each box and each man has to have about five dollars for eating purposes . . . and if we are not helped with money we will be powerless." The money never materialized, whereas the Crain campaign was flush with funds from numerous sources, including the Democratic National Committee. Weldon's strategists sought to place their own polling officials across the district to counteract fraud, but mostly they hoped to amass large enough voter majorities in the upper counties to offset the tremendous Democratic majorities in the south.[17]

"Money is flying," Carvajal reported days before the election, as the Democrats marshaled their resources. On election day the extent of the fraud became clear. Democratic election officials were seen opening voting boxes, discarding opposition ballots, and allowing Mexican nationals—with or without naturalization documents—to vote. Hundreds, perhaps thousands, of Mexicans were brought across the Rio Grande to cast fraudulent ballots. Some precincts polled a number of votes that was higher than their population figure. Weldon's attorney, R. B. Rentfro, estimated that two thousand fraudulent votes had been cast in three counties alone—a fact that could "be easily demonstrated." "All concealment was thrown aside," he

[16] "Mr. Weldon's Response," *Dallas Morning News,* Oct. 6, 1894, p. 2; "Will Not Vote for Weldon," *ibid.*, Oct. 14, 1894, p. 12; Eleventh District Populist Executive Committee to the Populists of the Eleventh Congressional District, Oct. 13, 1894, clipping, box 3E470, Weldon Collection; Ben Terrell to Whom It May Concern, n.d., clipping, *ibid.*; Capt. Joseph Sheley to Whom It May Concern, Oct. 13, 1894, clipping, *ibid.*; H. S. P. Ashby to the Eleventh District Populist Executive Committee, Oct. 8, 1894, clipping, *ibid.*; and Henry E. McCulloch to the Eleventh District Populist Executive Committee, Oct. 12, 1894, clipping, *ibid*. On the 1894 Eleventh Congressional District election and John B. Rayner's role in it, see Gregg Cantrell, *Kenneth and John B. Rayner and the Limits of Southern Dissent* (Urbana, 1993), 217–21. Also see Omar H. Ali, *In the Lion's Mouth: Black Populism in the New South, 1886–1900* (Jackson, 2010).

[17] R. J. Shelton to Weldon, Oct. 1, 1894, box 3E470, Weldon Collection; R. B. Rentfro to A. S. Crisp, Oct. 14, 1894, *ibid.*; Carvajal to Weldon, Oct. 26, 1894, *ibid.*; Dennis O'Connor to Weldon, Oct. 29, 1894, *ibid.*


This map of south Texas in 1894 shows the Eleventh Congressional District. *Map created by Jeff Wells.*

wrote, "and democratic politicians here return [the New York political boss William] Tweeds answer to all remonstrances, 'What in hell are you going to do about it.'" Weldon won with 55 percent of the vote, excluding the Rio Grande counties. In that area Crain won by a 3–1 margin; Cameron County's vote numbers alone were large enough to cost Weldon the victory.[18]

An Atascosa County Populist explained Weldon's defeat: "Not less than 100 Mexicans appeared (cotton pickers from Mexico or elsewhere) at our county clerk's office and declared their intentions to become citizens the last 10 days before the elections & were rounded up like cattle and voted by their leaders on election day." "Very many of them Mexicans in a drunken state appeared at the polls, and were voted by the leaders in the voting precinct. Democratic money flowed freely as well as Democratic whisky," he complained. Weldon's attorney claimed to have "abundant evidence" that in Starr County nearly four hundred Mexicans had filed bogus intention papers, abetted by a corrupt county clerk "who would issue the documents without ever having seen the 'applicant.'" He believed that Mexican customs records would reveal "the passing of more than five hundred Mexicans to Texas, (of course to vote)." Even at Beeville, two hundred miles north of the river, a Populist leader observed that "there was a large number of Mexicans naturalized at this place the day (Nov. 5) before the election and voted against us."[19]

[18] Carvajal to Crisp, Oct. 26, 1894, *ibid*.; Rentfro to Weldon, Nov. 12, 1894, *ibid*. Smith, *Biennial Report of the Secretary of State of the State of Texas, 1894,* 246–47.

[19] N. H. McGirk to Weldon, Nov. 20, 1894, box 3E470, Weldon Collection; Rentfro to Weldon, Nov. 14, 27, 1895, *ibid*.; A. J. Carothers to Weldon, Nov. 8, 1894, *ibid*. Naturalization records from Atascosa and Bee Counties confirm that sizable numbers of Mexicans filed intention declarations before the election. The Atascosa County records show 49 filings in the month before the election, 44 in the week before, and 32 on the day before. Bee County

Two years later, Texas Commissioner to Mexico Henry Ryder Taylor further revealed the Democrats' fraudulent methods. Taylor, an English journalist who had moved to San Antonio in 1881, claimed to have "an inside track in local politics" and thus "some personal and practical knowledge upon which to base a reliable opinion." Testifying to "the fact that thousands of Mexicans have been imported across the Rio Grande for the mere sake of voting in accordance with the instructions of the importers," he claimed that there was "always considerable activity in public improvements just before election[s] and the imported voter is given work on the county roads, on the bridges, on the streets in various places and even on railroads that are interested in getting certain officers elected." Imported Mexicans earned between $1.00 and $1.75 in gold per day, "besides their bribes." Their citizenship intention papers cost the importer $2.50 unless "friendly officers" issued them. Taylor had witnessed two hundred such voters "manufactured in a day just before elections." In San Antonio, he claimed, "the registrar is appointed by the influence of those that get the voters and issue the papers, and is generally their partisan, [and] he does not scrutinize these papers too closely." Taylor detailed the final step in the fraud: "On election days these imported voters are given their registration certificates, that are retained by the bribers in trust, given a ticket already marked as desired, and are led in squads to polling places to deposit their ballots." This was the process in urban San Antonio, where a new state law mandated registration and the secret ballot; in rural counties fraud was simpler. Still, as one critic noted, "there is no law that does not admit of evasion, especially backed by the authorities."[20]

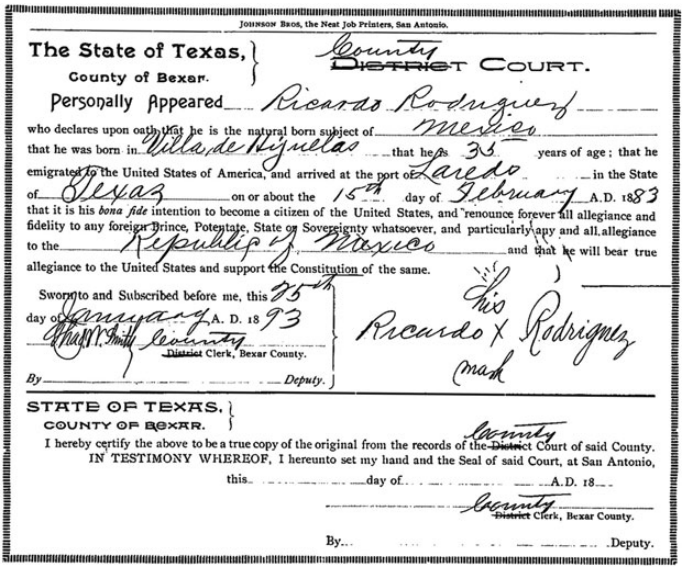
Immigrants needed only to file citizenship intention papers to vote in Texas elections. Ricardo Rodriguez had done just that in 1893. The *San Antonio Light* charged that of 12,000 intention papers issued in Bexar County since 1871, "not one Mexican" had taken out his final papers (that is, actually petitioned for citizenship), nor did any intend to; for them, voting was "a commercial affair, involving no risk or outlay of money with a certainty of reward." A San Antonio Populist agreed that "there exists a laboring element, non-union, chiefly made up of Mexicans, whose vote can only be had by purchase," but he insisted that the Populists did not "intend to follow the tricks of the two old parties. . . . We must use persuasion wherever we can, but nothing more."[21]

Immigration records substantiate allegations of widespread voter fraud. Two Rio Grande counties, Hidalgo and Starr, saw 2,239 Mexicans file intention papers between 1880 and 1899. Of these, fewer than ten individuals ever petitioned for final citizenship, and a staggering 85 percent (1,914) of the declarations were filed in election years between October 1 and November 7, roughly the last month before general elections. In Hidalgo and Starr Counties

records reveal 69 filings in the month before the election, 68 in the week before, and 60 on the day before. In the counties of La Salle and Uvalde, not on the river, there were 54 and 50 filings, respectively, in the month before the election. For the Atascosa County and Bee County naturalization records, see publication 7RA211, Index to Naturalization Records Found in Federal, State, and County Courts in Texas, ca. 1846–1939, Records of INS District no. 14 (San Antonio, Texas), RG 85.5.9 (Records of the U.S. Immigration and Naturalization Service, Fort Worth, Tex.).

[20] On Henry Ryder Taylor, see *Handbook of Texas Online,* s.v. "Taylor, Henry Ryder," http://tshaonline.org/handbook/online/articles/fta18. "The Mexican Vote," *Dallas Morning News,* June 19, 1896, p. 7; "Red Ribbon Men Only," *San Antonio Daily Express,* Feb. 7, 1895, p. 3; Waller, "Callaghan Machine and San Antonio Politics," 77–78, 90. On the Texas state law mandating registration and the secret ballot, see H. P. N. Gammel, *The Laws of Texas, 1822–1897* (10 vols., 1898), X, 377.

[21] "Short Stops," *San Antonio Daily Light,* May 15, 1896, p. 4; "Populist News," *Dallas Texas Advance,* Aug. 4, 1894, p. 3. An alternate estimate of how many immigrants had taken out final papers was "less than 100" out of 10,000. See "Noonan's District," *Dallas Morning News,* May 23, 1896, p. 8.



JOHNSON BROS, the Neat Job Printers, San Antonio.

The State of Texas, } County DISTRICT COURT.
County of Bexar.

Personally Appeared Ricardo Rodriguez who declares upon oath that he is the natural born subject of Mexico that he was born in Villa de Rinconada that he is 36 years of age; that he emigrated to the United States of America, and arrived at the port of Laredo in the State of Texas on or about the 15th day of February A.D. 1883 that it is his *bona fide* intention to become a citizen of the United States, and renounce forever all allegiance and fidelity to any foreign Prince, Potentate, State or Sovereignty whatsoever, and particularly any and all allegiance to the Republic of Mexico and that he will bear true allegiance to the United States and support the Constitution of the same.

Sworn to and Subscribed before me, this 25th day of January A. D. 1893
Chas. M. Smith County District Clerk, Bexar County.
By Deputy.

his
Ricardo × Rodriguez
mark

STATE OF TEXAS, }
COUNTY OF BEXAR. }

I hereby certify the above to be a true copy of the original from the records of the County District Court of said County.
IN TESTIMONY WHEREOF, I hereunto set my hand and the Seal of said Court, at San Antonio, this day of A.D. 18
County District Clerk, Bexar County.
By Deputy.

The Texas constitution of 1869 allowed immigrants to vote if they had taken the first preliminary step toward applying for citizenship: filing a simple form, usually in the presence of a county clerk, declaring their "*bona fide* intention to become a citizen of the United States, and renounce forever all allegiance and fidelity" to their former country. Ricardo Rodriguez, whose case resulted in the landmark 1897 decision *In re Rodriguez,* took that first step in 1893, as his intention declaration, shown here, indicates. *Courtesy Bexar County Clerk's Office, San Antonio, Texas*.

in 1894, the year of the Vachel Weldon–William Crain race, 389 intention papers were filed in the month before the election; 133 were filed in the final week, and thirty-seven were filed on the day before the election. And these were the numbers for just two of twenty-nine counties in the district. Populists understandably felt despair over their party's prospects in the region.[22]

In late 1894, as Weldon contemplated contesting his defeat, McMinn suggested that a challenge to Mexican naturalization might constitute part of that contest. He reminded Weldon that U.S. law barred "the yellow man[,] the red man[,] and the brown man" from becoming citizens. Except for individuals of pure Spanish blood, he declared, the Mexican "is a red man." If Congress "should take this position it would cure the river disease with which our politics is suffering." Weldon chose not to contest his defeat, so McMinn's idea came to naught.[23]

The election of twenty-four Populists to the Texas legislature in 1894, however, suddenly placed Populists in a position to treat the "river disease." Many reformist Democrats also

[22] For the Hidalgo County and Starr County statistics, see publication 7RA211, Index to Naturalization Records Found in Federal, State, and County Courts in Texas, ca. 1846–1939, Records of INS District no. 14 (San Antonio, Tex.), RG 85.5.9. Martha Menchaca utilized these records, but she refers to intention papers as "applications" and "petitions" and then fails to explain why fewer than 1% were granted after 1870 (when the new constitution allowing alien suffrage went into effect). As evidence that fraud played no role in the 1894 congressional race, she cites the fact that in Cameron County only 60 Mexicans had filed intention papers between October 23 and November 5, not enough to have "influenced the election results." This claim means little in a district with twenty-nine counties, many of which had similar, if not greater, numbers of filings. See Menchaca, *Naturalizing Mexican Immigrants,* 55, 58, 70, 113.

[23] T. J. McMinn to Weldon, Dec. 5, 1894, box 3E470, Weldon Collection.

found the border corruption distasteful, and when the legislature convened, the Hays County Democrat Samuel McBride proposed amending the state constitution to end alien suffrage altogether. The *Dallas Morning News* speculated that "its passage would result in the suppression of ballot prostitution on the Rio Grande border and prevent the voting of imported Mexicans in droves." The newspaper also believed that all of the Populists in the state house except John O'Connor supported the measure. When the resolution came to the floor, all the Populists voted for it, joining more than sixty Democrats. Even O'Connor, who owed his seat, in part, to Mexicano voters, supported it. The bill failed to garner the needed two-thirds majority, with conservative Democrats complaining that such a failure was "a blow aimed at the best interests of the Democratic party." The *San Antonio Express* later credited "the determined fight of a few dyed-in-the-wool Democrats" with "thwarting a few Democrats and their Populist allies in their attempt to disfranchise the Mexican vote."[24]

Ultimately, with unanimous Populist support, the state legislature passed a compromise requiring foreigners to file intention papers six months before voting. In November 1896, voters approved the measure by an 84 percent margin. It is unclear how much this watered-down effort actually curbed fraud on the border, but the state's failure to end alien suffrage set the stage for McMinn's legal gambit the following year.[25]

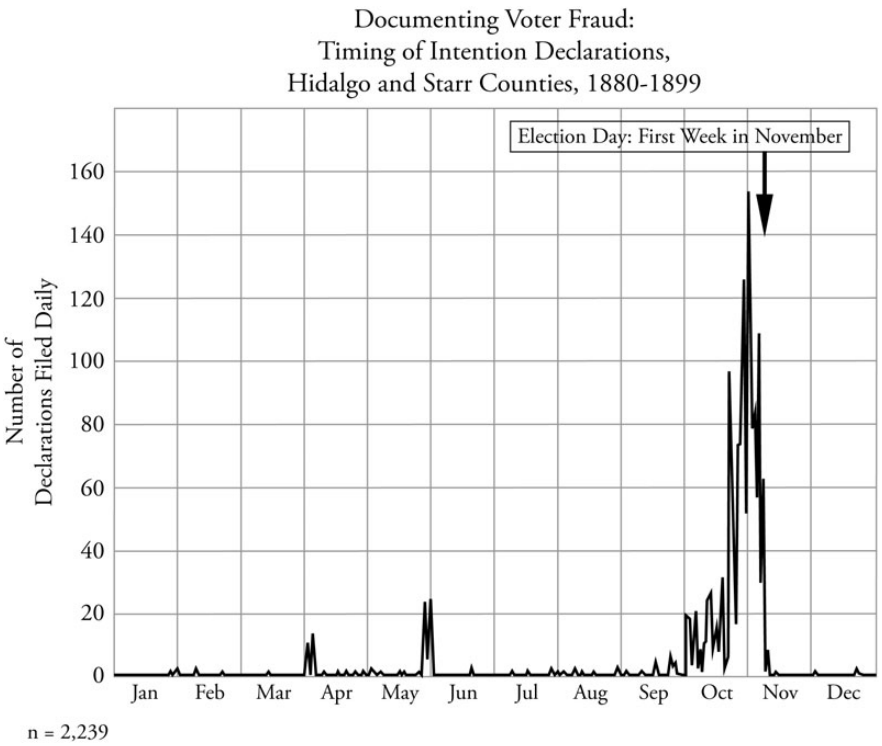
Two aspects of *Rodriguez* have largely escaped historians' notice. First, McMinn and Evans's legal action was specifically orchestrated as a test case. The evidence is convincing. As early as 1888 McMinn had written publicly of "the need for a legal test" of Mexican naturalization. In 1896 he and Evans apparently were waiting at the federal courthouse when Rodriguez applied for citizenship. Immigrants such as Rodriguez, who could already vote, virtually never applied for final citizenship papers, and if they did, they could apply to county or state courts, where elected Democratic judges had political incentive to approve their applications. (The Democrat Thomas Maxey also might have wanted to rule in his party's interest, but as a federal judge he was presumably insulated against political pressure.) Moreover, despite his poverty, Rodriguez appeared in court with legal counsel and produced the necessary documentation to support his application. These facts, plus the *San Antonio Light*'s specific reference to Rodriguez's application and the attorneys' response as "the Mexican citizen test case," suggest that Rodriguez was an actor in a larger drama. Certainly, as an unskilled laborer employed by the city of San Antonio he would have understood the importance of remaining in the good graces of Anglos in general and of the local Democratic political machine in particular. It seems unlikely, though, that he would have knowingly consented to be the means by which Mexicans were to be denied citizenship. His motives and the extent of his understanding of what was at stake remain a mystery, for he left no trail for historians to follow. Nonetheless, the evidence strongly suggests that it was a test case from the beginning, and it seems that the lawyers as well as the general public understood it as such.[26]

Assuming that McMinn and Evans were backed by their respective parties, scholars have also overlooked the evidence of who instigated their actions. The evidence indicates that their impetus did not come from their parties. In a newspaper article from May 1896, the

[24] "Final Naturalization Papers," *Dallas Morning News,* Feb. 6, 1895, p. 1; *Journal of House of Representatives, Being the Regular Session, Twenty-Fourth Legislature, Begun and Held at the City of Austin, Texas, January 8, 1895* (Austin, 1895), 353–55; "Gossip at Austin," *San Antonio Daily Express,* May 25, 1896, p. 3.

[25] *Journal of House of Representatives,* 724–25; Texas Legislative Council, *Amendments to the Texas Constitution since 1876* (Austin, 2012); Menchaca, *Naturalizing Mexican Immigrants,* 119.

[26] "Something Startling," *San Antonio Daily Express,* Nov. 21, 1888, p. 7; *In re Rodriguez,* 81 F. at 337–38*;* "The Express Dodges," *San Antonio Daily Light,* May 19, 1896, p. 3.




This graph depicts all Mexicans who filed intention declarations in Hidalgo County and Starr County, Texas, between 1880 and 1899 but who never petitioned a court for final naturalization papers. More than 99% of those filing intention declarations never petitioned for final citizenship papers, thus indicating that they did not pursue citizenship beyond voting. Exceptions to this pattern are very rare and statistically insignificant. Virtually all of the Mexicans in the 1880–1899 records filed their intention declarations in county court; the few Mexicans and the many immigrants of other nationalities who actually petitioned for citizenship usually did so in higher courts. The records give no indication of Mexicans actually petitioning for citizenship and being denied by judges, although there are a small number of cases where a petition for naturalization is listed with no indication of whether the petition was granted or denied. *Source: Publication 7RA211, Index to Naturalization Records Found in Federal, State, and County Courts in Texas, ca. 1846–1939, Records of* INS *District no. 14 (San Antonio, Texas),* RG *85.5.9 (Records of the U.S. Immigration and Naturalization Service, Fort Worth, Texas).*

anonymous writer "NOFOOL" stated unequivocally that the two attorneys were "employed by the Good Government club of San Antonio"—a nonpartisan reform group that campaigned against the city's corrupt political machine. Henry Ryder Taylor repeated this assertion a month later, writing matter-of-factly that "the good government club, a society consisting of some thousand members, are testing the legality of the Mexican vote" and that there were "indications that Rodriguez is in harmony with the good government club." The casual manner in which both of these sources linked McMinn and Evans to the Good Government Club, and the fact that no one ever disputed the linkage, suggest its accuracy. Therefore, when McMinn and Evans denied acting on behalf of their political parties, they were almost certainly being truthful. In fact, McMinn most likely raised the issue himself at a club meeting. Eight years earlier he had introduced a nearly identical resolution at a

similar club, the Young Men's Reform Club, and subsequently faced a minor tempest in the press for doing so. It seems beyond dispute, then, that he and Evans, if not actually employed by the Good Government Club, were certainly acting with its blessing. Every Populist who commented on the party's involvement in the case, including McMinn, denied any party role in it.[27]

The legal particulars of *Rodriguez* require only a short summation here. In their initial brief McMinn and Evans made a straightforward argument: Ricardo Rodriguez was "not a white person . . . nor of African descent, and is therefore not capable of becoming an American citizen." Under questioning, Rodriguez claimed simply that he was "a pure-blooded Mexican" and denied possessing Indian, African, or Spanish blood. All of the lawyers in the case, however, ultimately agreed that he was indeed an Indian or of mixed race, and not "white" by any scientific or common understanding of the term.[28]

That left the question of what American law truly intended regarding the naturalization of nonwhites. Days after Rodriguez's application, Judge Maxey realized that "the matter was one of much importance," and he appointed six local lawyers, including McMinn and Evans, as "friends of the court," instructing them to study all of the relevant laws, precedents, and treaties, and to submit briefs containing their findings, by November. Only four of the lawyers actually submitted briefs; McMinn and Evans argued against Rodriguez's application, as did a third lawyer, Floyd McGown. The longest brief was filed by Thomas M. Paschal, a conservative Democrat who had been a state district judge before defeating McMinn for a seat in Congress in 1892. Paschal supported Rodriguez's application, and his opinion greatly influenced Maxey.[29]

The nation's basic naturalization statute, in effect since 1802, specified that "any alien, being a free white person," could become a citizen. During Reconstruction, Congress amended the law to include Africans and persons of African descent but no other nonwhites. In the intervening decades, courts heard a series of "prerequisite" cases, with various applicants claiming whiteness to meet the requirements of the law. In the first and most influential of these cases, *In re Ah Yup* (1878), a federal court ruled that a Chinese immigrant was not white and thus ineligible for citizenship. *In re Camille* (1880) stated that a person considered half-white and half–American Indian was likewise deemed nonwhite. In case after case leading up to *Rodriguez,* using various definitions, theories, and arguments about race, courts ruled against

[27] NOFOOL [pseud.], "Two Stories," *San Antonio Daily Light,* May 31, 1896, p. 5; "The Mexican Vote," *Dallas Morning News,* June 19, 1896, p. 7; "Something Startling," *San Antonio Daily Express,* Oct. 21, 1888; *ibid.*, Oct. 24, 1888, p. 2; "The Club and the Mexicans," *ibid.*, Oct. 28, 1888, p. 2; *ibid.*, Oct. 31, 1888, p. 2. For additional reporting on the Good Government Club, see "Light Flashes," *San Antonio Daily Light,* April 26, 1895, p. 8; "Short Snappers," *ibid.*, June 2, 1895, p. 7; "Contributed Scraps," *ibid.*, June 9, 1895; "Light Flashes," *ibid.*, June 23, 1895, p. 8; "Personal and Otherwise," *ibid.*, June 30, 1895, p. 5; "Short Snappers," *ibid.*, July 21, 1895, p. 7; "City Local News," *ibid.*, Nov. 1, 1895, p. 7; "Short Snaps," *ibid.*, Dec. 18, 1895, p. 5; "The Good Government Club," *ibid.*, Dec. 21, 1895, p. 4; "Good Government Club," *ibid.*, Jan. 6, 1896, p. 8. On the Good Government Club movement nationwide, see William Howe Tolman, *Municipal Reform Movements in the United States* (New York, 1895), 91–100; and "Good Government Clubs," in *The Encyclopedia of Social Reform,* ed. William Dwight Porter Bliss (New York, 1897), 668. Misidentifying McMinn as a member of the Populist state executive committee but otherwise citing no evidence, Menchaca portrays McMinn as one of several Populists who sought a legal remedy and implies that he was acting on the party's behalf. See Menchaca, *Naturalizing Mexican Immigrants,* 145.

[28] *In re Rodriguez,* 81 F. at 337–47.

[29] "The Mexican's Right to Vote," *San Antonio Daily Express,* May 17, 1896, p. 11; "Judge Paschal's Canvass." On Thomas M. Paschal, see *Handbook of Texas Online,* s.v. "Paschal, Thomas Moore," http://tshaonline.org/handbook/online/articles/fpa48; and Charles G. Norton, ed. *Men of Affairs of San Antonio* (San Antonio, 1935), 108, 181. *In re Rodriguez,* 81 F. at 338–47.

non-European immigrants seeking citizenship. McMinn's argument therefore seemed legally sound.[30]

Several important points about the theory of U.S. law warrant emphasis. Nineteenth-century American jurisprudence separated citizenship and suffrage: citizenship was a national matter, while states determined suffrage. In 1896, Texas was one of eleven states that still permitted immigrants to vote based on their citizenship intention papers, down from twenty-two earlier in the century. When Texas finally abolished alien suffrage in 1921, only Missouri and Arkansas still permitted it, but they soon ended it.[31]

The 1869 state constitution first permitted alien suffrage in Texas. Contemporaries believed that Radical Republicans wrote the provision "to catch the vote of the German immigrants," but Democrats soon began using the law to their advantage in the border region. When Democrats regained control of the state legislature in 1872 and tried to make it even easier for aliens to vote (by allowing them to declare their intention before a district clerk rather than in open court), Republican governor Edmund J. Davis vetoed the proposal. He explained: "On the Rio Grande, where the facilities of crossing the line are easy, half the males living near our border in Mexico might 'declare their intention,' and thereon exercise the privilege of voting in Texas with impunity." Davis cited the example of a south Texas clerk who "received in vacation the declarations of some two hundred persons, and they voted at that election." Such chicanery occurred too frequently over the ensuing two decades. Davis believed that it was "certainly liberal enough" to require an alien to wait one year before voting and to then declare his citizenship intent "before the officers of the court and spectators," but Democrats disagreed.[32]

There is no evidence that McMinn sought to deny citizenship to Mexicans such as Rodriguez for any reason other than political corruption. If the Texas legislature had abolished alien suffrage in 1895, McMinn almost certainly would not have brought his court action. None of this exonerates him on charges of racism; he was, after all, a privileged white man who daily benefited from white supremacy. His legal brief rather gratuitously quoted John C. Calhoun and Sam Houston on the alleged unfitness of Mexicans for American citizenship. Though he deployed race as a tactical matter, however, McMinn never offered his own opinion on the question of Mexican racial fitness. Instead, he and Evans simply offered their interpretation of existing law: "There are millions of 'white persons' in Mexico today who, if they choose, can become citizens of the United States, but her original Indians and [their] descendants cannot."[33]

If McMinn invoked racist precepts, the same was true for Rodriguez's principal defender, Thomas Paschal. Unlike McMinn, who in his brief was content to quote others who had questioned the racial fitness of Mexicans to become citizens, Paschal openly expressed his own

[30] Naturalization Law of 1802, 2 Stat. 153 (1802); López, *White by Law,* 49–67, 202–03; *In re Ah Yup,* 1 F. Cas. 223 (1878); Padilla, "Early Chicano Legal Recognition," 566–71; *In re Camille,* 6 F. 256 (1880).

[31] Leon E. Aylsworth, "The Passing of Alien Suffrage," *American Political Science Review,* 25 (Feb. 1931), 114–16; Jamin B. Raskin, "Legal Aliens, Local Citizens: The Historical, Constitutional, and Theoretical Meanings of Alien Suffrage," *University of Pennsylvania Law Review,* 141 (April 1993), 1391–470.

[32] Menchaca states that the 1845 Texas constitution allowed alien suffrage, a critical error that casts her entire analysis of pre-1900 immigration trends into doubt as she struggles to explain why "applications" (that is, intention declarations) skyrocketed and the "percentage granted" fell to near zero starting in 1870, the year the 1869 constitution and alien suffrage went into effect. See Menchaca, *Naturalizing Mexican Immigrants,* 55–60, 70. Tex. Const. of 1869, art. III, sec. 1, http://tarlton.law.utexas.edu/constitutions/texas1869/a3. *Journal of the Senate of Texas: Being the Session of the Thirteenth Legislature Begun and Held at the City of Austin, January 14, 1873* (Austin, 1873), 234–35, http://www.lrl.state.tx.us/scanned/SenateJournals/13/senateJournal13thLeg_201.pdf.

[33] *In re Rodriguez,* 81 F. at 347; "The Mexican Question," *San Antonio Sunday Light,* Jan. 17, 1897, p. 4.

opinion about the unfitness of nonwhites—in this case the Chinese—declaring that they were "not only alien in color, but . . . in all things that render possible a sound citizenship." Paschal wrote of the "Mongolian's idol worship; his mode of living; his very vices" and of "the countless myriads who stood hovering on the shores of the Chinese waters, ready and anxious to swarm upon us." Leaving no doubt about his own racial beliefs, he noted that Caucasians "as a species, have no equal, physically or mentally." Paschal's illiberal take on racial issues apparently also extended to groups other than Asians; when Paschal ran against McMinn for Congress in 1892, the press reported that "the colored element" in the district was "in favor of indorsing McMinn, the populist candidate, who, with this help, they believe could defeat Judge Paschal."[34]

McMinn vehemently denied harboring racial prejudice toward Mexicans. When he first raised the naturalization question in 1888, he contended that "our worth and intellect are not fixed by color" and that "history is full of instances of genius and virtue within dusky skins." Even so, his legal case rested almost entirely upon his contention that Rodriguez and other dark-skinned Mexicans were not white, and thus, their naturalization would violate the letter of the nation's citizenship laws. McMinn, then, apparently acted not out of bigotry or a belief in white supremacy per se but as a means of rendering the state's alien suffrage law a dead letter. In seeking the Rodriguez test case, he avowed, "I do not speak dogmatically: I only cite the causes that have given me to doubt in my own mind" the legality of Mexican "Indian" naturalization. He simply appeared unbothered, however, that his solution to the problem of voter fraud would penalize an entire class of innocent immigrants by barring them from citizenship.[35]

If McMinn's motives were fundamentally political, Thomas Paschal's were no less so. He had almost certainly benefited directly from Mexicano votes in past campaigns, including during his 1892 congressional race against McMinn. No one doubted the importance of those votes to Democrats in statewide races. Even so, Paschal had been party to another locally notorious naturalization case five years earlier in his capacity as an elected state judge, and that case casts more doubt on his motives in *Rodriguez*.

The case involved the 1891 petition for citizenship of the German immigrant Richard Sauer. Race played no role in this instance, since few Texans doubted the whiteness of Germans, but immigrants also had to demonstrate their "attachment to the principles of the constitution of the United States." Here Sauer ran afoul of the conservative Democrat Paschal. Under questioning, Sauer admitted being a socialist. He favored government ownership of the railroads—a Populist platform plank—and "the forced sale of all lands owned by the citizens in excess of that which was actually necessary to make a living upon . . . for the purpose of giving it to those who owned none." Sauer defended his constitutional right to express such beliefs, but Paschal told Sauer that his beliefs "were un-American, impracticable, and dangerous in the extreme" and denied his petition for citizenship. By contrast, five years later, when Rodriguez made his application for citizenship, he admitted knowing "nothing about the constitution or laws of the United States" or who was president or governor. Paschal therefore faced a dilemma. Endorsing Rodriguez's application after rejecting Sauer's would, at a minimum, expose him to charges of hypocrisy. So he simply withheld any opinion on Rodriguez's personal fitness for citizenship, saying that determination depended upon "the individual judgment of the judge." That Sauer, who held Populistic views, and Rodriguez, a probable Democrat, received

[34] *In re Rodriguez,* 81 F. at 340; "Two County Slates," *Galveston Daily News,* Sept. 11, 1892, p. 8.
[35] "Something Startling," *San Antonio Daily Express,* Oct. 21, 1888, p. 2; *ibid.*, Oct. 31, 1888.

such different treatment from the same jurist suggests the difficulty of divorcing political considerations from such cases. Weighing either of these cases apart from their political context and analyzing them only in terms of race or definitions of "whiteness" is to invite an incomplete or simplistic understanding of them. Paschal did not need to employ racial arguments to deny Sauer's citizenship petition; there were easier tools at his disposal. McMinn, with a similar political motive in *Rodriguez,* found race to be the most convenient tool for his purposes. In neither case, however, was the concept of race driving events.[36]

Word of *Rodriguez* soon reached the streets of San Antonio. Despite McMinn's and Evans's claims that "the purpose of the proceeding is solely to prevent the newly arrived Mexicans from voting," most thought that a ruling against Rodriguez would disfranchise all Mexicanos no matter how long they or their families had lived in the United States. Since the attorneys had not publicized their apparent association with the Good Government Club, some initially suspected that they were being directly paid by "some political party" that had not been getting its share of the Mexican vote. One reporter opined that "a decision favorable to McMinn would deprive the democratic party of 20,000 votes" and potentially "turn the two southwestern . . . [congressional] districts over to populism."[37]

Not surprisingly, some of the fiercest denunciations came from San Antonio's Mexicano community. Leading the attack was Pablo Cruz, the editor of the Spanish-language newspaper *El Regidor*. Cruz sympathized with Populism, and his paper frequently endorsed Populist candidates, but he lambasted McMinn and Evans, referring to them as "*dos adoloridos*" (two soreheads) who were disappointed office seekers. Soon Cruz was calling McMinn a "sworn enemy of the Mexicans" and urging voters to "scratch [out] his name wherever you find it on the ballot." Ominously, in July Cruz reported on an "*anarquistica*" letter that local police had recently obtained, "illustrated with sinister figures such as skulls and other figures representing death" and threatening to kill "*gringos*" and "sour krouts" (Germans) for oppressing Mexicans and other minority groups. Cruz hinted that McMinn was a specific target.[38]

If McMinn did not expect the backlash from Mexicanos, he certainly did not anticipate the reaction he received from his fellow Populists. Selig Deutschmann quickly disavowed McMinn: "We are not responsible for what a member of our party does, any more than the Republicans can be charged with instigating this because Judge Evans is a Republican." Deutschmann, a German-born Jew who was perhaps quite familiar with bigotry, added, "Individually, I have always been opposed to anything that is calculated to arouse prejudice between the different races, as well as the different religions." Most Mexicans "make good citizens and are certainly entitled to citizenship," he declared, noting that they "enjoyed in their own country the highest civilization when New York City was a little Dutch village. . . .

[36] *Ex parte Sauer,* 81 F. 355 (U.S.D.C. Tx., 1891). Maxey appended the decision in *Ex parte Sauer* to the end of *In re Rodriguez*. See *In re Rodriguez,* 81 F. at 355–56. Paschal's "autocratic decision" against Richard Sauer was expected to cost him votes from labor-union members, who were reportedly supporting McMinn in the 1892 congressional race. See "Congressional Situation."

[37] "The Mexican's Right to Vote," *San Antonio Daily Express,* May 12, 1896, p. 5; *San Antonio Daily Light,* May 12, 1896, p. 4; "Mexican Vote," *Dallas Morning News,* May 14, 1896, p. 9.

[38] "Dos adoloridos" (Two soreheads), *San Antonio El Regidor,* May 14, 1896, p. 1; "De Todas Partes" (From all quarters), *ibid.*, June 18, 1892, p. 1; "Para Matar Gringos," (To kill gringos), *ibid.*, July 2, 1896, p. 1; "McMinn" (McMinn), *ibid.*, Aug. 13, 1896, p. 4. On Pablo Cruz and *El Regidor,* see Ana Luisa R. Martinez, "Pablo Cruz, *El Regidor,* and Mexican American Identity in San Antonio, 1888–1910" (Ph.D. diss., Texas Tech University, 2003). The political affiliation of *El Regidor* has been listed as Populist, but it is more accurate to say that the paper was independent, as it always endorsed eclectic slates of candidates in the 1890s. See *N. W. Ayer & Son's American Newspaper Annual* (Philadelphia, 1895), 765. For the 1896 political endorsements by *El Regidor,* see "De Todas Partes" (From all quarters), *San Antonio El Regidor,* Oct. 29, 1896, p. 1. I have translated into English quotations from Spanish sources.

To classify the Mexicans with the Indian seems to me to be rot." He then voiced what he believed to be basic Populist doctrine on the suffrage issue: "Populists believe in doing to others as they would be done by and while everyone is opposed to the methods adopted on the Rio Grande on election day, we favor regulating it by a law making a five year residence necessary before a person can vote, but not by a wholesale disfranchising of good citizens." The Populist party never went on record favoring any restriction on Mexican immigration or naturalization, and Pablo Cruz later wrote glowingly of Deutschmann, describing him as a "learned lawyer" and "one of the members of said party who has most distinguished himself defending . . . the right of Mexicans not to be denied U.S. citizenship."[39]

State representative John O'Connor, San Antonio's most prominent Populist officeholder and a native Texan, reacted similarly. When he learned of *Rodriguez,* he professed to be "very much surprised, even astonished"; he had "not been able to take the matter seriously, it seems so absurd." Then he unloaded on McMinn:

> as a Populist I desire to denounce this effort to disfranchise the Mexicans with all the fire and vigor [of which] an Irishman is capable [O'Connor was of distant Irish ancestry]. It not only has no support, but has no sympathy among the Populists. Why, some of the best and oldest citizens of this city and section are Mexicans. They have aided in building up this city and country, and were paying taxes to our government before some of those who would now disfranchise them were born. . . . And to say that these people have no right to become citizens here in the home of the free and the land of the brave, this asylum for the oppressed, is simply absurd.

O'Connor referenced the federal case of a Chinese immigrant who had been naturalized in New Jersey but had his naturalization overturned in California, resulting in his deportation. O'Connor believed that if McMinn was correct, "the good Mexican who has come here and taken up his abode, been naturalized, bought property, reared his family, paid his obligations to the State and Federal government, is not a citizen. You can see where the argument leads." O'Connor finally resorted to ridicule to express his displeasure with McMinn: "To say it is not good law is to put it mildly. . . . It is not good nonsense."[40]

The day after O'Connor's diatribe was published, McMinn issued a response: "no one—certainly no Populist—is in any way responsible in the remotest degree for my doings but my individual self." He reiterated that he was not seeking to disfranchise any "recognized citizen," but then he critiqued O'Connor and Deutschmann as "uninformed persons" who were "spouting irrelevant rot."[41]

By this point, just days after Rodriguez's appearance in federal court, the *San Antonio Light* could accurately declare that "the question has assumed large proportions." A week later, unidentified parties began circulating a "manifesto in the Mexican language signed by 'Mexicano-Texanos'" featuring newspaper accounts of the case along with an appeal to Mexicanos to vote for Democratic candidates because "both the Populist and Republican parties have combined to disfranchise the Mexican race." In nearby Wilson County, where Vicente Carvajal had labored

[39] "The Mexican's Right to Vote," *San Antonio Daily Express,* May 12, 1896, p. 5; "Lic. Selig Deutschman" (Lic. Selig Deutschmann), *San Antonio El Regidor,* July 16, 1896, p. 1. On Selig Deutschmann, see "The Pops in Session," *San Antonio Daily Light,* June 14, 1896, p. 4; "Is an Energetic Leader in Politics and Progressive Affairs of the City," *San Antonio Daily Express,* May 20, 1915, sec. 9, p. 24; "San Antonio Politician and Charity Worker Dies," *ibid.*, Sept. 6, 1922, p. 20; and Frank H. Bushick, *Glamorous Days* (San Antonio, 1934), 92, 96–97.

[40] "Say They Are Not to Blame," *San Antonio Daily Express,* May 13, 1896, p. 5. The case John O'Connor cited is *In re Gee Hop,* which relied heavily on precedents set by *In re Ah Yup*. See *In re Gee Hop,* 1 Fed. 274 (1895).

[41] "McMinn's Responsibility," *San Antonio Daily Express,* May 14, 1896, p. 8.

Pablo Cruz was the editor and publisher of the independent Spanish-language newspaper *El Regidor* from 1888 until his death in 1910. In the 1890s Cruz's paper endorsed the Populist party, but when Theodore J. McMinn and Andrew Jackson Evans brought their legal action against Ricardo Rodriguez, Cruz, himself a Mexican immigrant, lambasted the two politicians as "sworn enemies of the Mexican race" and turned against McMinn's Populists. *Courtesy Stefanie Cruz Singletary.*

to build a viable Anglo-Mexicano Populist coalition, local Populists passed resolutions "denouncing the move made by McMinn and Evans in the federal court to disfranchise the Mexicans." Two weeks later, in the Bexar County Populist convention, Deutschmann proposed a similar resolution:

> Whereas, the democrats are circulating a report to the effect that the populist party is endeavoring to disfranchise the Mexican citizens; therefore, be it
>
> Resolved, By the people's party in mass meeting assembled, that the above report is wholly untrue.
>
> Resolved, Further, that the people's party is opposed to disfranchisement of anyone by reason of their race, color or religion.

The convention failed to bring the resolution to the floor for a vote. Instead, the delegates passed a resolution calling for "fair and honest" elections, a sentiment that everyone could support.[42]

[42] "McMinn's Manliness," *San Antonio Sunday Light,* May 16, 1896, p. 2; "Pops in Session"; "Populist Paragraphs," *San Antonio Sunday Light,* June 14, 1896, p. 8; "O'Connor Talks," *ibid.*, June 21, 1896, p. 8; "McMinn's

The convention's failure to act on Deutschmann's resolution raises questions about Populist sentiment about disfranchisement. Individual Populists undoubtedly supported McMinn, and the convention's inaction may reflect that support, although there is no direct evidence of it. Alternatively, the convention's quiescence could be explained as a simple desire not to pour gasoline on a fire. O'Connor had missed attending the convention, but he most likely would have supported the antidisfranchisement resolution. A week later he and Deutschmann seized on a chance to right the wrong they believed had been perpetrated. At a June 20 joint meeting of the Independent American Labor Club and the San Pedro International Club—an apparently all-Populist gathering—they introduced the resolution again, this time with an additional clause condemning the county convention's inaction. At this juncture, the leading Tejano Populist Andrés López Montalbo gained the floor and said that although he supported the resolution, this was "no place for it." Apparently for Montalbo, only the upcoming state Populist convention could rectify the situation. Deutschmann moved to adopt the resolution anyway, which was promptly done.[43]

Montalbo had already decided to take his grievance to the Populists' statewide standard-bearer Jerome Kearby. Montalbo's June 18 letter to Kearby does not survive, but it is apparent that Montalbo wanted the issue addressed at the August state convention. Kearby responded in a letter that was widely published across south Texas. He hoped to meet with Montalbo during an upcoming visit to San Antonio, he noted, but he reassured Montalbo "that the People's party has always favored free suffrage, free ballot, honest count, subject only to constitutional limitations." Kearby claimed to "know nothing of Mr. McMinn's contentions before the Federal Court," but he reiterated that the Populist party had "never been consulted nor has it ever authorized any judicial movement" that might abridge the rights of Mexican Americans, and he promised to "favor in our State convention an unqualified expression of our party on the subjects mentioned in your letter." "I feel sure," Kearby asserted, "that the characteristic liberality that has heretofore prevailed in all our platforms will sustain us in our very pronounced theory of equal rights to all native and naturalized citizens."[44]

Pablo Cruz sought to exercise damage control. In *El Regidor* he discussed the Kearby letter favorably, and though he condemned McMinn personally, he also repeated McMinn's contention that the purpose of *Rodriguez* was only to curtail voter fraud and not to disfranchise any native-born Tejanos. He quoted McMinn as saying that fraud keeps the Democrats in power and that Democratic leaders "do not dare to condemn such acts because it would be political suicide to do so." Cruz repeatedly reminded his readers that McMinn did not speak for the People's party.[45]

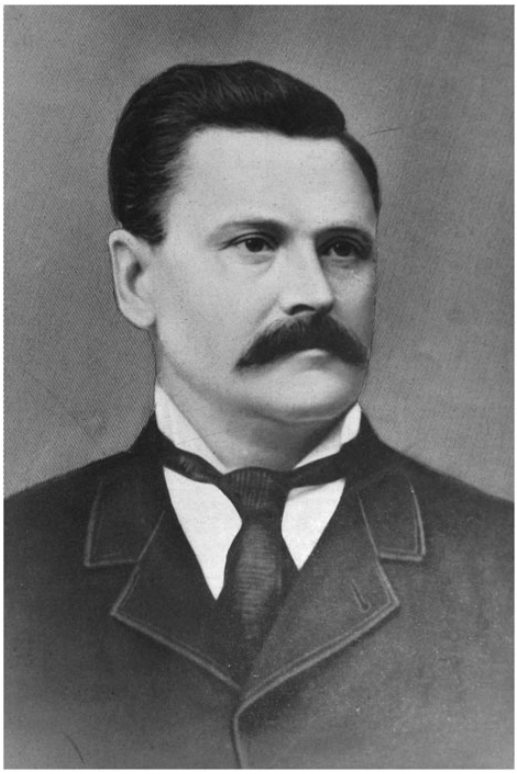
A few weeks later Montalbo addressed a Populist meeting in San Antonio's central park. No text of the speech survives, but Montalbo, speaking in Spanish, apparently reiterated that

Responsibility"; "Gossip at Austin," *San Antonio Daily Express,* May 28, 1896, p. 3; "Jerome Kearby Endorsed," *Galveston Daily News,* May 27, 1896, p. 4; "De Floresville" (De Floresville), *San Antonio El Regidor,* May 28, 1896, p. 1.

[43] Little is known about Andrés López Montalbo except that he worked as a printer at the firm of Guessaz & Ferlet in San Antonio and that he received the Populist nomination for weigher in Bexar County in 1894. See "Pops' Ticket," *San Antonio Light,* Oct. 1, 1894, p. 4; and "San Antonio, Texas City Directories, 1891–94," available at *Ancestry.com*. "O'Connor Talks."

[44] "Kearby is Against It," *Brownsville Herald,* July 4, 1896, p. 2.

[45] "Dos adoloridos"; "Kearby y McMinn" (Kearby and McMinn), *San Antonio El Rigador,* July 2, 1896, p. 4; "Politica local" (Local policy), *ibid*., July 30, 1896, p. 1; "Selig Deutschman" (Selig Deutschmann), *ibid*., Aug. 6, 1896, p. 2.



John A. O'Connor began as a farmhand and San Antonio policeman but became a successful businessman and self-taught attorney. Although a Populist, he won election to the Texas House of Representatives in 1894, with backing from Populists and Democrats, and he became an acknowledged leader of the Populist bloc in the Texas legislature. He joined other local Populists in denouncing Theodore J. McMinn's legal action against Ricardo Rodriguez. *Reprinted from Frank W. Johnson,* A History of Texas and Texans *(5 vols., Chicago, 1914), V, 69.*

neither McMinn nor Evans spoke for their respective parties. Kearby's assurances had not satisfied Montalbo. As a delegate to the upcoming state convention, Montalbo apparently planned to press the issue. Meanwhile, in Wilson County, where three-fourths of the Mexicanos reportedly voted Populist in 1894, Democrats boasted that three-fourths of them would support the Democrats in 1896. "Mr. McMinn's action in the federal court at San Antonio had no little to do with it," a newspaper claimed.[46]

When Texas Populists gathered in Galveston during the second week in August of 1896 for their momentous state convention, a feeling of grim desperation gripped the delegates. The nomination of the Democrat William Jennings Bryan by the Populist national convention in St. Louis—a move Texas Populists had almost universally opposed—had unleashed chaos among the state party's ranks. If disillusioned white Populists abandoned their party over the Bryan nomination, the party's only chance of a statewide victory lay in capturing the lion's share of the African American vote in east Texas. Accordingly, the Populists struck an informal fusion deal with Texas Republicans and renewed their calls for fair elections—a

[46] "Politica local"; "Pops in Session"; "Wilson County Notes," *Galveston Daily News,* July 16, 1896, p. 6.

The presence of an urban, German-born Jew in the Populist party, much like the presence of Mexican Americans among the ranks, suggests that the party in Texas had appeal among more than just Anglo farmers. Selig Deutschmann, pictured here, rose from modest beginnings to become a prominent attorney and longtime civic leader in San Antonio. In 1896 he joined Pablo Cruz, John A. O'Connor, and other Populists in denouncing Theodore J. McMinn's effort to deny Mexican immigrants the right of naturalization. *Courtesy Allan H. Glazerman, Congregation Agudas Achim, San Antonio, Texas.*

necessary prerequisite to securing black votes. McMinn's actions in *Rodriguez* now placed the People's party in a dilemma: opposition to election fraud was one of the principal issues that united Populists with black Republicans. Even so, McMinn's tactic of achieving clean elections in south Texas through the disfranchisement of Mexicans (even if he only intended to target aliens) provided fodder for Democrats, who could charge the Populists with favoring disfranchisement in general. Taking an open stand for Mexican disfranchisement not only would hurt the party's prospects in places such as Wilson County but it would also enable Democrats to present a slippery-slope argument to African Americans: if Populists are targeting the Mexican vote today, they might take aim at the black vote tomorrow.[47]

Populist leaders thus sought a middle ground. First, they avoided any open debate on the Mexican issue. No Tejano delegate ever appeared in the press accounts of the convention, and if delegates ever attempted to introduce or debate a resolution specifically concerning

[47] Gregg Cantrell and D. Scott Barton, "Texas Populists and the Failure of Biracial Politics," *Journal of Southern History,* 55 (Nov. 1989), 659–92, esp. 676–81.

*Rodriguez,* no record of it survives. "Rivalrous ambitions, loaded with petty jealousies" were reported to have prevented San Antonio's delegates from exerting "the slightest influence in the convention," causing the Bexar County delegation, including Montalbo, to be "unceremoniously shoved aside every time it got in the road." Having ignored the issues raised by *Rodriguez,* the convention then adopted a plank demanding "a free vote by every qualified elector without reference to nationality, and an honest count" and another calling for "equal justice and protection under the law to all citizens, without reference to race, color, or nationality." It also liberalized the party's alien land law plank to allow resident aliens to own land in Texas.[48]

As for McMinn, he had been the Populist nominee for Congress in 1892 and Texas state representative in 1894, but his role in the Rodriguez case had not only badly damaged the People's party but also effectively ended his career in south Texas politics. Barely two weeks after the case was filed, the *San Antonio Express* bluntly asserted that McMinn had "rendered himself unavailable [as a candidate] through his attempt in the Federal court to disfranchise the Mexicans, . . . having aroused the bitter enmity of all that race and its political friends."[49]

Outside of south Texas, Populists still viewed McMinn favorably. Those who were aware of *Rodriguez* may have seen it as McMinn did—a progressive measure intended only to prevent fraud. Given the nationwide trend to end alien suffrage, many Texans would not have looked askance at McMinn's efforts. At the Galveston convention, the state party chairman H. S. P. "Stump" Ashby placed McMinn's name in nomination for the Texas Supreme Court. McMinn received the nomination over two other candidates.[50]

McMinn's nomination was the tipping point for Montalbo. In early October 1896 he called a meeting of San Antonio Mexicanos. Two hundred people attended the meeting at a cockfighting arena, "and there was a picture of determination on every face, which showed plainly that they strongly objected to their rights of citizenship in their adopted country being interfered with." With a distressed Deutschmann looking on, Montalbo read a manifesto in Spanish castigating Populists and Republicans. McMinn, he noted, was nominated for the supreme court "by Stump Ashby, the high priest of the Texas Populists," and it was "clear that the Populist party . . . approved the views of McMinn, and the McMinn views are that the Texas Mexicans should be reduced to the category of pack animals." Referring to a developing plan for statewide Populist-Republican fusion, Montalbo asked: "Is it not plain that both parties are anti-Mexican?" McMinn's election, he declared, "will mean that the Texas Mexicans will be deprived of their civil rights, and as the law provides that aliens shall not hold possessions, it will also mean that they will lose with their civil rights their possessions also." Condemning Montalbo's manifesto as "a piece of low down demagoguery," the *San Antonio Light* charged that the meeting's purpose was "to denounce the movement to test the right of the Mexican Indian tramp to vote under our laws." But the damage was done.

[48] "The Bexar Delegation," *San Antonio Express,* Aug. 8, 1896, p. 2; Ernest William Winkler, ed., *Platforms of the Political Parties in Texas* (Austin, 1916), 296, 381. On the Alien Land Law of 1891, see *General Laws of the State of Texas, Passed at the Regular Session of the Twenty-Second Legislature, Convened at the City of Austin, January 10, 1892, and Adjourned May 9, 1892* (Austin, 1892), 83; and *Handbook of Texas Online,* s.v. "Alien Land Law," http://www.tshaonline.org/handbook/online/articles/mla01. Menchaca calls the passage of the 1891 Alien Land Law "a major victory for the People's Party and their first successful campaign against aliens." The law, however, was passed by an overwhelmingly Democratic legislature and signed into law by a Democratic governor 4 months before the Texas People's party existed. See Menchaca, *Naturalizing Mexican Immigrants,* 102–3;

[49] "A Column of Fresh Politics," *San Antonio Daily Express,* May 25, 1896, p. 2.

[50] "Closing Day."

The state convention's inaction on *Rodriguez* and its nomination of McMinn had alienated Montalbo and his constituents, notwithstanding the strong denunciations of McMinn by O'Connor and Deutschmann and McMinn's public denials that he had acted on his party's behalf.[51]

Cruz's support for Populism now wavered. "Although McMinn is a member of the Populist Party," Cruz wrote on August 27, "he is an idiot, because with his heavy-handed and clumsy acts he is on the verge of destroying the work that we Mexico-Texans have done over the past four years. This is how stupid people act: they do not know how to build but they do know how to destroy." Soon Cruz was calling McMinn and Evans "sworn enemies of the Mexican race." He claimed to support the exclusion of "ignorant and venal" people from voting, but he objected "to the total exclusion of any race." When the time came to endorse candidates, Cruz backed the Democrat James Slayden for the Twelfth Congressional District, despite the fact that the Populist nominee was Taylor McRae, the respected chairman of the Bexar County People's party. Cruz still endorsed Jerome Kearby for governor, but Populist hopes for a viable coalition with Tejanos in San Antonio lay in ashes.[52]

In November 1896 voters dealt the Populists a devastating blow. In the governor's race the Democrat Charles Culberson defeated Kearby 298,568–238,688. Whereas Kearby lost by only 60,000 votes, McMinn lost by nearly 100,000—a far worse margin of defeat than any other Populist candidate. *Rodriguez* is the only explanation for his unpopularity. Cruz reported on McMinn's dismal showing in *El Regidor*. Showing no small measure of glee, he lapsed into English to say that "McMinn is in the soup, donde siempre estará" (where he will always be).[53]

Nowhere was McMinn's fall from grace more striking than in Wilson County. In that Populist stronghold, the party narrowly won one and lost four statewide races below the level of governor and lieutenant governor, with each loss occurring by only about one hundred votes out of some 2,500 cast. In McMinn's race, Vicente Carvajal's county dealt him a humiliating loss (1,326–202)—a defeat so great that it could not be attributed entirely to disaffected Tejanos. Similar stories played out in other counties. In neighboring Atascosa County, McMinn polled only 202 votes while other Populist statewide candidates received nearly five hundred. Tejano *and* Anglo-Populists had turned against McMinn.[54]

The revolt in the upper counties against the Populists in general, and McMinn in particular, reveals much about the region's politics. Clearly, Mexicano voters were not buying McMinn's disclaimer that he had acted without the backing of the People's party in the Rodriguez affair and that he did not intend to disfranchise Tejano citizens, nor did they believe the protests of party leaders when they repudiated McMinn's actions—an understandable reaction given the party's nomination of McMinn for the high court. Democratic propaganda had been effective in driving home these points, but Mexicano voters were taking no chances: they concluded that the potential threat that *Rodriguez* posed to voting, immigration, and citizenship was simply too great. As appealing as the Populist economic agenda might have been, it would be meaningless if it came at the cost of basic political rights. Safety,

[51] "Texas Mexicans Protest," *Brownsville Herald,* Oct. 13, 1896, p. 2; "The Mexicans Are Very Angry," *San Antonio Daily Express,* Oct. 9, 1896, p. 5; "Short Stops," *San Antonio Daily Light,* Oct. 10, 1896, p. 7.

[52] "De todas partes" (From every side), *San Antonio El Regidor,* Aug. 27, 1896, p. 1; "Evans y McMinn" (Evans and McMinn), *ibid.*, Oct. 1, 1896; "Otra candidatura" (Other nominations), *ibid.*, Oct. 22, 1896, p. 1; "De todas partes" *ibid.*, Oct. 29, 1896, p. 1.

[53] Pablo Cruz, "Las elecciones" (Elections), *ibid.*, Nov. 5, 1896, p. 5; Allison Mayfield, *Biennial Report of the Secretary of State of the State of Texas,1896* (Austin, 1897), 65–76.

[54] Mayfield, *Biennial Report of the Secretary of the State of Texas,* 72, 73, 76.

Mexicanos believed, lay in the time-tested patronage democracy offered by Democrats. Democrats might not be offering expanded rights to Mexicanos, but they were offering inclusion. Populists had attempted to build a biracial coalition that expanded rights, but McMinn had unwittingly sacrificed that coalition to expediency.

Further south, in the Rio Grande Valley, McMinn also lost, but not because his fellow Populists turned against him; he had no fellow Populists there. In those counties the Democratic political bosses once again mobilized the vote, with predictable results. In Cameron, Hidalgo, and Starr Counties, the Democratic Supreme Court candidate polled 4,901 votes to McMinn's thirty-two. McMinn, it seems, was doubly damned: he had alienated legitimate Mexican American and Anglo-Populist voters while failing to solve the problem of fraud. The Populist vision of color-blind political citizenship—what Jerome Kearby had called "our very pronounced theory of equal rights to all native and naturalized citizens"—had run headlong into the party's need to guarantee a free ballot and a fair count.[55]

Judge Maxey postponed action on Rodriguez's case for another six months, until November 1896. The *San Antonio Light* complained, noting that in the recent election "thousands of these alien Mexican voters were voted for all officers from president of the United States down to constable" and that "hundreds of these people were brought over the Rio Grande river and herded like so many cattle until they were voted." Finally, in May 1897, Maxey issued his decision. He accepted McMinn's and others' contention that, according to ethnological theory and ordinary usage, Rodriguez probably was not "white." McMinn had pinned most of his hopes on this argument, believing that Maxey would follow the letter of the law that restricted the right of naturalization to whites and blacks. Following Paschal's lead, however, Maxey found that this language was never intended to bar Mexicans from citizenship. The Republic of Texas constitution, the 1848 Treaty of Guadalupe Hidalgo, and other pacts had allowed thousands of ethnic Mexicans to become citizens, without regard to race. Maxey therefore concluded that Rodgriguez's case was "embraced within the spirit and intent of our laws upon naturalization." Moreover, Rodriguez's conduct as a law-abiding resident indicated his "attachment to the principles of the constitution," regardless of his inability to explain them. Consequently, Maxey granted Rodriguez's petition, "notwithstanding the letter of the statute may be against him."[56]

Maxey seemed to grasp the irrationality and impracticability of law and public policy based on fictive notions of race. One of the great ironies of the case is that McMinn understood this, too. He admitted that some dark-skinned Mexicans—for example, those covered by the Treaty of Guadalupe Hidalgo—qualified for citizenship while others—immigrants such as Rodriguez—presumably did not. Although he may have cynically sought to disfranchise Mexican aliens by invoking the legal technicality of their nonwhiteness, McMinn never argued that race per se rendered some of them unfit for citizenship. He had suggested that "many of the citizens of Mexico would do credit to the highest civilization in the country." McMinn's strategy was arguably more Machiavellian than racist: the ends (fair elections) justified the means (interpreting existing laws to prevent Mexican immigrants from becoming citizens and therefore voters). The justice of the underlying law was not his concern.[57]

Maxey's decision complicated the supposedly straightforward rule in American immigration policy that only whites and blacks could become naturalized citizens. Although Maxey

[55] *Ibid.*, 73, 74, 76.
[56] "Short Stops," *San Antonio Light,* Nov. 12, 1896, p. 5; *In re Rodriguez,* 81 F. at 354–55.
[57] "Something Startling," *San Antonio Daily Express,* Oct. 21, 1888, p. 2.

had admitted that Rodriguez was not technically "white," the judge essentially said that for legal purposes Mexicans could be considered white, because it had never been the intention of American policy to deny them citizenship, regardless of their race. Thus, Mexicans became "the exception that proves the rule" in the ongoing national debate over race and immigration. Moreover, the decision that Mexicanos would be considered legally white for immigration purposes spilled over into other areas, as Mexican Americans in the twentieth century sometimes invoked their legal "whiteness" to resist segregationist measures that threatened to consign them to the same de jure Jim Crow system as African Americans. There is little wonder, then, that modern scholars of race have found the case significant; it dramatically illustrates how race is a legal and social construct. Even so, the case was never really about race, except to the extent that a racial argument was used as a means to a political end. The principal motivation of the lawyer-politicians who challenged Rodriguez in federal court was neither racism nor xenophobia (though they may have been guilty of both to some extent); their main purpose was to end the wholesale manipulation of elections in south Texas. *Rodriguez,* therefore, ends up being a relatively poor example of late nineteenth-century racialized thinking, though that is how critical race theorists have usually depicted it. The lawyers in the case drew upon that thinking, but only because it offered a convenient argument for policing alien voting. Likewise, scholars who have dismissed the legitimate political concerns of Populists as a smoke screen for Anglo prejudice against Mexicanos have misunderstood Populist motives and the magnitude of the problem they faced. McMinn's motivation in bringing his test cast against Rodriguez sprang from his frustration over the Democratic manipulation of Mexican votes in south Texas—manipulation that, ironically, played an instrumental role in defeating Populist efforts to form coalitions with Tejano citizens across racial and ethnic lines. We may rightly fault him for resorting to a racialized argument to combat fraudulent voting by noncitizens, but to move from that criticism to the conclusion that *Rodriguez* constituted a "grand plan" by the racist People's party to persecute all Mexicanos is a conclusion simply not borne out by the evidence.[58]

Perhaps most important, though, the story told here adds a new layer of complexity to understandings of Populism. Even though historians of Populism have largely ignored the history of the People's party in the region, the struggles of Populists in south Texas to build a coalition based on shared economic grievance echoed the battles that they fought elsewhere to construct alliances with African Americans and with urban workingmen. Reformers such as McMinn often sincerely wanted good government and equal political rights for all Americans, but the social and racial climate of the era frustrated them at every turn. In Texas, Populism stood no chance of victory unless the party could build an effective coalition with African Americans in east Texas. That coalition could not succeed, however, if fair elections could not be assured. The fraudulent vote in south Texas could mean the difference between victory and defeat statewide, but attacking fraud on the border could invite charges that Populists favored the disfranchisement of nonwhites, including blacks, in general. This irresolvable catch-22 led to a public relations nightmare for south Texas Populists and an uncomfortable silence by the state Populist party at its Galveston convention. Fraud continued unabated in south Texas and across the state, and it may have cost the People's party a statewide victory in 1896. When it came to fighting fraud, the Populists were, as the expression goes, "damned if they did and damned if they didn't."

[58] Menchaca, *Naturalizing Mexican Immigrants,* 107. On Mexican Americans and whiteness, see Benjamin H. Johnson, "The Cosmic Race in Texas: Racial Fusion, White Supremacy, and Civil Rights Politics," *Journal of American History,* 98 (Sept. 2011), 404–19, esp. 414–15.

The desire of Populists such as O'Connor, Deutschmann, Carvajal, Cruz, and Montalbo to reach across racial, ethnic, and class lines to build reform coalitions at the grassroots level indicates that scholars who have seen a foreshadowing of twentieth-century racial liberalism in Populism are not entirely wrong. All told, the cast of Populist characters in this article should dispel any lingering notions about Populism being naïve, narrow-minded, or retrograde—not to mention racist or xenophobic. In his career as a state legislator, O'Connor consistently supported reforms to modernize and rationalize state and local government. He and the Populist bloc in the Texas House of Representatives worked to raise the legal "age of consent" (that is, the age above which statutory rape could not be charged) in Texas from twelve to sixteen or higher, to abolish the county administration fee system that made local government such a rich source of corruption, to strengthen the state's antitrust laws, to place black schools under the control of black trustees, to outlaw the printing of fraudulent election ballots, to prevent the enactment of a poll tax, and to fund public education more fully. O'Connor personally sponsored bills to abolish the convict lease system, to strengthen the mechanic's lien law, to regulate working hours on railroads, and to professionalize urban police and fire departments. Deutschmann not only defended Tejano rights but also spearheaded progressive civic causes long after Populism's demise, including efforts to establish a public library, a successful campaign to adopt the commission plan of city government, and the founding of the city's first free kindergarten. Carvajal played an active role in public affairs in Wilson County for decades, earning the respect of his fellow citizens of all ethnic and political persuasions. Cruz remained an influential advocate for Mexicano rights and a voice for reform in San Antonio until his death in 1910. Despite their diverse backgrounds, all of these men saw the egalitarian promise of Populism.[59]

And what of McMinn? His infamous role in *Rodriguez,* when properly understood, casts him not so much as a racist villain but as a blundering clean-government crusader, and the backlash against him by his fellow Populists further underscores Populist opposition to bigotry. In many ways McMinn personified the populist/progressive/liberal mindset that held that an activist government controlled by the people could tame the abuses of unbridled capitalism, protect the rights and liberties of individuals, and create a more just society. In 1898, when the United States went to war against Spain, McMinn warned of war profiteering conducted under "the cry of patriotism." Renominated for the supreme court, he fought to strengthen the party's support for the workingmen's lien law, chiding the party for not "paying enough attention to the laboring classes." In 1900 the remnants of the People's party nominated him for governor of Texas, and on the stump he railed against "the sorrow and hunger and nakedness in factories and sweatshops." McMinn championed progressive causes in his role as a statewide Populist leader well into the twentieth century, long after most Populists had either given up in disillusionment or returned to the Democratic party. Some former Populists aided the triumphant Democrats in erecting the superstructure of the Jim Crow system across Texas and the South after 1900, including aiding passage of the 1902 Texas Poll Tax Amendment that disfranchised most poor African Americans and

[59] *Journal of House of Representatives,* 34, 40, 41, 154, 205, 226, 449, 621; "Mr. O'Connor's Bill to Abolish the Lease System," *Dallas Morning News,* Jan. 31, 1895, p. 1; "The House," *ibid.*, Feb. 1, 1895, p. 1; "O'Connor's Bill," *ibid.*, Feb. 17, 1895, p. 4; "The House," *ibid.*, Feb. 27, 1895, p. 1; "The Legislature," *ibid.*, p. 1; "The O'Connor Police Bill," *ibid.*, April 13, 1895; "Fee Bill Fight," *ibid.*, April 18, 1895, p. 1; "New Corporations," *ibid.*, July 24, 1903, p. 6; "Is an Energetic Leader in Politics and Progressive Affairs of the City"; Bushick, *Glamorous Days,* 92, 96–97; "San Antonio Politician and Charity Worker Dies"; "Deaths," *Dallas Morning News,* March 3, 1935, p. 15. "A Talk with M'Minn," *ibid.*, July 24, 1903, p. 4.

Mexican Americans. There is, however, no evidence that McMinn was among them, nor did he ever embrace the myriad other restrictions on voting—poll taxes, literacy tests, burdensome property-owning and registration requirements—that proliferated in the North as well as the South around the turn of the twentieth century.[60]

McMinn's fifteen minutes of fame—accorded him by his regrettable role in the Rodriguez affair—placed him on the wrong side of history and on the wrong side of many modern historians when he deployed a racial argument in federal court as a means of fighting political corruption in south Texas. In many ways, however, McMinn personified the terrible dilemma that Populists and other reformers faced in the turn-of-the-century United States: how to seek justice for all—including justice for racial and ethnic minorities—when the opponents of justice were so willing to use racial demagoguery and the power of white supremacy to frighten white voters and steal elections. McMinn and his fellow Populists were not blameless in the scapegoating of racial and ethnic minorities that characterized American politics at the time, but in a way they were also victims of that racism and prejudice. Democrats were willing to violate the state's election laws, manipulate poor immigrants, and then accuse the Populists of bigotry to maintain their political dominance. History may remember *In re Rodriguez* as a footnote in the long, strange story of how Americans used bogus ideas about race to define what it meant to be a citizen, but the case should also be a reminder of the tragic consequences that race and racism held for those who would reform a corrupt political system.

[60] "A Talk with M'Minn," *Dallas Morning News,* June 10, 1895, p. 4; "McMinn's Views," *San Antonio Daily Express,* June 9, 1898, p. 5; "Crown of Thorns Thrust on Gibbs," *ibid.*, July 29, 1898, p. 3; "McMinn's Acceptance," *Victoria Advocate,* Sept. 29, 1900, p. 3. On disfranchisement in Texas, see J. Morgan Kousser, *The Shaping of Southern Politics: Suffrage Restriction and the Establishment of the One-Party South, 1880–1910* (New Haven, 1974), 196–209; and Michael Perman, *Struggle for Mastery: Disfranchisement in the South, 1888–1908* (Chapel Hill, 2001), 271–81. For the 1902 Poll Tax Amendment, see Texas Legislative Council, *Amendments to the Texas Constitution since 1876,* 58. On suffrage restriction as a national movement, see Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States* (New York, 2000), 119–59.