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Racial Disenfranchisement and Its Impact on Political Participation in the United States

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Racial Disenfranchisement and Its Impact on Political Participation in the United States



Honors Thesis

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April 2020

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Abstract

Political participation, and in particular, the power to cast a vote, is crucial to representation in a democracy. This project seeks to explore the issue of racial disenfranchisement in the United States, both historically and in the present day, as well as its implications for the political participation and representation of racial minorities in politics and government. In analyzing the broad scope of this issue, I will research both federal and state laws. Until recently, the 14th and 15th Amendments to the Constitution of the United States coupled with the Voting Rights Act of 1965 have provided important barriers to state passage and implementation of laws that suppress or disenfranchise minority voters. The U.S. Supreme Court decision in *Shelby County v. Holder* (2013) freed states to adopt potential discriminatory voting and election laws without federal review by the Justice Department. I will focus specifically on voter suppression laws, including voter identification requirements, gerrymandering, laws concerning felon voting rights, and other policies that constitute modern-day voter suppression tactics. With significant legal barriers preventing certain segments of the population (specifically, minority groups) from casting their vote, they are effectively not having their voices heard, nor are they being represented in their own government. I end by proposing a possible solution to the issue of racial disenfranchisement and its implications on the American public, but specifically for racial minorities in the United States.

Acknowledgments

I would like to thank Dr. Miller for being an incredible advisor and helping me with my research through the entire thesis process.

Dedication

To all people of color in the United States who were not able to exercise their fundamental rights, and to those who continue to fight the good fight.



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INTRODUCTION

In the United States, the ability to participate in our political system, and in particular the power to cast a vote, is the cornerstone of our nation and what unites us as a democracy. When this power is lost, one loses the ability to shape policies and political agendas in their community. However, many groups have historically faced substantial obstacles to voting. With significant legal barriers preventing certain segments of the population, particularly minority groups, from casting their vote, they are effectively not having their voices heard, nor are they being represented in their own government.

Following the abolition of slavery, the 15th Amendment to the United States Constitution, ratified in 1870, declared that, “The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.” However, despite this amendment, by 1890, discriminatory practices such as poll taxes, literacy tests, understanding clauses, Grandfather Clauses, and “good character” clauses were used to prevent African Americans from exercising their right to vote, especially in the South (Anderson 2018). The Voting Rights Act of 1965 led to federal government intervention of state and local laws that infringed on minority groups’ right to vote.

The Voting Rights Act (VRA) outlawed the discriminatory voting practices adopted in many southern states after the Civil War, and was signed into law on August 6, 1965, by President Lyndon Johnson. It identified jurisdictions that had a long, documented history of racial discrimination in voting, and required that the Department of Justice or the federal court in Washington, D.C. approve any change to the voting laws or requirements that those districts wanted to make before it was enacted (Anderson 2018). The impact of the Voting Rights Act was immediate, leading to a surge in African

American voter registration and turnout in the South (Anderson 2018) until the Supreme Court revisited the Act again in 2013.

The 2013 United States Supreme Court decision, *Shelby County v. Holder*, struck down the provision that determined which locales came under federal oversight, and has since resulted in a surge in discriminatory voter suppression tactics – primarily in the form of restrictive voter identification laws, purged voter rolls, redrawn district boundaries (in a process known as “Gerrymandering”), and closed and moved polling places – all without the approval of the Justice Department. Additionally, issues that have historically disproportionately impacted the African American community (such as voter identification requirements and felony voter disenfranchisement) have only increased with the passing of laws post-*Shelby*.

This thesis seeks to explore the issue of racial disenfranchisement in the United States, both historically and in the present day, as well as its implications for the political participation of racial minorities in politics and government. In analyzing the broad scope of this issue, I will research both federal laws and judicial rulings— such as the 15th Amendment to the Constitution of the United States, the Voting Rights Act of 1965, and the 2013 Supreme Court decision *Shelby County v. Holder* – and state laws, policies, and local administrative practices pertaining to voting rights; and specifically those that have primarily impacted people of color (whether intentionally or unintentionally) by using public legislative databases.

I will focus specifically on voter suppression laws, especially those enacted after 2013, including stringent voter identification requirements, gerrymandering, laws concerning felon voting rights, and other policies that constitute modern-day voter

suppression tactics, as well as the impacts they have had on political participation among minority groups by using publicly available election data. I will end by detailing the implications of these laws, not only on the American public, but specifically for racial minorities in the United States, and proposing a possible solution to the issue of racial disenfranchisement.

LITERATURE REVIEW

In the following section, I will attempt to cover the history and development of voting rights in the United States as they pertain to race. Race has always been the central fault line of American politics. Throughout United States history, proponents of racial equality have continuously struggled for preeminence in American politics against those who advocated for white supremacy or otherwise opposed federal measures designed to reduce racial inequalities.

Because voting is the paramount way in which most Americans exercise their civil rights and participate in U.S. democracy, abridging voting rights in any way should be anathema to the American people; and yet, the history of this country is inseparable from the disenfranchisement of various groups, especially racial minorities. Contemporary developments and practices impacting voting rights must be examined and understood within the broader social and historical context of the struggle for political inclusion led by African Americans and the subsequent struggles of other groups, including women and various minority groups, to access the right to vote.

HOW ELECTION LAWS ARE ORGANIZED

The right to vote in the United States has deep roots in the nation's historical conception of democracy, one of America's founding ideals. However, the U.S.

Constitution does not include any direct, explicit language granting the right to vote to all people – it merely implies the right to vote through negative language. Instead, the Constitution directs responsibility to regulate most aspects of elections to the states, and federal lawmakers have generally deferred to the states on these issues. Moreover, the U.S. Constitution directs the inquiry over voter eligibility to state sources. As Supreme Court Justice Antonin Scalia declared in *Arizona v. Inter-Tribal Council of Ariz., Inc.* (2013), the Elections Clause of Article I of the U.S. Constitution, “empowers Congress to regulate *how* federal elections are held, but not *who* may vote in them,” (Douglas 2014, 91). As a result, voter eligibility rules are left instead to the states.

Therefore, all national mandates that have contributed to the expansion of voting rights have been through amendments to the United States Constitution, federal laws passed by Congress, and United States Supreme Court case law. The three Reconstruction Amendments, passed between 1865 and 1870, expanded the right to vote to African Americans. The Thirteenth Amendment, ratified in 1865, abolished and prohibited slavery and established a minimal degree of citizenship for former slaves. The Fourteenth Amendment, ratified in 1868, granted citizenship to all people “born or naturalized in the United States” and extended the protections of due process and equal protection to individual citizens under the Equal Protection Clause (Brown and Clemons 2015, 8). However, this amendment did not explicitly prohibit voter discrimination on racial grounds. This necessitated and eventually led to the passage of the Fifteenth Amendment to the U.S. Constitution in 1870, which prohibited the denial of the right to vote, “on account of race, color, or previous condition of servitude,” (Brown and Clemons 2015, 9).

Although these federal mandates have *de jure* secured the right to vote for African Americans, in reality, these amendments historically did little to prevent states from enacting their own restrictive voting and elections laws, as authorized by the Constitution, that effectively prohibited the right to vote for African Americans. Throughout United States history, the expansion of voting rights to African Americans has been reliant on the use of the social movement as a crucial mechanism for gaining access instead (Brown and Clemons 2015).

HISTORICAL BARRIERS TO RACIAL MINORITIES

In the United States, those outside of the majority (particularly African Americans) have historically been largely excluded from participation in the electoral process. Hanes Walton Jr. and Robert Smith, authors of “American Politics and the African American Quest for Universal Freedom” have said, “For much of their history in the United States, African Americans have been excluded from the normal routine processes of political participation such as lobbying, voting, elections, and political parties. Indeed, in the Republic’s more than 200-year history, African Americans have been included as nearly full participants for less than 50 years – the 10-year Reconstruction period from 1867 to 1877 plus the years since the adoption of the Voting Rights Act of 1965.” (Brown and Clemons 2015, 3).

Institutions, including slavery and discriminatory immigration laws – such as the 1882 Chinese Exclusion Act and the Immigration Act of 1924 – purposely shaped the racial composition of our nation so that, even today, people of color are a numerical minority (Overton 2006). Our racial history, including the Civil War, continues to shape the political identity of Americans of all racial backgrounds. Ignoring this history gives

license to today's political operatives to exclude voters of color and perpetuate racial inequality in order to win elections.

The political development process in the United States can be divided into five major historical periods, including: Enslavement, Reconstruction, Jim Crow, Civil Rights, and Post-Civil Rights. For the purposes of this historical analysis, only the first four are of most relevance to the issue of racial disenfranchisement. However, interesting parallels can be drawn between the Jim Crow era and Post-Civil Rights period: during each of these eras, "broad-based, counter-democratic programs were launched, seeking a reversal of the progress made in extending the franchise to those who had been excluded," (Brown and Clemons 2015, 3).

Enslavement

From the moment of their enslavement in America, African Americans were possessed by the desire to stand on equal ground in the political process to represent themselves alongside whites, and to have their policy preferences articulated, legislated, and codified. Women, Native Americans, and the majority of African Americans, however, were initially considered unqualified to participate in the electoral process after the founding of the nation. The uniquely brutal nature of American slavery necessitated complete humiliation and dehumanization, and disenfranchisement served an essential purpose in accomplishing this: For almost 80 years (1787-1865), black people could not vote in any state if they were enslaved (Brown and Clemons 2015). As a consequence of their enslavement, persons of African descent were in the position of having to

free themselves from bondage before there could ever be consideration of using the franchise as a group to bring about favorable social and political change.

Reconstruction (1867-1877)

After the Civil War, African Americans began to be recognized as both human beings and citizens for the first time in the United States. The Thirteenth Amendment to the U.S. Constitution, ratified in 1865, abolished and prohibited slavery and established a minimal degree of citizenship for former slaves. The Fourteenth Amendment, ratified in 1868, granted citizenship to all people “born or naturalized in the United States” and extended the protections of due process and equal protection to individual citizens under the Equal Protection Clause. And finally, the African American voting rights were further solidified by the ratification of the Fifteenth Amendment in 1870, which prohibited the denial of the right to vote “on account of race, color, or previous condition of servitude.”

After these amendments were ratified, African Americans began participating in American politics to an unprecedented degree: between 1870 and 1900, Southern states sent 700 African Americans to state legislatures, and 22 African Americans to Congress (Overton 2006). For comparison, between 1970 and 2000, these states collectively sent only 23 African Americans to Congress. During the era of Reconstruction, South Carolina also elected the first African American members of its state legislature and state Supreme Court; Mississippi sent an African American to represent the state in the U.S. Senate; and Louisiana even elected its first African American governor. However, these rights and freedoms were only enjoyed for a short period of time.

Jim Crow (1877-1950s)

The decision to purposely disenfranchise African Americans can be best understood by going back to the close of the Civil War (Anderson 2018). After Reconstruction, the plan was to, “take years of state-sponsored “trickery and fraud” and transform those schemes into laws that would keep blacks away from the voting booth, disenfranchise as many as possible, and most importantly, ensure that no African American would ever assume real political power again,” (Anderson 2018, 2).

In attempting to restore white supremacy, in line with the desire of Southerners to maintain political power, a wide range of mechanisms were employed – including the “Grandfather Clause, white primaries, preprimaries, poll taxes, reading and interpretation tests, multiple ballot boxes, single-month registration periods, party instead of state-administered primaries, single-state party systems, evasion, economic reprisals, terror, fraud, corruption, violence, mayhem, and murder,” (Brown and Clemons 2015, 10).

The period from 1890 to 1901 has been referred to as the “era of disenfranchisement” during which the states of the Old Confederacy adopted new state constitutions that prevented, prohibited, or manipulated African Americans out of their voting rights (Brown and Clemons 2015). During this time, Jim Crow laws in Southern states disenfranchised blacks through poll taxes, literacy tests, Grandfather Clauses, and all-white primaries (Donovan 2017). These Jim Crow-era laws would persist and not be fully dismantled until the passage of the 1965 Voting Rights Act.

The domination of Republicans during Reconstruction – largely freed slaves assisted by white “carpetbaggers” and “scalawags” – inflamed white Democrats. White Southerners struck back by forming groups like the Klu Klux Klan to prevent African Americans from voting. The Klan tortured and lynched those who tried to vote, and by 1870, their terrorism helped to reestablish white Democratic rule in Georgia, North Carolina, and Tennessee (Overton 2006).

In the absence of federal intervention, the regression began. Southern white Democrats created voting regulations that denied most African Americans the right to vote without explicitly mentioning race (Overton 2006). Poll taxes, literacy tests, and other devices cleared the voter rolls of blacks, most of whom were Republican. Violence took care of those few who dared attempt to vote despite the regulations. While a majority of adult black males in all but two Southern states voted in the 1880 presidential election, virtually all had been eliminated from the voter rolls by 1910 (Overton 2006). This assault on black voters emptied Congress and state legislatures of all black elected officials.

Modeled After Mississippi

In the words of C. Van Woodward, from his 1955 magnum opus *The Strange Career of Jim Crow* (often considered to be one of the definitive histories of the Jim Crow era), “The first step in applying the formula of white supremacy was the total disfranchisement of the Negro,” (83). After Reconstruction, disenfranchisement was presented as a guarantee that neither of the white factions – Democrats or Republicans – would violate the white man’s peace by rallying African American support

against the other in the future. Southerners generally accepted African American disenfranchisement as a reform, without taking a second thought. The standard devices for accomplishing disfranchisement on a racial basis and evading the restrictions of the Constitution were invented by Mississippi, of which other states emulated (Woodward 1955).

The so-called “Mississippi Plan” first established certain barriers, such as property or literacy qualifications, for voting, and then created certain loopholes in the barrier through which only white men could squeeze (Woodward 1955). The loopholes which were meant to appease (though not invariably accommodate) the underprivileged whites were the ‘understanding clause,’ the ‘Grandfather Clause,’ and the ‘good character clause,’ all of which were incorporated into the constitutions of South Carolina in 1895, Louisiana in 1898, North Carolina in 1900, Alabama in 1901, Virginia in 1902, Georgia in 1908, and Oklahoma in 1910 (Woodward 1955). After widespread adoption of the Mississippi Plan, voter turnout plummeted to less than half of age-eligible voters (Anderson 2018).

Among the most effective methods of disenfranchisement during the Jim Crow era were the use of poll taxes, literacy tests, Grandfather Clauses, and all-white primaries, each briefly explained below. As a result of these barriers, the collapse of the black voter turnout was precipitous; “The restrictions imposed by these devices [in the Mississippi Plan] were enormously effective in decimating the Negro vote,” (Anderson 2018, 4).

Poll Taxes

During the rise of Jim Crow, the deliberate intent to choke off the black vote came into play when all eleven states of the former Confederacy required all age-eligible males to pay an annual fee in order to vote. Initially, after the Civil War, the poll tax, “was intended not so much to disenfranchise the Negro as to place him again under the white man’s domination, since failure to pay the tax was made *prima facie* evidence of vagrancy,” (Anderson 2018, 7). Poll taxes required that voters pay a \$1 or \$2 fee to vote, which few newly freed slaves could afford (Overton 2006). Proponents argued any person unwilling to pay a small fee in order to enjoy such a precious privilege did not deserve the franchise.

While the poll tax may have read as race-neutral, its reality was anything but – the disparities in wealth, education, and relations with law enforcement had everything to do with disproportionate access to the vote between blacks and whites. With its cumulative features and procedures artfully devised to discourage payment, the poll tax was esteemed by its proponents as the most reliable means of curtailing the franchise to African Americans (Woodward 1955).

Literacy Tests

The literacy test, mandated by the adoption of the “understanding” clause to Southern state constitutions, was tailor-made for a society that systematically refused to educate millions of its citizens and ensured that

the bulk of the population remained functionally illiterate (Anderson 2018). African Americans would receive difficult, complex passages in order to prove their ability to read, and then would have to interpret the legal treatise they were given in order to gauge how well they could actually understand what they had just read. The deliberate underfunding of black schools was critical to the literacy test's disenfranchising success, and many Jim Crow school systems did not even have high schools for African Americans. However, the law itself was just race-neutral enough to withstand judicial scrutiny; not only did literacy tests appear nondiscriminatory, they also carried the aura of plausibility (Anderson 2018).

The Grandfather Clause

The Grandfather Clause was a provision of several Southern state constitutions, passed during Reconstruction, designed to deny suffrage to African Americans. These clauses mandated that those who had enjoyed the right to vote prior to 1867, and their lineal descendants, would be exempt from educational, property, or tax requirements for voting. In practice, this law denied the right to vote for people who were illiterate or did not own property, unless their descendants had voted before 1867. Because former slaves were not granted that right until the adoption of the Fifteenth Amendment in 1870, these clauses worked effectively to exclude African Americans from voting and assured the vote of many impoverished and illiterate whites (“‘Grandfather Clause’ Enacted”).

The White Primary

Even if African Americans did learn to read, acquired sufficient property, and remembered to pay the poll tax, they could still then be tripped by the final hurdle devised for them – the white primary. The state-wide Democratic primary was adopted in South Carolina in 1896, Arkansas in 1897, Georgia in 1898, Florida and Tennessee in 1901, Alabama and Mississippi in 1902, Kentucky and Texas in 1903, Louisiana in 1906, Oklahoma in 1907, Virginia in 1913, and North Carolina in 1915 (Woodward 1955). From Reconstruction until 1968, the South was a one-party system: only Democrats needed to apply, so despised was the party of Lincoln (Anderson 2018). As long as the all-important and decisive primary was a whites-only affair, the results would be foreordained.

The primary system was undoubtedly an improvement over the old convention system and did much to democratize nominations and party control (Woodward 1955). But along with the progressively inspired primary system were adopted the oppositely inspired party rules, local regulations – and in some cases, state laws – excluding the minority race from participation, thus converting the primary into a white man's club.

The effectiveness of these methods of disenfranchisement can be delineated by a comparison of the number of registered African American voters in Louisiana: In 1896, there were 130,334 African Americans registered to vote. In 1904, there were only 1,342 (Woodward 1955). Between these two dates, the

literacy, property, and poll tax qualifications were adopted. Disenfranchisement measures adopted around the turn of the century excluded all but a tiny percentage of African Americans from the polls in the Southern states for nearly fifty years. Efforts to abolish the poll tax by federal law were repeatedly defeated until 1964, after the 24th Amendment to the Constitution was adopted. Although several states did eventually abolish the tax and literacy tests, intimidation kept African American registration at a minimum. Even those who successfully managed to register could still be disenfranchised by the white primary, the most formidable barrier of all.

Civil Rights (1954-1968)

The Civil Rights era was one of tremendous hope and promise (Brown and Clemons 2015). Among the major accomplishments of the Civil Rights era was the passage of the 1964 Civil Rights Act, which was aimed at racial discrimination in public accommodations, public schools, housing, labor unions, employment, and economic opportunity (Woodward 1955). The act also provided for greater comprehensive federal oversight of voting than had been demonstrated by prior legislation, such as the 1875, 1883, and 1957 Civil Rights Acts (Brown and Clemons 2015).

While the modern Civil Rights Act helped enable the inclusive, guaranteed exercise of the franchise, it was the Voting Rights Act (VRA) of 1965 that reaped the boldest legislative achievements in the struggle for African American enfranchisement. Signed by President Lyndon Johnson on August 6, 1965, the VRA, “rendered illegal the determination of voting qualifications on the

basis of race or color,” (Brown and Clemons 2015, 14). Altogether, the political gains of the Civil Rights era were a result of the collective efforts of the civil rights movement, as well as the VRA, the government measures taken to enforce it, and the hard work of organizations and individuals, which accounted for the massive registration of African American voters and made a breakthrough possible.

Overall, the political development of the United States, divided into four major historical periods, dictates the long, winding journey that African Americans have undergone in their efforts to gain the right to vote. Next, I will detail several of the major accomplishments – achieved through legal measures such as constitutional amendments, federal laws, and Supreme Court case law – that have contributed to the expansion of voting rights for minority groups.

SIGNIFICANT LEGAL MILESTONES

Constitutional Amendments

The 13th, 14th, and 15th amendments to the United States Constitution, known collectively as the Reconstruction Amendments, were designed to ensure equality for recently emancipated slaves. These amendments were the foundation from which further achievements in African American voting rights were based.

Thirteenth Amendment

The Thirteenth Amendment to the U.S. Constitution, ratified in 1865, abolished slavery and established African Americans as citizens. Section 1 of the provision states that, “Neither slavery nor involuntary servitude, except as a

punishment for crime whereof the party shall have been dully convicted, shall exist within the United States, or any place subject to their jurisdiction.” This amendment additionally secured a minimal degree of citizenship of former slaves (Brown and Clemons 2015).

Fourteenth Amendment

The Fourteenth Amendment, ratified in 1868, granted citizenship to all people born or naturalized in the United States, and extended the protections of due process and equal protection to individual citizens, including former slaves. Section 1 of the provision states that, “All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.”

Fifteenth Amendment

African American voting rights were further solidified by the ratification of the Fifteenth Amendment to the U.S. Constitution in 1870, which prohibits the denial of the right to vote, “on account of race, color, or previous condition of servitude.” These federal protections collectively allowed voters to elect several African Americans to become delegates to state constitutional conventions, and later state legislators and congressmen, in the two decades following its ratification (Overton 2006). Further, since the ratification of this amendment, exercise of the franchise has become a fundamental aspect of citizenship rights.

Supreme Court Rulings

Although the advances made during Reconstruction from the legislative and executive branches helped to expand civil rights to former slaves, initial U.S. Supreme

Court rulings were not favorable toward African Americans – particularly during the period before, and in the immediate wake of, the Civil War. In chronological order, the following SCOTUS rulings detail the struggle to gain voting rights for African Americans in the courts.

Dred Scott v. Sandford (1857): The Supreme Court’s 1857 *Dred Scott* decision further institutionalized black disenfranchisement and rendered freedom even more distant for African descendants. This ruling made it clear that those who had been sold as slaves were not citizens, and therefore, they could not lay claim to any rights and privileges – except those given to them by whites (Brown and Clemons 2015).

United States v. Cruikshank (1875): The Supreme Court established that private actors (such as state Democratic Parties) were, “immune from the strictures of the Fourteenth and Fifteenth Amendments,” and thus did not have to abide by the Constitution (Anderson 2018, 12).

Williams v. Mississippi (1898): The Supreme Court decided that the poll tax and the literacy test were constitutional (Anderson 2018).

Newberry v. United States (1921): The Supreme Court ruled that the federal government, and thus, the Constitution itself, had no authority over the conduct of primary elections in the states (Anderson 2018).

Nixon v. Herndon (1927): After reviewing Texas’ white primary law (the state’s 1923 statute expressly forbade anyone but whites from voting in the Democratic primary), the Supreme Court ruled that the law was an explicit violation of the equal protection clause and a direct and obvious infringement of the Fourteenth Amendment (Anderson 2018).

In their struggle for justice in the courts, as in their fight for the ballot, African Americans were aided by a friendly Supreme Court during the mid-twentieth century. In a series of decisions, beginning in 1939, the Supreme Court repeatedly ordered new trials for African American defendants on the grounds that members of their race had been systematically barred from jury services in the counties where the trials took place (Woodward 1955).

United States v. Classic (1941): The *Classic* case erased much of the ambiguity about how far the Fourteenth and Fifteenth Amendments could reach into the

election process (Anderson 2018). The Supreme Court reversed previous decisions upholding the white primary and pronounced it unconstitutional (Woodward 1955).

Recognizing the primary as the real election in the South, the Court refused in all subsequent decisions after *United States v. Classic* to uphold any party rules excluding African Americans from voting, on the grounds that the delegation of this authority by the state, “may make the party’s action the action of the State,” (Woodward 1955, 141). As a result of these decisions and other forces, African Americans finally began to return to the polls of the South.

Smith v. Allwright (1944): The Supreme Court held that the white primary, although supposedly a private affair, was central to the election process, and thus fell under the domain of federal law and the U.S. Constitution (Anderson 2018). Therefore, the practice of barring black voters from voting in the primaries was considered a state action and was unconstitutional (Brown and Clemons 2015). This decision signified a substantive shift in the direction of securing African American voting rights.

Terry v. Adams (1953): The final case regarding the white primary, the Supreme Court ruled that voters may not be excluded from an organization’s primary on the basis of race if the primary decided who would be elected in general elections, “finally and completely driving a stake through the heart of the white primary,” (Brown and Clemons 2015, 14).

South Carolina v. Katzenbach (1966): One year after its passing, the Supreme Court reaffirmed the constitutionality and the need for the VRA. This decision ruled that, “The Voting Rights Act was designed by Congress to banish the blight of racial discrimination in voting, which has infected the electoral process in parts of our country for nearly a century,” (Anderson 2018, 23).

Allen v. State Board of Elections (1969): The Supreme Court ruled that voting is not just the act itself, but is instead, “all action necessary to make a vote effective,” including the right to political representation for long-disenfranchised minority groups. The Court concluded that the VRA was, “aimed at the subtle, as well as the obvious, state regulations which have the effect of denying citizens their right to vote because of race,” (Anderson 2018, 25).

Shaw v. Reno (1993): The Supreme Court criticized “bizarrely drawn” predominantly African-American districts and wrote that a constitutional violation could occur if race, rather than politics, was the “predominant factor” in drawing a district. The justices envisioned race and politics as two different things

and determined that political gerrymandering is fine, but racial gerrymandering is questionable (Overton 2006).

After the landmark election of President Barack Obama in 2008, the trend of the Supreme Court ruling in favor of expanding voting rights to African Americans began a gradual downward spiral.

Crawford v. Marion County (2008): The Supreme Court held that Indiana’s strict photo ID law was appropriate because the mere risk of voter fraud constituted a legitimate state interest, despite strong evidence that the Indiana law negatively affected African Americans (Donovan 2017). The justices concluded that, before a state enacts a voter ID law, if the interest they are trying to achieve is combating fraud, there does not have to be evidence that fraud has been committed in the state (Berman 2015)

Shelby County v. Holder (2013): And finally, in the words of author Carol Anderson, “The U.S. Supreme Court, in *Shelby County v. Holder*, looked at the VRA, “the most effective legislation ever passed by Congress,” and proceeded to eviscerate that law,” (Anderson 2018, 25). The 2013 United States Supreme Court decision struck down the provision of the Voting Rights Act of 1965 that determined which locales came under federal oversight, and has since resulted in a surge in discriminatory voter suppression tactics – primarily in the form of restrictive voter identification laws, purged voter rolls, redrawn district boundaries, and closed and moved polling places – all without the approval of the Justice Department. Additionally, issues that have historically disproportionately impacted the African American community (such as voter identification requirements and felony voter disenfranchisement) have only increased with the passing of laws such as *Shelby*.

Overall, the Supreme Court has both helped and hindered progress in the struggle for enfranchisement for African Americans. As the most recent ruling to have significant implications for voting rights, the far-reaching consequences of the *Shelby* ruling will be discussed in a later section.

Federal Laws

Because the Constitution directs responsibility to regulate most aspects of elections to the states – and, as discussed previously, this power was often used

historically to enact restrictive and discriminatory voting practices – many of the major accomplishments towards the expansion of voting rights to African Americans from a national level have come in the form of federal laws, passed by Congress during times of major social and political upheaval.

The Military Reconstruction Act of 1867

The Military Reconstruction Act of 1867 ensured the civil rights of free blacks in state-level politics and political processes (Brown and Clemons 2015). Under this law, freed slaves were now to become a part of society, able to exercise their rights as citizens to be involved in the political processes along with all other Americans. Additionally, the act mandated that adult males of all races would be entitled to vote (Overton 2006). Since most freed African Americans were Republicans and most Southern whites were Democrats, the provisions bolstered the Republicans' political power in the South.

Civil Rights Acts

The Civil Rights Act of 1957

The Civil Rights Act of 1957 gave the federal government the authority to obtain an injunction against any threatened or actual interference with voting rights (Brown and Clemons 2015). This act also created the Civil Rights Commission, mandated that the Department of Justice section on civil rights be upgraded to a division, authorized the U.S. attorney general to sue those violating the voting rights of American citizens, and gave the federal government the authority to obtain an injunction against any threatened or actual interference with voting rights. However, most consequentially, this act put the responsibility for

adhering to the Constitution onto state and local governments, instead of the federal government (Anderson 2018).

The Civil Rights Act of 1960

The Civil Rights Act of 1960 built upon the foundation provided by the 1957 act. The bill explicitly suggested that the problem of protecting the voting rights of people of African descent had not been resolved by the passage of previous legislation, including both the 1875 and 1957 Civil Rights Acts. To address this persistent problem, the Civil Rights Act of 1960 provided for the appointment of federal “voting referees” in order to safeguard blacks’ right to vote without discrimination. It also further authorized federal district courts to enlist qualified voters for all state and federal elections in locales where systematic disenfranchisement had occurred. A final component that gave the bill particular effectiveness in addressing discrimination was its provision that the U.S. Department of Justice could challenge those cases in which individuals had been denied their voting rights (Brown and Clemons 2015).

The Civil Rights Act of 1964

The Civil Rights Act of 1964, a monumental act aimed at racial discrimination in public accommodations, public schools, housing, labor unions, employment, and economic opportunity, provided for even greater comprehensive federal oversight of voting than had been demonstrated by prior legislation (Brown and Clemons 2015). This act required voting registrars to apply consistent standards for applicants regardless of race, mandated that literacy tests be in

writing, and defined a sixth-grade education as a refutable presumption of literacy.

The Voting Rights Act of 1965

The Voting Rights Act of 1965 was a seismic shift in thought, action, and execution for the U.S. government, especially compared with the Civil Rights Act of 1957 (Anderson 2018). This act rendered illegal the determination of voting qualifications on the basis of race or color by outlawing the discriminatory voting practices adopted in many southern states after the Civil War; identifying jurisdictions that had a long, documented history of racial discrimination in voting and requiring that the Department of Justice or the federal court in Washington, D.C. approve any change to the voting laws or requirements that those districts wanted to make before they were enacted (Anderson 2018).

The Voting Rights Act (VRA) also suspended literacy and interpretation tests for voters and provided federal officials to register black voters and monitor local elections in the South. Perhaps the most important part of the act, however, was its Section 5 “preclearance” provision. Section 5 required that a state or locality obtain approval (“preclearance”) from the federal government whenever it wanted to change its election law (Overton 2006). The goal was to prevent an area stripped of one discriminatory tool from backsliding by simply adopting a different exclusionary device. The preclearance requirement only applied to areas that previously had devices such as literacy tests and low voter turnout – including Alabama, Alaska, Georgia, Louisiana, Mississippi, South Carolina, Virginia, and certain counties in Arizona, Hawaii, Idaho, and North Carolina (Overton 2006).

Unlike all previous legislation concerning voting rights, the VRA was the first to provide the federal government discretionary authority to act on behalf of the aggrieved; in instances in which local registrars refused to comply with the guarantees of the Fifteenth Amendment, the federal government was empowered to take the action necessary to ensure compliance (Brown and Clemons 2015). In effect, the Voting Rights Act held that any voter qualifications must be equally applied to all persons.

In the words of Ari Berman, “One hundred years after the end of the Civil War, the Voting Rights Act of 1965 guaranteed the franchise for black Americans and other minority groups and fulfilled the long-overdue promise of the Fifteenth Amendment of 1870, which states that the right to vote “shall not be defined or abridged by the United States or by any State on account of race, color, or previous condition of servitude”,” (2015, 6). The VRA of 1965 quickly became known as the most important piece of civil rights legislation in the twentieth century, as well as one of the most transformational laws ever passed by Congress. In subsequent decades following the passing of the VRA, the number of black registered voters in the South increased from 31 percent to 73 percent; the number of black elected officials increased from fewer than 500 to 10,500 nationwide; and the number of black members of Congress increased from 5 to 44 (Berman 2015). The Voting Rights Act, and its four congressional authorizations, became the prime vehicle for expanding voting rights for all Americans.

Evolution of the Voting Rights Act

Since 1965, the Voting Rights Act has been renewed and expanded in four major legislative overhauls (in 1970, 1975, 1982, and 2006) (Rhodes 2017).

These reauthorizations have collectively lowered the voting age to 18, eliminated

literacy tests nationwide, and expanded protections for language-minority groups, such as Hispanics in Texas, Asian-Americans in New York, and Native Americans in Arizona (Berman 2015).

In his book, *Ballot Blocked: The Political Erosion of the Voting Rights Act*, author Jesse Rhodes details how the “puzzling” evolution of the Voting Rights Act has followed a trend of consistently expansive legislative actions (as detailed in the previous “Federal Laws” section), while also suffering from increasingly conservative Supreme Court actions during the same period (2017). In short, the legislative branch has taken the following actions since the enactment of the Voting Rights Act in 1965:

The Evolution of the Voting Rights Act, Legislative Politics

Year	Action
1965-1968	Enactment of the Voting Rights Act of 1965
1969-1980	Extension of the VRA to enfranchise 18-year olds (1970); expansion of VRA to protect the rights of language-minority citizens (1975)
1981-2000	Extension of preclearance coverage and other “temporary” provisions for 25 years; expansion of Section 2 to permit legal challenges to voting rules with “discriminatory effects”
2001-2013	Extension of preclearance coverage and other “temporary provisions” for 25 years; overturning of several conservative statutory decisions by Supreme Court
2009-2016	No major decisions (Republican obstruction of the legislative response to Supreme Court decision striking the coverage formula and obstructing preclearance)

Source: Rhodes, Jesse H. 2017. *Ballot Blocked: The Political Erosion of the Voting Rights Act*. Stanford: Stanford University Press. p. 6.

During the same periods, however, the Supreme Court has taken the following actions:

The Evolution of the Voting Rights Act, Supreme Court Politics

Year	Action
1965-1968	Vindication of the constitutionality of the VRA; expansion of preclearance to cover vote dilution as well as denial of the ballot
1969-1980	Narrowing of preclearance “effects” standard to instances of “retrogression” of minority voting power; acceptance of annexation plans that dilute minority voting power
1981-2000	Imposition of substantial constitutional limitations on majority-minority redistricting; narrowing of preclearance “intent” standard to instances of “retrogressive intent” on part of officials
2001-2013	Narrowing of meaning of “vote dilution” to further disadvantage minority interests; invalidation of Section 4 “coverage formula,” with effect of paralyzing federal preclearance of proposed voting changes in jurisdictions with records of racial discrimination
2009-2016	No major Supreme Court decisions 2014-2016 (Court split 4-4 after death of Justice Antonin Scalia)

Source: Rhodes, Jesse H. 2017. *Ballot Blocked: The Political Erosion of the Voting Rights Act*. Stanford: Stanford University Press. p. 6.

The most recent Supreme Court ruling to have significant implications for voting rights was the 2013 *Shelby County v. Holder* decision. Rhodes argues that the *Shelby* ruling is illustrative of a general pattern in which legislative and judicial voting rights decisions have, since the early 1970s, consistently marched in different directions (2017). This leads us into the following section, which details the significance and implications of this landmark Supreme Court ruling.

SHELBY COUNTY V. HOLDER (2013)

On June 25, 2013, the Supreme Court announced its decision in *Shelby County v. Holder*. The ruling overturned a central provision of the Voting Rights Act, known as the “coverage formula” that identified jurisdictions with records of racial discrimination in elections, and thereby made their proposed election rules subject to preapproval by the federal government (Rhodes 2017). By striking down the coverage formula, the Court

made it much easier for these jurisdictions to instate stringent election rules that raise significant obstacles to voting, particularly among younger, poorer, and nonwhite citizens.

Prior to the Supreme Court ruling, Shelby County, Alabama, had filed suit in district court and sought a declaratory judgment that two sections of the Voting Rights Act of 1965 were unconstitutional: Section 5, which prohibits eligible districts from enacting changes to their election laws and procedures without gaining official authorization, and Section 4(b), which defines the eligible districts as ones that had a voting test in place as of November 1, 1964 and less than 50% turnout for the 1964 presidential election. The district court in Alabama upheld the constitutionality of the two Sections, but the U.S. Court of Appeals for the District of Columbia Circuit subsequently held that Congress did not exceed its powers by reauthorizing Section 5 and that Section 4(b) is still relevant to the issue of voting discrimination.

When the case came to the U.S. Supreme Court, the Justices held that Section 4 of the Voting Rights Act imposes current burdens that are no longer responsive to the current conditions in the voting districts in question. The Court's rationale was that, although the constraints this section places on specific states made sense in the 1960s and 1970s, they do not any longer and now represent an unconstitutional violation of the power to regulate elections that the Constitution reserves for the states. The Court also held that the formula for determining whether changes to a state's voting procedure should be federally reviewed is now outdated and does not reflect the changes that have occurred in the last 50 years in narrowing the voting turnout gap in the states in question (*Shelby v. Holder* 2013).

Significance of the Ruling

The power of Section 5's preclearance requirements was decimated in the *Shelby* ruling. The ruling that Section 4(b) was unconstitutional effectively disabled Section 5 of the Voting Rights Act, which had compelled parts or all of the sixteen states where voting discrimination was historically most prevalent – primarily in the South – to have their voting changes approved by the federal government (Berman 2015). This preclearance requirement was the VRA's most important enforcement provision; the tool that allowed the federal government to ensure that the law did not meet the same cruel fate as Reconstruction. Preclearance covered a wide scope of voting changes, from the moving of a polling place to the drawing of lines for nearly every elected office. It also gave the federal government unique power to preemptively block the “second generation” of voting restrictions frequently employed by white southern legislators to subvert the power of the growing minority vote.

The Supreme Court's ruling overturning Section 4 of the VRA underscored the fact that what should be the most settled right in American democracy – the right to vote – remains the most contested. The loss of Section 5, combined with an often hostile judiciary, created perpetual uncertainty when it came to protecting voting rights (Berman 2015).

Impact of the Ruling

The post-*Shelby* voting rights landscape most closely resembled the period before 1965 – which the VRA was meant to end – when the blight of voting discrimination could only be challenged on a torturous case-by-case basis (Berman 2015). By striking down the coverage formula, the Supreme Court made it much easier for jurisdictions with

documented histories of racial discrimination in voting to adopt stringent election rules that raise significant obstacles to voting, particularly among younger, poorer, and nonwhite citizens (Rhodes 2017). With the Supreme Court's ruling in *Shelby County v. Holder*, and the subsequent rush by states throughout the nation to adopt restrictive voting requirements, the vulnerability of the right to vote became strikingly evident.

In the wake of the *Shelby* ruling, local governments throughout the nation (and especially those jurisdictions that were previously covered by Sections 4 and 5 of the VRA) began altering election rules in ways that disproportionately burdened people of color and language minorities. Between June 2013 and September 2016, the NAACP Legal Defense Fund tallied dozens of subtle alterations in election rules – such as changes in methods of election, mid-decade redistricting, purges of voter rolls, relocation of polling places, reductions in the number of polling places, and so forth – in counties and municipalities previously covered by Sections 4 and 5 (2016). These alterations have impacted thousands of voters, and in particular, have made it more difficult for members of historically disadvantaged communities to vote and wield political influence.

The disproportionate impacts of these new election rules on certain groups – particularly on young, poor, and nonwhite citizens – constitute modern forms of voter suppression. The enactment of these laws today has the same purpose and the same result of suppressing turnout from historically marginalized groups as the methods used during the Jim Crow era. In the following section, I will detail how socioeconomic factors influence why these specific groups are most affected by the discriminatory election laws that have been passed after *Shelby*.

MODERN-DAY VOTER SUPPRESSION

The history of race in the United States has permanently impacted the structure and hierarchy of American society. Those groups, particularly African Americans, that have been structurally, institutionally, and systematically discriminated against throughout history, still remain some of the most vulnerable members of society. Therefore, when states enact laws that make it harder for people to exercise their civic duty, it is often these same vulnerable populations who are most affected.

Socioeconomic Factors

American democracy is marred by deeply ingrained and persistent class-based political inequality. Therefore, when it comes to participatory differences among groups based on race or ethnicity, social class is an important part of the story. “Compared to non-Hispanic whites, African Americans and Latinos are disadvantaged in educational attainment and income. Once education and income are taken into account...racial or ethnic differences in political activity diminish substantially – often to the point of statistical insignificance,” (Scholzman et al. 2012, 137). The inequalities of political participation on the basis of race or ethnicity derive from group differences in education and income – disparities that are rooted in group differences in socially structured experiences.

Socioeconomic factors – such as housing segregation and racial disparities in wealth, educational attainment, incarceration, and English proficiency – make people of color easy targets for political shenanigans. For example, numerous studies have shown that the median net worth of white households is more than ten times higher than both African-American and Latino households; that Latinos are twice as likely as whites to be incarcerated, and African Americans are six times as likely as whites to be incarcerated;

and that nearly half of all Asian-language and Spanish speakers in the United States speak English less than “very well” compared with about 8 percent of the total U.S. population (Overton 2006). These factors make today’s voters of color (in the aggregate) particularly susceptible to voter suppression tactics such as doctored election districts, poll challenges, punch-card machines, lifetime felon-disenfranchisement rules, and English-only ballots.

As the pinnacle of the success of the Voting Rights Act, the election of President Barack Obama in 2008 was a catalyst for the most recent version of massive disenfranchisement (Anderson 2018). After President Obama’s victory, 395 new voting restrictions were introduced in 49 states from 2011-2015 (Berman 2015). During this period, half of the states in this country passed laws making it harder to vote, and I will detail several of the tactics used to suppress voter turnout in the following section.

Voter Suppression Tactics

North Carolina: A Case Study

After *Shelby*, North Carolina became an immediate example of what a post-Section 5 world would look like; a striking refutation of Chief Justice John Robert’s beliefs that voting discrimination was largely a thing of the past, and that Section 5 was no longer needed. In 2012, North Carolina had the most progressive election laws in the South: the state had passed early voting in 2000, allowed out-of-precinct ballots in 2005, and enacted same-day registration during early voting in 2007 (Berman 2015). These reforms were particularly beneficial to African Americans, as black voters in North Carolina had registered and turned out to vote at higher rates than whites during the years 2008-2012.

However, after the *Shelby* ruling, Republicans in the North Carolina legislature introduced the toughest voting restrictions in the country. These restrictions included:

- a) Requiring a strict voter ID by eliminating student IDs from public universities; out-of-state driver's licenses; and county, municipal, and public employee IDs from the list of acceptable voter IDs;
- b) Curtailing the early voting period by one week;
- c) Eliminating same-day registration during the early voting period; and
- d) Ending the automatic restoration of voting rights for ex-felons who had served their sentences.

The North Carolina legislators knew that African Americans in the state were twice as likely to vote early, use same-day registration, and vote out of precinct compared with whites (Berman 2015). They were also disproportionately less likely to have government-issued IDs. As a result of the new law, several African American voters in North Carolina who had successfully voted in 2012 did not have their ballots counted in the 2014 primary, due to the state's elimination of same-day registration and prohibition on counting a provisional ballot cast in the wrong precinct (Berman 2015).

These new restrictions disproportionately burdened black and Democratic voters; "While black voters made up 22% of all registered voters, they were 39% of those who lost their votes because of the two rule changes." Additionally, "Democrats [were] 42% of the state's registered voters, but 57% of those disenfranchised by the new rules," (Berman 2015, 306).

North Carolina was not alone. Today, voter suppression has now become commonplace; in 2017, 99 bills to limit access to the ballot have been introduced in 31 states, and more states have enacted new voting restrictions in 2017 than in 2016 and 2015 combined (Anderson 2018). Many of these discriminatory laws have been challenged at the state-level, in federal courts and in state Supreme Courts (NAACP Legal Defense Fund 2016). However, in most cases, the states have upheld the constitutionality of these laws.

In light of the *Shelby* decision, the Supreme Court has essentially eliminated a federal remedy to the reduction of voting rights for minority groups. But, if individuals continue to challenge these laws – through lawsuits, protests, op-eds, and even the work of investigative journalists searching into the arcane minutiae of electoral law and legislative intent – progress is still possible, even if only on a case-by-case basis.

Voter ID Laws

Several legal scholars view recent voter identification laws as a renewed “Jim Crow 2.0” effort to prevent minorities from fulfilling their potential on election night (Donovan 2017). According to the *National Conference of State Legislatures*, as of 2020, a total of 36 states have laws requesting or requiring voters to show some form of identification at the polls (Underhill 2020). While proponents of voter identification laws see increasing requirements for identification as a way to prevent in-person voter fraud, there is a wealth of scholarship that suggests that partisan strategy instead lies at the heart of these laws.

Demographically, Republicans increasingly depend on a shrinking population of white voters to remain competitive at the national level. Democrats, on the other hand, rely on a diverse coalition of voters that includes racial and ethnic minorities. Therefore, Republican strategy seeks to shape the electorate to favor turnout of their ideologically driven base with rules such as voter ID laws (Donovan 2017). The segments of the electorate who are most likely to be negatively impacted by voter ID laws – racial and ethnic minorities, the less affluent, and young people – are more likely to vote as Democrats. Operating in response to these electoral incentives, the Republican Party, “has become the central driver of restrictive changes to election laws and the primary perpetrator of a wide range of suppression efforts,” (Donovan 2017, 28). Further, numerous studies have shown that Republican legislatures in politically competitive states had the highest probability of introducing and adopting voter ID laws (Rocha and Matsubayashi 2013; Hicks et al. 2015).

Specifics of many voter ID laws also suggest a disparate impact on marginalized groups, as racial minorities are less likely to have access to a valid piece of identification than whites (Donovan 2017). Studies of the effects of voter ID on voter turnout have consistently concluded that voter ID requirements present a burden to voting that is substantially larger for non-white registered and prior voters than for whites; although there remains a significant range in restrictiveness by state (Hajnal et al. 2017). Requiring ID at the polls thus constitutes an institutional barrier to exercising the franchise, and minorities (specifically black, Latino, and Asian voters) are disproportionately affected by

these types of laws. Today, voter identification remains one of the most widespread means to regulate the vote and prevent minority voters from gaining access to the ballot.

Registration Laws

Some states' voter registration laws also disproportionately affect minorities. In one of the most egregious examples of restrictive election rules to be enacted after *Shelby*, Republicans in Georgia brought their own distinct twist to voter suppression: "Exact Match" voter registration laws. In 2018, ahead of the midterm elections, Georgia's Secretary of State Brian Kemp (who was also running for governor at the time) championed a new voter registration law requiring that citizens' names on their government-issued IDs must precisely match their names as listed on the voter rolls.

Under the policy, missing a hyphen, an initial instead of a complete middle name, or even simply having a discrepancy in one letter could compromise a voter registration application. A 2018 report by *The Associated Press* revealed significant racial disparity in the state's registration verification process; of the over 53,000 applications that had been placed on hold in Kemp's office, nearly 70 percent of the registrants were African American – despite comprising only 32 percent of Georgia's population (Nadler 2018). This process, and policies like it, disproportionately prevent minority applicants from getting on the voter registration rolls – and ultimately, prevent them from casting their votes

Early Voting Restrictions

In other states, laws regulating early voting have disproportionate impacts on minority groups. In states that mandate an early voting period before elections, Republican legislatures (such as those in Ohio, Indiana, Florida, and North Carolina) have reduced the days and times available for early voting (Anderson 2018). These reductions are significant because early voting is one of the key ways to ameliorate the economic burden on mostly working-class populations who are forced to choose between voting on Tuesday or missing hours at the job, or going to work and not participating in electing the officials and policies that affect their lives. Hispanic and African American voters are the two least likely groups to vote in person on Election Day (Alvarez, Levin, and Sinclair 2010), and are therefore the groups most affected by laws that reduce the early voting period by any measure.

Other Forms of Suppression

Other ploys to strip election resources from minority communities abound, from purging voter rolls, to redrawing congressional district boundaries (“gerrymandering”) in ways that dilute the voting power of racial minorities, to felon disenfranchisement, to closing and moving polling locations from minority neighborhoods and further stripping these locations of the resources needed to conduct elections effectively, including poll workers and voting machines. These modern-day methods of suppressing votes – like those enacted during the Jim Crow era – continue to disproportionately impact racial minorities; and collectively, contribute to an overall greater difficulty for members of these communities to cast their ballots.

Implications for Modern-Day Voter Suppression

Because race is inherited, the damage done by voter suppression along racial lines is particularly daunting. Excluding a racial group from the political process can not only silence a political perspective in a particular election cycle, but can also result in government policies such as segregated schools and home ownership programs that affect a minority community for generations. While processes such as felon disenfranchisement, strict voter ID rules, and socioeconomic factors do not exclude voters of color to the same degree as literacy and character tests did in the Jim Crow South, structural hurdles to political participation and the engagement of voters of color in politics seem relevant in measuring the health of a state's political process.

The structure of election rules, practices, and decisions filters out certain citizens from voting and organizes the electorate. Voter suppression reduces voter autonomy by denying the voter a choice; further, suppression of voters of color, who are already underrepresented in the political process, systematically distorts democracy and makes it more likely that the government will disregard the needs and priorities of those excluded. Therefore, practices that suppress voters of color, even when undertaken or tolerated for partisan purposes, facilitate racial inequality.

The greatest of the countless ways in which modern voter suppression tactics impact minority voters is how these policies make it more difficult for voters to cast their ballots, or increase the "cost" of voting. As I have detailed in the previous sections, there have been a flurry of new laws which have changed the time and effort it takes to vote in each state, particularly since 2013. Some changes, such as automatic voter registration, same-day registration, and allowing mail-in voting, have made it easier to vote; while

others, like registration drive restrictions and more stringent voter identification laws, have made it harder for citizens to vote. Ultimately, failure or success in approaching the ballot box – because of the variable costs of voting – has significant sociopolitical implications, and it is important to recognize who is being impacted the most by these laws.

RESEARCH DESIGN AND METHODOLOGY

If voting is the paramount way in which most Americans exercise their civil rights and participate in U.S. democracy, one would assume that most governments would want to make it as easy for as many people as possible to be able to vote. However, this is evidently not the case, as some states enact laws that intentionally make it harder for their citizens to vote. In order to study the impact of the increased cost of voting on minority populations as a result of these laws, the purpose of this study is to identify which motivating factors might explain why some states make it harder to vote, while others make it easier to vote.

Cost of Voting Index

This study devises a measure of the cost of voting from Quan Li, Michael J. Pomante II, and Scot Schraufnagel’s study, “Cost of Voting in the American States” (2018). The Cost of Voting Index is a composite score to represent the totality of the time and effort associated with casting a vote in each American state. Li et al. used principal component analysis and information on 33 different state election laws, assembled in seven different issue areas, to create a Cost of Voting Index (COVI) for each of the 50 American states in each presidential election year from 1996 through 2016. (See Appendix for full list of component parts of the Cost of Voting Index.)

In addition to providing a detailed description of measurement and coding decisions used in index construction, they conducted sensitivity analyses to test relevant assumptions made during the course of index construction. After controlling for other considerations, they found that aggregate voter turnout is lower in states with higher index values and self-reported turnout also drops in states with larger index values. Therefore, states with a higher “Cost of Voting” make it harder for citizens to cast a vote, resulting in lower voter turnout, while states with a lower “Cost of Voting” make it easier for citizens to cast a vote, resulting in higher voter turnout.

Hypothesis

Using this measurement, my primary research hypothesis is that states with Republican control of either the legislative branch, executive branch, or both branches, are more likely than states controlled by Democrats to pass laws with the intention of suppressing votes or depressing voter turnout, thus indicating a higher Cost of Voting. There is an additional sub-hypothesis relating to the racial context provided by the previous discussion: that Republican-controlled states with higher minority populations are more likely than states controlled by Democrats to pass laws with the intention of suppressing votes or depressing voter turnout, thus indicating a higher cost of voting.

1. **Republican-controlled states are more likely to pass laws that increase the cost of voting.**
 - a. **Republican-controlled states with higher minority populations are more likely to pass laws that increase the cost of voting.**

Given that strict voter identification laws are one of the most effective methods of modern voter suppression, these types of laws and their implications can serve as a proxy for various other restrictive voting laws in general. The scholarship surrounding voter

identification laws includes many studies that explore the relationship between partisan and racial context and the likelihood of voter identification laws being adopted by state governments, with most research concluding that Republican governments and lawmakers increase the likelihood of the adoption of voter identification laws.

For example, Rocha and Matsubayashi (2013) find that Republican governments increase the likelihood that a new law requiring citizens to have a photo ID to vote will be passed. Similarly, Hicks et al. find that the number of Republican lawmakers and closer state legislative election margins have a strong and highly significant effect on the passage of voter ID laws (2015). These findings indicate that enacting legislation requiring strict voter identification is primarily facilitated by those on the right. Therefore, the expectation is that Republican control of states will have a positive correlation with a higher cost of voting.

Description of Variables

The key dependent variable of this study was the Cost of Voting Index value for each of the 50 American states in each presidential election year from 1996 through 2016. The numerous independent variables, including demographic and political factors, are each described briefly below:

Percentage of Minority Population: The size of the minority population in each state was measured using U.S. Census data and was derived from the percentage of a state's population that identifies as any racial identity other than Non-Hispanic White. The results of the 1990 Census were used for the 1996 data, the 2000 Census for 2004 and 2008 data, and the 2010 Census for 2012 and 2016 data.

Estimate of Republicans in Population: The estimate of the proportion of a state's population that identifies as Republicans was based upon the policy liberalism measure created by Caughey and Warshaw (2016). Given that policy changes would need to be made prior to the election year, this variable was lagged – an estimate of Republicans in the state in 1995 was used for 1996, 1999 for 2000, 2003 for 2004, etc.

Polarization: The polarization between state legislative bodies was measured using Shor and McCarty's (2011) polarization data. This measure was calculated by averaging the House and Senate polarization for all 50 states. This measure was also lagged; average polarization for 1995 was used for 1996, 1999 for 2000, 2003 for 2004, etc.

GOP Legislature: A dummy variable was created to designate whether in the legislative session prior to the election, both chambers of the state legislature were controlled by the Republican Party.

GOP Governor: A dummy variable was created to designate whether in the legislative session prior to the election, the governor's office was controlled by the Republican Party.

Interaction of GOP Governor and Legislature: An interaction term was created to account for when both chambers of the state legislature and the governor's office were controlled by the Republican Party in the year prior to the election.

Year Dummy Variables: In the aggregate model, dummy variables were included to account for the 2000, 2004, 2008, 2012 and 2016 election years. The 1996 election is the excluded category.

State Effects: A random effects OLS Regression model was estimated in all cases to control for individual state effects.

DATA AND ANALYSIS

Findings

For this project, two sets of models were estimated: 1) Pooled, cross-sectional time series with random state effects using OLS Regression and 2) Year-by-year Cross-sectional OLS Regression with random state effects. Table 1 displays the cost of voting and various state effects for the years 1996-2016. In every data set except 1996 (in which none of the variables were statistically significant), the percentage of minority population was found to be statistically significant in predicting the cost of voting in individual states (see Table 2). In some years, the impact of this variable was stronger – particularly in 2008 and 2012 – but overall, the percentage of minority population was a consistent finding in the prediction of the time and effort associated with casting a vote, being statistically significant in 2000, 2004, 2008, 2012, and 2016. Therefore, a higher

percentage of minority population was the biggest predictor for an increased cost of voting.

TABLE I. Cost of Voting and State Effects

	1996-2016	2016
<i>Variable Name</i>	<i>B (Std. Err)</i>	<i>B (Std. Err)</i>
Percent Minority Population	0.01 (0.01)*	0.01 (0.01)*
Estimate of Rs in Population	1.53 (1.4)	-2.15 (2.28)
Lagged Polarization	-0.18 (0.15)	-0.32 (0.19)*
GOP Legislature	0.2 (0.14)	0.68 (0.39)*
GOP Governor	0.1 (0.08)	-0.19 (0.32)
GOP Governor/Legislature Interaction	0.06 (0.15)	0.39 (0.47)
adjusted R^2	0.71	0.28
<i>n</i>	255	44

Column 1: Generalized Least Squares-Between Effects Model

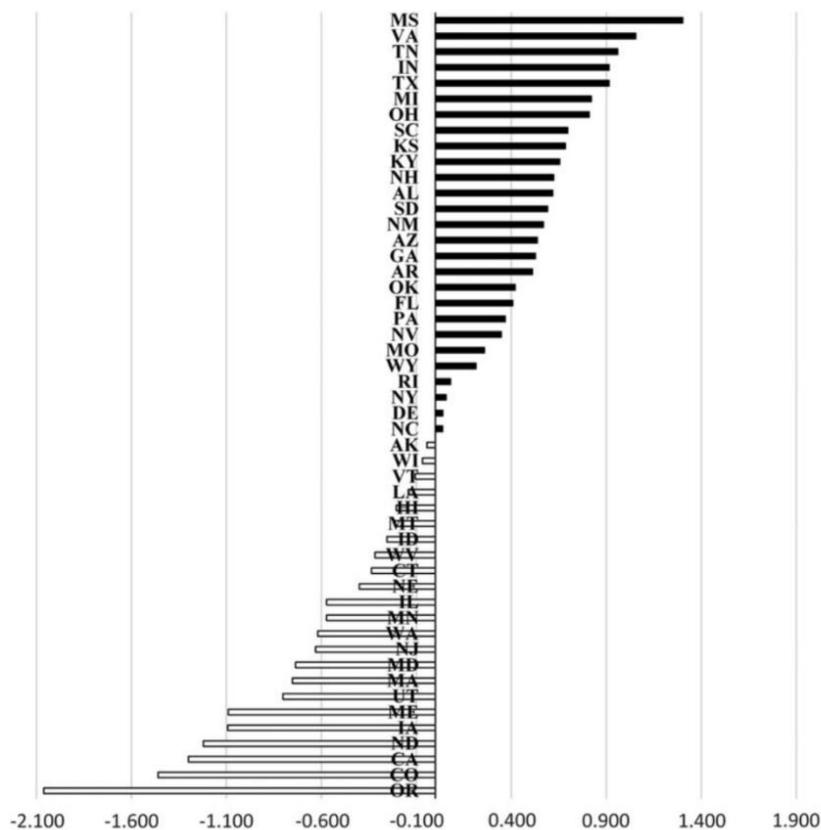
Column 2: Ordinary Least Squares Regression

* $p < .05$, ** $p < .01$, *** $p < .001$ (two-tailed tests)

For reference, the state with the largest percentage of minority population in 2016 was Hawaii, with 77.3% of the state's population identifying with racial groups and ethnicities other than non-Hispanic White. In the same year, Maine was the state with the lowest percentage of minorities, with only 5.6% of the population identifying with racial groups and ethnicities other than non-Hispanic White.

There was also a range in the Costs of Voting Index values for individual states for each presidential election year, as displayed in Figure 1. For example, in 2016, it was easiest to vote in Oregon, which had a Cost of Voting Index of -2.061; while the state it was hardest to vote in was Mississippi, which had a Cost of Voting Index of 1.302.

FIG. 1. Cost of Voting Index for all 50 American states in 2016



Source: Li, Quan, et al. 2018. "Cost of Voting in the American States." *Election Law Journal: Rules, Politics, and Policy*. Vol. 17, No. 3. p. 241.

A second factor that was found to be statistically significant throughout was Republican control of a state. The GOP Legislature variable, which measured whether in the legislative session prior to the election, both chambers of the state legislature were controlled by the Republican Party, was statistically significant in one or more election years. In 2012 and 2016, the GOP Legislature was found to be a strong predictor for each state's relative Cost of Voting Index, indicating a strong correlation between a state having Republican control of the legislature and an increased cost of voting.

TABLE 2. Cost of Voting and State Effects

	2000	2004	2008	2012	2016
<i>Variable Name</i>	<i>B (Std. Err)</i>				
Percent Minority Population	0.01 (0.01)*	0.02 (0.01)*	0.03 (0.01)***	0.02 (0.01)**	0.01 (0.01)*
Estimate of Rs in Population	-1.53 (2.14)	-0.87 (2.01)	-1.1 (1.89)	-1.45 (1.82)	-2.15 (2.28)
Lagged Polarization	0.06 (0.27)	-0.303 (0.25)	-0.4 (0.21)	-0.37 (0.17)*	-0.32 (0.19)*
GOP Legislature	0.28 (0.49)	0.09 (0.33)	0.31 (0.33)	1.44 (0.58)**	0.68 (0.39)*
GOP Governor	0.64 (0.29)*	0.01 (0.29)	-0.21 (0.26)	0.37 (0.21)*	-0.19 (0.32)
GOP Governor/ Legislature Interaction	-0.89 (0.57)	-0.26 (0.45)	-0.21 (0.43)	-1.26 (0.62)*	0.39 (0.47)
adjusted R^2	0.09	0.07	0.19	0.26	0.28
<i>n</i>	48	49	49	48	44

* $p < .05$, ** $p < .01$, *** $p < .001$

Analysis

Overall, these findings suggest that there is a clear pattern that emerges over the past several election cycles: states with higher minority populations make it harder to vote, and states with Republican legislatures make it harder to vote as well. The variable of having a Republican legislature and a Republican governor also become more statistically significant in the election years directly before and after the Supreme Court's *Shelby* ruling in 2013, indicating that the climate surrounding voting rights was particularly volatile in the period closest to the decision. Further, the Cost of Voting Index in Republican states with minority populations increased in the years closest to the *Shelby* ruling.

These results, thus, confirm my original hypotheses that Republican-controlled states are more likely to pass laws that increase the cost of voting, and Republican-controlled states with higher minority populations are more likely to pass laws that increase the cost of voting. As the two most consistent signifiers of making it harder to vote, the data indicate that as the percentage of a state's minority population grows, the

cost of voting increases, and with a Republican legislature, there is also an increased cost of voting. Therefore, states with Republican legislatures and significant minority populations are those most likely to have a higher cost of voting.

Implications

Given the previous discussion, the implications of these findings are not surprising. The Republican Party increasingly depends on a shrinking population of white voters to remain competitive at the national level, while Democrats rely on a diverse coalition of voters that includes racial and ethnic minorities. Therefore, Republican strategy seeks to shape the electorate to favor turnout of their ideologically driven base with rules, such as strict voter ID laws, that make it harder for people of color to vote. If growing minority populations – who are less likely to support Republican candidates – begin to mobilize and vote at higher rates, the Republican Party will begin to lose political power.

As I have demonstrated, the goals of these restrictive voting laws are to disenfranchise minorities because Republicans recognize that those who will be most impacted by these laws are less likely to support members of their party. The continued passing of laws and policies that increase the cost of voting have significant implications for racial minorities: Excluding a racial group from the political process can not only silence a political perspective, but it also systematically distorts democracy by denying a faction of citizens a political voice. Suppressing voters of colors makes it more likely that the government will disregard the needs and priorities of those who are excluded from the political process, and these contemporary developments and practices impacting voting rights fall within the broader social and historical context of the struggle for political

inclusion, led by African Americans, and the subsequent struggles of other groups to access the right to vote.

CONCLUSION

Author Todd Donovan succinctly summarizes the impact of modern voter suppression laws in the context of the history of voting rights in the United States as follows: “Since the passage of the Reconstruction amendments between 1865 and 1870, which expanded the right to vote to African Americans, states across the nation responded with a series of institutional barriers to deny or dilute the vote of blacks, Latinos, and Asians. These barriers to voting were so obviously race-based that the country passed a national Voting Rights Act in 1965 to directly prohibit any devices or tests that would disproportionately discourage black Americans from being able to cast an equal vote to whites. Now, 50 years after the passage of the VRA, our nation is witnessing a renewed debate around access to the ballot,” (2017, 36). These modern day tactics of voter suppression (especially those enacted after 2013) – including stringent voter identification requirements, gerrymandering, laws concerning felon voting rights, and other policies – constitute racial inequality, as they disproportionate negatively impact the political participation of minority groups.

Since the 1960s, voting rights have continually been expanded in the United States, standing as a staunch reflection of the evolving nature and character of American democracy. The expansion of voting rights demonstrates the painfully incremental nature of societal change, as well as a strength that is indicative of the malleability of the system and its capacity to absorb the country’s growing multiculturalism and diversity. This country is perpetually engaged in a transitioning democracy, which has long been

overwhelmingly controlled by a dominant white majority. The entrenched, institutionalized behavior of this dominant group that has long been exercised and accepted, will likely be difficult to reverse. However, the demographic changes and electoral shifts currently besetting the United States suggest that it is critical to give serious consideration to understanding these issues, and to formulate a methodology that not only substantiates but also advances the process of a democracy of inclusion and participation of all groups, regardless of racial identity.

Rather than giving people of color “special rights,” acknowledging and dismantling barriers faced by racial groups produces benefits for voters of many other backgrounds. For example, outdated punch-card machines produce more spoiled ballots in predominantly African-American precincts than in white ones, but by adopting better technology, voters of all races will cast ballots that are more likely to be counted. Redesigning the matrix to include people of color opens democracy to millions of other Americans, and policies that will help expand voting rights to minorities include allowing automatic voter registration, same-day voter registration, preregistration of 16- and 17-year olds, online voter registration, in-person early voting, no-excuse absentee voting, providing sufficient resources in elections, ensuring that voting is accessible, restoring voting rights for formerly incarcerated people, ending partisan and racial gerrymandering, and making Election Day a federal holiday (Root and Kennedy 2018). By consciously ensuring that election rules do not intentionally or inadvertently exclude voters of color, we encourage democratic engagement and racial reconciliation that benefits the entire nation.

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Appendix

I. Component Parts of the Cost of Voting Index

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TABLE 1. COMPONENT PARTS OF THE COST OF VOTING INDEX

<i>Issue area</i>	<i>Cost of voting consideration</i>
1. Registration deadline (ratio variable)	No. of days prior to election that registration must occur
2. Voter reg. restrictions (additive indicator)	Same day registration not allowed for all elections Same day registration not located at poll locations Felons not allowed to register Mental competency req. for voter registration ^a No online voter registration ^b Same day registration not allowed in presidential election ^c No automatic voter registration ^d
3. Reg. drive restrictions ^e (additive indicator)	Official certification required by state Participation in state training course required Group required to submit documents to state Penalty imposed for any violation of deadline or rule
4. Preregistration laws (0–5; Likert scale)	0 = 16-year-olds allowed to preregister 1 = 17-year-olds allowed to preregister 2 = 17.5-year-olds allowed to register 3 = allowed to register 90 days prior to 18th birthday 4 = allowed to register 60 days prior to 18th birthday 5 = no preregistration allowed
5. Voting inconvenience (additive indicator)	No early voting Excuse required for absentee voting State sanctioned excuse required for absentee voting No in-person absentee voting No all mail voting ^f No “ask once and always able to vote absentee” ^g No time off from work for voting ^h No time off from work with pay for voting ^h Reduced number of polling stations ⁱ
6. Voter ID laws ^j (0–4; Likert scale)	0 = no ID required to cast a ballot, only signature 1 = non-photo ID required not strictly enforced 2 = photo ID required not strictly enforced 3 = non-photo ID required strictly enforced 4 = photo ID required strictly enforced
7. Poll hours (ratio variable)	Min. and max. poll hours (averaged and reversed)

^aUneven within-state enforcement and uneven state reporting limits the use of this variable prior to the 2004 index. The variable is not included in the 1996 and 2000 indices.

^bArizona becomes the first state to allow online voter registration in 2002; the variable is not included in the 1996 and 2000 indices.

^cRhode Island passed and implemented Election Day registration for presidential elections in 2011 and the variable is not included in the index prior to 2012.

^dOregon implemented automatic voter registration for the 2016 election; the variable is not included in the index prior to 2016. California passed a similar law prior to 2016, but the policy change was not yet implemented for the 2016 election cycle.

^eRegistration drive restrictions were passed after the 2008 presidential election. The entire issue area is not included in the index construction prior to 2012.

^fOregon is the first state to institute all mail voting for the 2000 presidential election and the variable is not included in the 1996 index.

^gCalifornia becomes the first state to allow voters permanent absentee voting status in 2007 and the variable is not included in the voting inconvenience additive scale prior to 2008.

^hReliable data is not available prior to 2008 and the variable is not included in the voting inconvenience additive scale prior to 2008.

ⁱSeven states reduced the number of polling locations prior to the 2016 election (AL, AZ, LA, MS, NC, SC, and TX) and the variable is not included in the voting inconvenience additive scale prior to 2016. The specific decrease in the number of polling locations is not publicly known because following the ruling in *Shelby County v. Holder*, 570 U.S. 2 (2013), districts are no longer required to report changes or seek preclearance for such changes.

^jEnforcement level (“strict” versus “non-strict” is provided by the National Council of State Legislatures; <<http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx>>, last accessed July 19, 2017).

Source: Li, Quan, et al. 2018. “Cost of Voting in the American States.” *Election Law Journal: Rules, Politics, and Policy*. Vol. 17, No. 3. p. 236.