THE LAST STAND?

Shelby County v. Holder, *White Political Power, and America's Racial Policy Alliances*

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Abstract

In 2013, the United States Supreme Court decided *Shelby County v. Holder*, which invalidated Section 4(b) of the Voting Rights Act of 1965. The ruling is part of longstanding efforts to maintain American institutions that have provided wide-ranging benefits to White citizens, including disproportionate political power. Over time, such efforts are likely to fail to prevent significant increases in political gains for African Americans, Latinos, and other minority citizens. But they threaten to foster severe conflicts in American politics for years to come.

Keywords: Voting Rights Act, Racial Policy Alliances, *Shelby County v. Holder*, Vote Suppression, Color Blind Policies, Race Conscious Policies

INTRODUCTION

Voting Rights and America's Racial Policy Alliances

The U.S. Supreme Court's 5-4 decision in *Shelby County v. Holder* that found Section 4(b) of the Voting Rights Act of 1965 (VRA) unconstitutional was the first substantial invalidation of any of the major civil rights laws of the 1960s.[1] It reinforces modern Republican efforts to make voting more difficult, which will inevitably impose a disproportionate burden on Democratic constituencies such as the poor and racial and ethnic minorities. The Court enfeebled the most interventionist egalitarian power asserted by Congress in the twentieth century: the requirement of federal preclearance of changes in voting rules in certain jurisdictions. Under the VRA's Section 5, a number of states identified by the formula in Section 4(b), whose voting systems have posed barriers to full participation, have long been required to obtain permission from the U.S. Department of Justice or the District Court for the District of Columbia before making any changes to laws which impact voting. Even before the ruling,

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GOP-controlled state legislatures were changing voting laws energetically. In *Shelby's* wake, many of these new restrictive laws went into effect. With Republicans winning nationwide in the 2014 elections and the *Shelby* ruling in place, further restrictive initiatives are on the rise.

The nullification of Section 4(b) is clearly part of partisan struggles. But partisan struggles today are also racial policy struggles. The abolition of preclearance approval was a major triumph for what we call the modern "color blind racial policy alliance" over its rival, the "race conscious policy alliance" (King and Smith, 2011, pp. 9-10). The fifty-eight amicus briefs in the case, twenty-five urging invalidation of Section 4(b), thirty-three favoring upholding it, represented a virtual who's who of the affiliates of the modern racial alliances, from the Cato Institute and the Pacific Legal Foundation on the one hand to the NAACP Legal Defense Fund and the American Civil Liberties Union (ACLU) on the other.

Section 4(b) of the VRA specified the criteria for identifying the jurisdictions subject to preclearance. The Court ruled that the formula defining these criteria—whether less than 50% of persons of voting age were registered to vote in 1964, or whether less than 50% voted in the 1964 presidential election—is no longer valid. There are, indeed, good reasons to fault Congress for not updating the formula in the last half century. A range of what are often termed "second generation" barriers to voting, such as at-large districting schemes, inconvenient poll locations and times, and racial gerrymanders, now pose some of the greatest threats to electoral participation.[2] But simply finding Section 4(b) unconstitutional has rendered the VRA's Section 5 preclearance powers toothless.

The justices are not politically naive. They must have known that pressing a virulently polarized Congress to amend the law would probably leave a crippled VRA unaltered for years to come.[3] It is improbable that the Congress, influenced by Tea Party Republicans, will even vote on such legislation in the foreseeable future (Roth 2014). Meanwhile, many electoral structures perpetuate unequal racial representation. For example, the ACLU filed a lawsuit in December 2014 against the "at large" voting system employed by the Ferguson-Florissant School District in racially troubled Ferguson, Missouri, which has produced a seven-member board with one African American member in a school district where over three quarters of the system's 122,000 pupils are Black (Editorial Board 2015).[4]

The end of preclearance approval for changes to voting rules or procedures in the currently-covered states affects the timing of challenges to voting discrimination. The pre-*Shelby* system was prospective: changes proposed by electoral bodies needed Justice Department pre-clearance for changes. The post-*Shelby* system emphasizes retrospective challenges. This new posture reduces the legal resources available to minority voters *prior* to an election and so weakens anti-discrimination law. It also awards opportunity to recently reinvigorated voter suppression activists, who have engaged in misinformation campaigns about voting eligibility and procedures, "caged" and challenged voters in intimidating fashion, and manipulated registration records and lists, among other means to discourage turnout (Piven et al., 2009).

These consequences matter. The structure of modern racial politics, and the reality that the United States remains marked by racial disparities, encourages many non-White citizens, particularly African Americans and Latinos, to distrust their governing institutions—and many White Americans to distrust their non-White fellow citizens. American racial politics has historically been structured by opposed racial policy alliances that include movement activists, political officials and parties, and governing institutions, held together by views on how to resolve the central racial policy issue of their eras—first slavery, then *de jure* segregation, and in the

modern day, whether material racial equality is best realized by insisting that public policies eschew racial categories, the view of the color blind policy alliance, or by designing measures to reduce material racial inequalities, the view of the rival race conscious policy alliance.

The modern alliances are historical products (Franklin and Higginbotham, 2010; Tarrow 2015). Hard won as they were, the civil rights victories of the 1960s did create a nation in which it is far more difficult than it once was to justify voter exclusions explicitly or implicitly targeted at racial minorities. To be sure, White Americans gave up many of their legal privileges, including huge advantages in gaining access to the ballot, only under extraordinary circumstances: an intensification of many decades of protesting, marching, organizing, and litigating by civil rights activists; declining needs for cheap farm labor in the south; the pressures of the Cold War; the assassination of President John F. Kennedy soon after he proposed what became the Civil Rights Act of 1964 (CRA); and the consequent rise to the heights of power of a man determined to be a towering figure in the history of American democracy (Morris 1984; Packard 2002).

Congress enacted the Voting Rights Act in 1965 after the struggles of many thousands over many decades were reinforced by an exceptional exercise of presidential persuasion by that man, President Lyndon B. Johnson. Johnson was a reformed segregationist southerner who won a landslide election in 1964 after he forced through passage of the Civil Rights Act earlier that year, identifying it as the cause of the recently martyred Kennedy. Together the VRA and the CRA extended equal rights of citizenship to African Americans and other minorities, reviving the unfulfilled promise of the post-Civil War amendments.

These momentous legislative changes spurred a new era of further battles in racial policy and politics. During the mid-1960s, civil rights proponents debated and enacted a wide range of policy instruments about how best to address racial inequality in ways that blended racially neutral and race conscious components, depending on pragmatic judgments of what steps were likely to produce racially egalitarian change in different policy arenas (Ackerman 2014; Rustin 1965). Yet within the strikingly brief space of a decade, this range of policy possibilities imploded. Policy coalesced into the two diametrically opposed approaches we now know: color blind and race conscious policymaking (King and Smith, 2014). But just as American political polarization in general has been asymmetrically a phenomenon of rising ideological conservatism, not any surge in left-leaning views, color blind proponents have been more aggressive and uncompromising in recent decades than their race conscious rivals.[5] *Shelby* and state vote restriction measures are part of the purposeful agenda of the post-1970s color blind racial alliance to limit federal government activism when it aims directly at achieving more equal racial outcomes in many spheres of American life.

Racial Alliances and Policy Divisions

The modern racial alliances stem from the persistence of the political, economic, and social systems advantaging Whites built up during most of American history.[6] Despite Americans' official repudiation of legalized White supremacy, many Whites, being human, oppose policies that threaten advantages they now enjoy—and many are not enthusiastic about voting rights for those likely to support such policies. So while the color blind alliance includes many who disavow race conscious policies as a matter of moral principle, its numbers are swelled by others who desire first and foremost to prevent policies redistributing material benefits they now possess to others.[7] The main goal around which color blind proponents have united has been

to "just say no" to all policies consciously designed to reduce racial inequalities, including electoral arrangements and protections structured to enhance minority chances to win political power.

Although civil rights reformers support many race-neutral "universal" or class-oriented initiatives, the race conscious policy alliance's agenda also includes many race-focused measures, notably affirmative action programs in education and hiring (addressed both to legacies of the Jim Crow era and more recent barriers to equality), race conscious housing aid programs, multicultural education initiatives, expanded Equal Employment Opportunity Commission (EEOC) regulatory powers in labor markets to promote opportunities for minorities facing discrimination, criminal justice reforms aimed at ending the disproportionate incarceration of racial minorities, and more.

Color blind proponents have mounted multiple political and legal challenges to all these policies since the 1970s, achieving particular success in winning favorable rulings from the Supreme Court.[8] Their core contention is that, far from authorizing race conscious measures, the 1960s civil rights laws, along with the 14th Amendment's equal protection clause, mandate that there be no "race-based decision making in any public transaction," as Roger Clegg, President of the Center for Equal Opportunity, has put it (Rutenberg, 2015). This claim makes all proposals perceived as aimed at reducing racial disparities suspect in many voters' eyes (King and Smith, 2014). Political scientist Michael Tesler has shown, for example, how this racial policy outlook amongst White voters shaped attitudes toward the Affordable Care Act (Tesler 2012, 2013). The influence of color blind stances converges more generally with the rightward shift amongst many voters that has heightened America's sharp political polarization (Pew Research Center 2012).

Even so, most modern opponents of race conscious policies have claimed to identify with, rather than oppose, the now widely admired civil rights laws of the 1960s. Though such advocates contend that the laws have been misinterpreted to permit violations of color blind principles, they have not urged their abandonment (King and Smith, 2011). It has sometimes even proven possible for race conscious proponents not only to sustain but also to expand those original measures over muted color blind opposition. In economic arenas, race conscious alliance supporters point to the documented erosion of effective regulatory agency efforts addressing labor market discrimination and argue the need for measures to aid racial minorities (Sturm 2001, 2005). In political arenas, race conscious proponents point to the continuing disproportionate electoral political power of Whites—the specific form of racial inequality that the Voting Rights Act sought to end.

Targeting Voting and the VRA

The aims of these racial policy alliances are now intertwined with partisan goals along with racial ones because the modern Republican Party has become the ardent champion of color blind policy approaches. More ambivalently, the Democratic Party endorses the legitimacy of some race targeted measures (King and Smith, 2011).

For political parties seeking electoral victories, no disputes are more crucial than voting rights. Republicans have been glad to ally with many color blind advocates who have long been the most outspoken critics of the modern VRA. They contend the VRA has been turned into a vehicle for race conscious policies that are both immoral and unconstitutional. For good reasons, these partisan and ideological allies have also seen the law as aiding the voting power of Democrats and supporters of liberal policies in general. As a result, beginning in 1970, conservative Republicans and many other

color blind advocates have campaigned fiercely, first to prevent the VRA from being repeatedly extended, then to water down the voting law's efficacy.

For decades they did so in vain. Though the VRA was enacted as a temporary measure, it soon proved the most effective law of the civil rights era. It enfranchised millions of largely African American and then Latino voters and promoted office holding by racial minority candidates. Its resulting prestige meant that conservatives often only tried to weaken the law at early stages in legislative renewal processes, and after they failed in this initiative, Congress gave overwhelming (if often misleading) bipartisan approval of the bill in final roll call voting. Significantly for the twenty-first century electorate, the VRA's 1975 amendments extended its protections to many Latinos by adding language-based triggers for federal monitoring and preclearance requirements. In 1982, further amendments effectively authorized the creation of minority majority districts as solutions to proven patterns of discrimination, overriding contrary judicial rulings (King and Smith, 2011). And over time, the racial minority voters for whom the VRA helped secure the right to register and to vote have favored Democrats more and more strongly. Thus, in 2012, the Republican presidential candidate Mitt Romney carried the 72% of the electorate that identified as White by 59%, over President Obama's 39%. In contrast, of the 13% of the electorate who identified as African American, 93% voted for Obama, while 6% voted for Romney. Furthermore, Obama won 71% of the 10% of the electorate who classified as Latinos, and 73% of the 3% of the electorate who were Asian American (CNN 2012; Liu 2014). Non-White voters not only vote as Democrats, they also remain far more favorable to race conscious measures and many other liberal positions than most Whites (Ethnic Majority 2012; Hutchings 2009; King and Smith, 2011). In light of those patterns it is not hard to see why modern Republicans, particularly the great bulk of Republicans who identify as conservatives, have been tempted to discourage voting by these groups.

Even so, despite conservative opposition, in 2006 the VRA was again renewed after Congress spent ten months reviewing the act. The congressional committee held twenty-one hearings that were attended by over ninety witnesses, and it examined over 15,000 pages of evidence, giving close attention to the voting patterns in and outside the sixteen Section 5-covered jurisdictions. As Congressman John Lewis subsequently stressed, these deliberations welcomed post-1965 advances but concluded that entrenched voting discrimination in the areas singled out by the Section 4(b) formula endured (Lewis 2013).

Though few color blind advocates were persuaded, most Republicans were too wary of appearing to oppose the VRA to vote against its renewal. In light of America's deep divisions over policies with racial dimensions, legislators and elected chief executives of both parties often prefer to leave controversies concerning their meaning and scope to less visible administrative agencies or, especially, the politically insulated courts. Because the nation has had a preponderance of Republican Presidents since 1968, the modern Supreme Court's majority has, like the Republican Party that appointed it, moved toward rigid insistence on color blind views of constitutional equality (King and Smith, 2011). That stance proved fortuitous for the opponents of Section 4(b): because of the efficacy and prestige of the Voting Rights Act, probably *only* the Supreme Court could have openly sought to restrict its reach.

Shelby is by no means the last battleground over color blind versus race conscious policies in general. But the dilution of the VRA may be the most signal achievement of the last wave of major efforts by the color blind alliance specifically to limit voting by those American citizens whom they do not wish to see gain more political power.

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THE *SHELBY* RULING

A Closer Look at the *Shelby* Decision

In the eyes of the majority of the Supreme Court, the VRA has succeeded so efficaciously that its most significant original provisions are obsolete. Accordingly, *Shelby County v. Holder* undercuts the federal government's powers to intervene in state and local cases of voting discrimination. To be sure, the decision leaves intact the VRA's Section 2 and 3 powers. These powers enable the Justice Department to bring states, cities, and other political subdivisions under its Fifteenth Amendment voting rights jurisdiction. But to do so, the federal government must demonstrate that state legislators or the public officeholders responsible for compiling and monitoring electoral rolls' accuracy or other aspects of electoral systems have *intentionally* engaged in racial discrimination, or that their actions compound the effects of other forms of racial discrimination. This criterion of discriminatory intent is hard to prove. The difficulty in establishing intent was a major motive for the adoption of the VRA's Section 4(b) formula in the first place. Section 4(b) enabled the Justice Department to act if a political subdivision was simply failing to register or turn out half its voters. The choice between including the need to demonstrate intentional racial discrimination versus showing a pattern of disparate impact on parts of the citizenry is a general one in all civil rights enforcement. Opting for the former always means opting for the weaker measure.

The majority of the *Shelby* justices acknowledged the significance of the VRA in bringing about change. But, they concluded that the low registration rates and the voting tests that plagued southern states in the 1960s are now vanquished, and that the gap between White and Black registration and voting rates in the covered areas is no longer significant (and in some cases even favors Blacks). They cited White-Black voting gaps of, for example, 49.9% in Alabama and 63.2% in Mississippi in 1965, compared with gaps of 0.9% in Alabama and *negative* 3.8% in Mississippi in 2004. As legal scholar Ellen Katz has noted, Chief Justice John Roberts argued that the continuing problems Congress found in many areas covered by the 1965 formula were indeed "second-generation" barriers: these barriers diluted the *influence* of African American votes rather than preventing them from being cast. Roberts suggested those problems had no relationship to the formula that Congress re-enacted (Katz 2013). In reaching its view that racial disparities had declined in registration and voting, the Court's majority relied on the voter registration and turnout data reported in the Census Bureau's Current Population Survey (CPS) (*Shelby County v. Holder*, 2013, p.15). The Census Bureau itself judges the standard errors in the CPS-reported percentages for Black and Latino voters to exceed those of Whites significantly (U.S. Census Bureau 2015). But the Court's majority decision made no reference to this reliability concern in its *Shelby County* decision.

In any case, impressive and important as the progress in increasing Black voter turnout in many long-covered jurisdictions is, both the oral hearing for *Shelby* and the Court's decision show that the five-justice majority also construed their 2013 VRA decision as a means to advance the color blind agenda of ending race conscious measures. After listening to the Justice Department's defense of the VRA, Justice Antonin Scalia suggested that members of the Senate who supported the Section 5 preclearance provisions in 2006 did so for invidious political reasons: their desires to cater to racial minority voters and avoid criticism from civil rights groups. We should note that although the Section 4(b) formula was clearly race *conscious*, directed at removing obstacles to voting for minority voters, it was not explicitly race *targeted*. It focused only on percentages of registered and actual voters, not the race of voters. Scalia nonetheless characterized congressional renewal of the

VRA as being part of a "phenomenon that is called perpetuation of racial entitlement" (Barnes 2013).

Scalia's "perpetuation of racial entitlement" criticism expresses one of two beliefs underlying the Court's opinion. The first belief is that because preclearance no longer seems required to protect voters against barriers to *casting* ballots, it operates instead as an unjust legal privilege for Black and Latino voters, and so amounts to racism in a new form. The second belief is that the old form—White supremacist racism—is no longer sufficiently entrenched in the covered jurisdictions to warrant an interventionist preclearance power, even though the justices conceded that some "voting discrimination still exists" (*Shelby County v. Holder*, 2013, p. 2).

Both beliefs resonate with the color blind alliance. Outside the Court's deliberations, color blind proponent and Republican Senator Rand Paul went further, contending that in fact no "objective evidence" of voting discrimination against African Americans exists today in the covered states, much less in America as a whole (Whitaker 2013). Yet even the *Shelby* majority acknowledged that some discrimination continues. Subsequently, as his presidential ambitions mounted, Paul said he now wanted to reinvigorate the VRA and make the Republican Party a champion of voting rights for all; but he has never supported any measure to do so in the Senate (Benen 2014).

Although we believe enough has changed to make a strong case that Section 4(b)'s formula needs to be updated, it is at best naïve and at worse politically malicious to think that high voting rates by themselves equate with an absence of discrimination. Since the passage of the VRA many of the covered jurisdictions (and others) have engaged in repeated efforts to establish new districting or at-large voting systems that would reduce chances for minority voters to elect a proportionate number of officeholders, even when they turn out in significant numbers. These efforts often appear aimed at just such vote dilution. As Katz observes, though such devices are sometimes called "second generation" issues, they perpetuate many of the sorts of barriers to the ballot box the Voting Rights Act sought to address; and prior to *Shelby County* they could be and were frequently challenged in the districts subjected to preclearance requirements (Katz 2013, p. 331). The fact that these second generation issues continue (and that conservative advocates seek to augment them) hardly suggests that the need for the VRA has vanished. In Texas, for example, a three-judge federal court found in 2012 that the Republican-controlled legislature's proposed redistricting plan would discriminate against African American and other minority voters. The judges concluded that the plan's designers intended this outcome. They observed that the lawyers challenging the districting scheme had provided more "evidence of discriminatory intent than we have space, or need, to address here" (*State of Texas v. USA and Eric H. Holder*, 2012).

There is abundant evidence of continuing discriminatory initiatives of these sorts. Between 2006 when the VRA was last reauthorized and 2012, thirty-one proposed changes to elections fell afoul of the Justice Department's approval, and in the period 1999 to 2005, one hundred fifty-three proposed changes were dropped after questions were raised about their legality by the Department of Justice (Perez and Agraharkar, 2013). Shelby County itself had pursued redistricting plans that the Justice Department assessed as limiting the influence of Black voters, precipitating the County's legal attack on the VRA preclearance requirements.

This record animated Justice Ruth Bader Ginsburg's stern dissent in *Shelby County* and her assessment that "the scourge of discrimination has not yet extirpated" (2013, p. 1). Ginsburg reported: "[A]ll told, between 1982 and 2006, DOJ objections blocked over 700 voting changes based on a determination that the changes were discriminatory" (*Shelby County v. Holder*, Ginsberg dissent, p. 13). Ginsburg cited Congress's 2006

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decision to reauthorize the VRA because of its continuing efficacy as an instrument to withstand discrimination against African American and Latino voters in many parts of the country, including the covered regions, and she contended:

> But the Court today terminates the remedy that proved to be best suited to block that discrimination. The Voting Rights Act of 1965 has worked to combat voting discrimination where other remedies had been tried and failed. Particularly effective is the VRA's requirement of federal preclearance for all changes to voting laws in the regions of the country with the most aggravated records of rank discrimination against minority voting rights (*Shelby County v. Holder*, Ginsberg dissent, pp. 1–2).

The dissent ended with a vivid metaphor: "[T]hrowing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet" (*Shelby County v. Holder*, Ginsberg dissent, p. 33).

The Rise of the (Old) New State Level Voting Restrictions

Shelby matters most, however, because the majority's decision implies that going forward the Court will not resist a wide range of partisan- and race-tinged efforts to limit voting. Republican legislators' enactment of new barriers to likely Democratic and disproportionately racial minority voters date to the Clinton years and have been especially intense since 2010, only receiving further reinforcement from the *Shelby* decision. More than 180 restrictive voting bills were introduced in forty-one states from 2010 through the fall of 2014, and twenty-two states adopted laws, though those in preclearance states, especially, faced both federal administrative and judicial challenges (Brennan Center for Justice 2014). Since *Shelby*, of states covered by the Section 4(b) formula, eight have moved to adopt new voter ID laws or other voter checks or to implement their recent voter ID laws, including Texas which previously had its law rejected by the Justice Department when it sought preclearance. Six states not covered by Section 4(b) have adopted similar measures (Brandeisky and Tigas, 2013). The two sides in the voter suppression legislation debate across the states match partisan divisions: the Democratic Governors' Association resists these new restrictions, while Republican governors and state lawmakers celebrate them.

As in other areas of policy with racial implications, the GOP position sits more closely with public attitudes, as polls find a majority of Americans favoring voter ID requirements.[9] There is little doubt that many, probably most, of these American voters, conservative activists, and color blind proponents do not consciously favor White supremacy. But there is also little doubt that most think it unwise and unjust for public policies aggressively to transform further the political, economic, and social institutions and practices built up under centuries of White supremacist policies—institutions and practices in which Whites continue to hold advantaged places, in practice if not in law. The Democratic party, meanwhile, as represented by the Obama White House and Justice Department, opposes the restrictive changes, and in North Carolina the Justice Department has sued, arguing that new voting changes adopted in 2013 violate Section 2 of the Fourteenth and Fifteenth Amendments by imposing discriminatory burdens on part of the electorate (Gerstein 2013).

North Carolina provides an excellent case study of how the two major parties and allied racial policy alliance organizations are clashing over these new voting laws. The first Republican majority in the state legislature since 1877 was elected in 2010.

With Republican governor Pat McCrory, elected in 2012, this GOP majority provided the partisan basis for enacting voter suppression laws. On August 12, 2013, McCrory signed into law a set of comprehensive changes to the state's voting laws. Many of these were implemented in 2014, although the voter ID change was delayed until 2016.[10]

The North Carolina legislation has three principal elements. First, it enacts a requirement to bring photo IDs to the polling booth. The North Carolina State Board of Elections estimates that about 613,000 voters in the state do not possess the mandated government-issued IDs. Of this pool of voters, a third are African American and over half are registered as Democrats. Eight types of photo ID are acceptable under the new law. If a voter lacks one of the eligible ID types, he or she may cast a provisional ballot, but to make this ballot valid the voter must visit the relevant election board within six days (or nine for a presidential election), producing a valid photo ID.

Second, student IDs are proscribed as an acceptable form of photo ID for voting. Third, the law reduces early voting arrangements by one week (from 17 to 10 days, though the voting day within those ten days is lengthened to make booths open for the same amount of aggregate time). The law eliminates the same-day-registration option, a policy that some see as significantly facilitating voting, though scholarly research is divided on that question (Hanmer 2009). The statute also voids a previous election law measure that permitted a voter attending the wrong precinct in error to cast a provisional ballot that could be later confirmed. The option for pre-registration of 16- or 17-year olds who would be 18 on the day of the election was ended as well.

The new residency and ID checks permitted a county Board of Electors that governs two college towns (one a historically Black college) to establish measures making it harder for students to vote. In regard to Appalachian State University, the Watauga County Board of Elections voted to end on-campus early voting sites and election-day polling precincts. In the case of Elizabeth City State University (ECSU), the Pasquotank County Board of Elections disallowed a student seeking election to the city council, claiming that the candidate's campus address did not qualify to show local residency. This measure could open up challenges to students' voter registrations that use campus addresses (The MaddowBlog 2013). Because ECSU is a historically Black institution, the measures target students and African Americans concurrently. There is no evidence of student IDs being used for fraudulent voting.

The ACLU argues that ending early voting also has a disproportionate impact upon poor voters because if they hold an hourly paid or minimum wage job, it can be difficult to get time off to vote. Many prefer to take advantage of early voting days. The Southern Coalition for Social Justice (SCSJ) and the ACLU, co-counsel in a case challenging the law, contend: "[P]overty in North Carolina is higher among African Americans, meaning a reduction in early voting opportunities will disproportionately impact voters of color" (Southern Coalition for Social Justice 2013a).

The SCSJ has contended that the new voter laws also adversely affect many women, as well as all African Americans. The 2.5 million votes cast under early voting arrangements in 2012, 50% of the total state turnout, included 70% of all African American voters (Southern Coalition for Social Justice 2013a). And "55.81% of one-stop early voters in the 2012 General Election were women. While African American women made up 23.79% of total registered voters in 2012, they accounted for 31.69% of one-stop early voters" (Southern Coalition for Social Justice 2013b). And of the 23.79% of African American women voters, 34.31% used the same-day registration that was eliminated in the new law (Social Coalition for Social Justice 2013b).

The SCSJ also examined who made up the 318,644 voters from the 2012 rolls bereft of a valid photo ID that matched the names on their voter registration cards.

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Such mismatches were disproportionately women and African American voters (Southern Coalition for Social Justice 2013b). The new ID laws hurt women more than men because, sometimes due to marriage, more women than men have documents with a different name than their current legal name. Within this group of women voters, women of color again stand to be disproportionately penalized. The SCSJ found that of the 202,714 eligible women voters identified in the State Board of Elections "No ID" report for 2012, "58.48% were White and 43.52% were non-White. Women of color are substantively more impacted by photo ID requirements than White women (Southern Coalition for Social Justice 2013b)" The SCSJ added: "[P]articularly troubling is the trend in African-American women, who made up just 23.79% of registered female voters in 2012 but account for 34.22% of registered women voters in the 'No ID' report" (Southern Coalition for Social Justice 2013b).

These implications of the new laws for women and racial minority voters prompted the SCSJ and the North Carolina branch of the League of Women Voters to join in a suit against the new measures, petitioning to reinstate same day registration and out-of-precinct voting (*League of Women Voters of North Carolina v. North Carolina*, 2015). The laws' passage also provoked major demonstrations in the state, with opponents and supporters visibly aligned in the polarized camps that do so much to structure American racial policy disputes today (Blythe 2013). The Fourth Circuit Court of Appeals decided in favor of the League of Women Voters' suit. The Supreme Court stayed this appellate court's ruling on October 8, 2014, with Justices Ginsburg and Sotomayor in dissent.[11]

Other features of the North Carolina laws are still in litigation, largely under VRA Section 2 lawsuits. Shortly before the latest federal trial began in July 2015, North Carolina's attorney general Roy Cooper said plaintiffs were demanding "the equivalent of election law affirmative action," while the state's NAACP President, William J. Barber II, maintained: "This is our Selma" (Eckholm 2015). Former U.S. Attorney General Eric Holder repeatedly contended that although under some circumstances voter ID laws might be unproblematic, in many areas, "there is still a factual basis for us to conclude that these photo-identification laws to combat non-existent voter fraud are racially based, or, certainly, have a racial impact" (Toobin 2014, p. 46). But the Roberts Court has proven unreceptive to this concern: as the midterms approached in 2014, it upheld new restrictive voting laws in Ohio and Texas (as well as in North Carolina), striking down only immediate implementation of Wisconsin's ID requirement because it appeared likely to exclude 300,000 registered voters and to have a racially discriminatory impact (Liptak 2014a). Justices Alito, Scalia, and Thomas dissented.

In the Ohio ruling, a closely divided (5-4) Supreme Court also upheld a measure that reduced early voting from thirty-five to twenty-eight days, just a day before early voting would otherwise have begun (Denniston 2014). But the Texas decision was a much greater setback for the Obama Justice Department's efforts to combat discriminatory laws (*Veasey v. Perry*, 2014). On October 18, 2014, the Court upheld Texas's photo ID law, with advance voting scheduled to commence on October 20, despite conceding the requirement would have significant racially discriminatory effects (Liptak 2014b).[12] The decision, issued at 5 a.m., was unsigned and offered no reasoning for the affirmative judgment. Justice Ginsburg wrote a six-page dissent, joined by Justices Sotomayor and Kagan. It stressed the conclusion of the federal district court that the new law would result in racially discriminatory voting patterns.

The 2011 Texas law lists seven forms of acceptable photo ID that voters could bring to the ballot box. Student IDs are not permissible. But the crucial issue concerned *who* possesses at least one form of the seven eligible IDs. Hearing a challenge to the law brought by the Texas NAACP, the U.S. district court found compelling expert

testimony contending that African American and Hispanic voters were, respectively, 305% and 195% less likely than White voters to have IDs that were valid under the new law. Overall, 1.2 million Texans lacked any one of the seven voting ID forms. On October 9, 2014, U.S. District Court Judge Nelva Gonzales Ramos concluded that the 2011 ID requirements not only created "an unconstitutional burden on the right to vote" but also established "an impermissible discriminatory effect" against African Americans and Hispanics. [13] The law therefore was designed and implemented to achieve an "unconstitutional discriminatory purpose."[14] Swiftly appealed to the Supreme Court, Ramos's decision was revoked. In going to the Supreme Court for a final arbitration we again see some of the color blind alliance's key members—the five conservative majority justices—defeating the race conscious alliance, here led by the NAACP Legal Defense Fund.

The dissenting justices argued that that the law was likely to "prevent more than 600,000 registered Texas voters (about 4.5 percent of all registered voters) from voting in person for lack of compliant identification. A sharply disproportionate percentage of those voters are African American or Hispanic" (*Veasey v. Perry*, 2014). Justice Ginsburg wrote that the greatest "threat to public confidence in elections in this case is the prospect of enforcing a purposefully discriminatory law, one that likely imposes an unconstitutional poll tax and risks denying the right to vote to hundreds of thousands of eligible voters" (*Veasey v. Perry*, 2014,).[15] The new law created the "strictest regime in the country," by, for example, rejecting as acceptable "a photo ID from an in-state four-year college and one from a federally recognized Indian tribe" (*Veasey v. Perry*, 2014). Furthermore, under the Texas law a considerable burden was imposed on 400,000 eligible voters by requiring them to undertake "round-trip travel times of three hours or more to the nearest" government office from which an ID could be acquired. And acquiring an approved photo ID required providing a certified birth certificate (*Veasey v. Perry*, 2014). Even the reduced cost of $2 for a certified birth certificate looked, the dissenters argued, uncomfortably like the old style poll tax outlawed by the Supreme Court in 1966 in *Harper v. Virginia*. At the district court level, NAACP LDF lawyer Ryan P. Haygood had also noted that the "evidence in this case demonstrated that the law, like its poll-tax ancestor, imposes real costs and unjustified, disparate burdens on the voting rights of more than 600,000 registered Texas voters, a substantial percentage of whom are voters of color" (quoted in Liptak 2014a).

The Supreme Court decision in favor of Texas's law was clear evidence of how removing preclearance powers in *Shelby* has significant impacts on voting rights. With preclearance requirements still in effect prior to *Shelby*, the Justice Department had refused to allow Texas to implement its new rules, precisely because they were likely to have racially discriminatory impacts. Justice Ginsburg's dissent underlined that: "[A]lthough this Court vacated the preclearance denial in light of *Shelby County v. Holder*, 570 U.S. __ (2013), racial discrimination in elections in Texas is no mere historical artifact. *To the contrary, Texas has been found in violation of the Voting Rights Act in every redistricting cycle from and after 1970*."[16] But in the wake of *Shelby*, the Justice Department could no longer prevent what it judged to be new discriminatory measures from going into effect, and the Court's majority refused to do so (Bentele and O'Brien, 2013).

The Color Blind Policy Alliance's Upward March and Modern Vote Suppression Efforts

Assessing where the *Shelby* ruling may lead means placing it in the context of the struggle over the structuring of access to electoral power that the nation's political

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parties, and their affiliated racial policy alliance activists, have been waging over the last two decades (Piven et al., 2009, pp. 1-6). Of course, the pertinent history could be extended much further back. It is commonplace in politics for contestants to seek to disfranchise or weaken the voting power of their opponents. Disfranchisement through a great variety of mechanisms was a cornerstone of the subjugation of African Americans during the Jim Crow era (Tuck 2009; Valelly 2004). And as the two parties have become identified with the rival modern racial policy alliances (a division expressed in the party fault-line between the five-justice Republican-nominated majority in *Shelby* versus the four-justice Democratic-nominated dissent), the modern GOP began to pursue a variety of means of minimizing voting by likely Democrats, often poorer Black and Latino voters.

This color blind alliance/GOP assault on voting began twelve years into the "Reagan Revolution," after the 1992 elections, when the Democrats briefly gained control of both houses of Congress as well as the White House. After the election, Democrats passed the National Voter Registration Act of 1993, designed to achieve near-universal registration of eligible voters, in part by allowing persons to register as they applied for driver licenses or various social services (hence its nickname, the "Motor Voter" law). Republicans attacked the bill as an unconstitutional infringement on state powers to define voter qualifications and as likely to unleash voter fraud (Minnite 2010, p. 136; Rutenberg 2015). Once the bill, which did not go into effect until 1995, began to add millions of less affluent and minority voters to the rolls, Republicans and conservative advocacy groups and pundits began to stress more and more vociferously that voter fraud was a serious national problem—though no evidence of actual fraud has ever been found convincing by the courts that have considered challenges to the law, regardless of their appointing parties (Minnite 2010).

In the same years, Republicans, who had by and large championed immigrant workers and courted Latino voters in the Reagan years, gravitated to a new issue raised by public anxieties. These were concerns stirred by the rising number of unauthorized, primarily Mexican and Central American immigrants in the wake of the 1986 Immigration Reform and Control Act (IRCA) and the 1990 North American Free Trade Agreement (NAFTA) (King and Smith, 2011; Zolberg 2006). Throughout the states and at the national level, Republicans enacted measures restricting the rights of documented and undocumented immigrants during the 1990s. But ironically, these measures accelerated naturalization rates for legal Latino immigrants. They also reinforced the already strong tendencies of new Latino citizens to vote Democratic (Zolberg 2006). Consequently, Republicans became still more agitated that the fast-growing non-White segment of the American electorate posed a rising threat to their electoral prospects, especially in immigrant-receiving states—which new, more diffuse immigration patterns made far more numerous.

In the middle of these developments, the Bush-Gore election debacle in 2000 dramatized the flaws in America's decentralized, partisan-operated system of conducting elections. To address these inadequacies, including the voting problems exposed in 2000 in Florida, Congress passed the 2002 "Help America Vote Act" (HAVA). Republicans managed to insert in HAVA a requirement that states collect official identifying information from citizens when they registered to vote, thereby nationalizing measures already in place in Florida (Minnite 2010; Rutenberg 2015). From that point on, GOP legislators have pushed for tougher voter ID requirements, invariably promoted in the name of combating vote fraud. They gave new emphasis, bolstered in the aftermath of the 9/11 attacks, to the alleged danger of voting by illegal immigrants who supposedly could register when applying for a driver's license, despite their lack of citizenship. Again these arguments were advanced without any evidence of such fraud, apart from

easily discredited urban legends (Minnite 2010). Though fraudulent absentee voting has occasionally occurred, instances of the sort of in-person fraudulent voting that ID laws claim to address appear virtually, if not wholly, non-existent (Rutenberg 2015). But these claims formed a piece with mounting Republican-led efforts throughout the first decade of the twenty-first century to enact a range of restrictive laws that might persuade immigrants to return home, instead of seeking citizenship—an approach immigration opponents referred to as "attrition through enforcement," aimed at encouraging, especially, Latinos' "self-deportation" (Smith 2013, p. 43).

The GOP's dual efforts to make voting more difficult and to deter immigrants from becoming citizens constituted a choice to identify the Republican Party with the concerns of those White Americans who for whatever reasons felt threatened by the rising numbers and political power of non-White voters. This choice was not inevitable. President George W. Bush, like Ronald Reagan before him, favored comprehensive immigration reform in part because he believed Republicans could and should compete successfully for Latino votes. But Bush failed to persuade the increasingly powerful right wing of his party.

Instead, Republican efforts perceived as hostile both to African Americans and Latinos, including restrictive voting laws and anti-immigrant initiatives, mounted through the 2000s, and intensified after the election of Barack Obama. Keith Bentele and Erin O'Brien document the rising trend of bills proposed in almost every state to pose new barriers to voting after 2006, even prior to the accelerated efforts that began in 2010 (Bentele and O'Brien, 2013). They contend that "the Republican party has engaged in strategic demobilization efforts in response to changing demographics, shifting electoral fortunes, and an internal rightward ideological drift" that has been "heavily shaped by racial considerations" (Bentele and O'Brien, 2013, p. 1089). Specifically, they find such legislative initiatives occurring and succeeding more often "*where African-Americans and poor people vote more frequently, and there are larger numbers of non-citizens*" (Bentele and O'Brien, 2013, pp. 1098, 1102, italics in original).

Such efforts to restrict voting were stalled by various state judicial decisions up through 2012. But they were renewed after the Supreme Court's *Shelby County* ruling (Perez and Agraharkar, 2013). Recent political science research also indicates that not only are Democrats right to think that restrictive voter laws take "*aim along racial lines with strategic partisan intent*," they have racial consequences (Bentele and O'Brien, 2013, p. 1104). In an experimental study, Rachael Cobb and colleagues find that when voter ID laws are implemented, African American and Latino voters are asked for IDs at significantly higher rates than White voters (Cobb et al., 2012).

As in the 1990s, the GOP's support for restrictive voting laws in the second decade of the twenty-first century has not been preordained. Many analysts expected that the Republicans would change course after Obama was re-elected in 2012 with a larger share of the Latino and Asian American votes than in 2008 (and only a slightly smaller share of the African American vote). At first, many GOP leaders seemed to agree. The Republican National Committee's post-election "Growth and Opportunity" internal review commission argued that in light of the nation's "demographic changes," unless the Republicans began to strengthen their appeal to Latinos, in part by revising their positions on immigration, "we will lose future elections" (Brownstein 2013).

But over the course of 2013, for many Republicans "the sense of demographic urgency . . . palpably dissipated" (Brownstein 2013). A number of conservative analysts, especially Sean Trende, a writer for *RealClearPolitics* who has sometimes been employed as a GOP strategist, contended that it was a viable strategy for Republicans to win in 2014 and 2016, and perhaps beyond, by increasing turnout and winning still larger margins of support from White voters, especially "downscale, Northern, rural Whites."

Trende has contended that GOP support among Whites can realistically reach as high as 70%, which if combined with high turnout would be enough to produce victories despite Democrats winning over 70% of Latino and Asian voters and well over 90% of Black voters. He doubts that high African American, Latino, and Asian American voter turnout will continue when Barack Obama is not on the ballot (Edsall 2013).

Other analysts vigorously debated these sorts of estimates. But Trende's arguments were reinforced by other Republican strategists and many political scientists who contended that for a number of reasons, Republicans were positioned not only to capture full control of Congress in 2014 but also to win the Presidency in 2016; and, of course, Republicans did score major gains in the 2014 elections. The upshot has been to strengthen Republicans and conservatives in the belief that they do not need to modify their positions to appeal to non-White voters in order to be politically successful in the years ahead. And many feel they do not need to do so, fundamentally, because they believe they can further improve their already strong position among White voters, who have voted against every Democratic presidential candidate, albeit sometimes narrowly, since Lyndon Johnson in 1964. The modern GOP strategy assumes that many Whites feel that America today is in danger of a catastrophic fall from the far better America of the past, one in which Whites held hegemonic power.

Trende, to be sure, did not argue that Republicans should feature racial appeals. He urged adoption of "economic populist" positions, even at the risk of alienating the GOP's big business supporters. In characterizing vote suppression efforts as well as "White voter" electoral strategies as part of the "last stand" of America's historical systems of White power, we do not suggest that proponents of these approaches embrace traditional White supremacist ideologies. Many, probably most, are simply partisans seeking to gain power.

The fact remains, however, that they seek power by identifying their party with the preferences of White voters (Harwood 2013; Krugman 2013). Most of those voters do not support strong measures to ameliorate the racial inequalities observable in most of the main arenas of American life. They prefer the status quo, with Whites' long-standing relative advantages left intact. Although modern individual Whites who act improvidently can forfeit these advantages, they are available to Whites more than Blacks as legacies of the economic, educational, political, and social privileging of Whites that segregationists established in the not-so-distant past. When Republicans seek to suppress the votes of racial minority citizens who generally support policies that would work against preserving those advantages and instead court the votes of Whites who generally support policies that sustain privilege, then, in effect (if not in conscious intent), they are taking a stand to preserve much of what survives of the older White supremacist institutional ordering of America.[17]

CONCLUSION

The Prospects for America's Racial and Political Future

The Republican successes in the 2014 election strengthened the position of those who believe the party does not need to alter its race-related policy positions to win elections in the twenty-first century. The GOP gained control of the U.S. Senate; increased its majority in the House of Representatives to the largest size since 1946; increased its governorships from twenty-nine to thirty-one; and gained control of sixty-eight of the country's ninety-nine state legislative chambers, its highest number since 1924 (Hook 2014).

It is at this juncture impossible to determine how significant a role the voter suppression laws passed in recent years played in the GOP victories. Journalist Sean McElwee, citing political scientist Michael P. MacDonald, has made a preliminary estimate, noting first that mostly older felon disenfranchisement laws excluded close to 6 million voters in 2014 (McElwee 2014a). The analysis shows that in two senate races (North Carolina and Georgia) and one gubernatorial contest (Florida), the margin of victory was smaller than the number of disenfranchised felons in the state.

McElwee's article also tried to estimate the effect of new photo ID laws on election results in 2014. He cautioned that many of the twenty-one states with new laws witnessed unusually high turnout among African American voters in 2008 due to Barack Obama's candidacy, so some decline in participation by non-White voters might not be surprising, regardless of the new requirements. One way of getting at their effect is to compare turnout in three sorts of states: those with a new photo ID requirement, those with non-photo ID requirements, and states with no ID law at all. This comparison yields a striking result: On average, turnout was lower by 4.4 percentage points in states with a photo ID law than in states lacking any such a requirement. States with some form of ID requirement, but not a photo one, had a turnout of 1.52 percentage points less than the non-ID states. Those patterns are consistent with a U.S. Government Accounting Office report which reviewed studies testing the effects of voting ID laws and concluded such a suppressive effect was observable in earlier elections in Tennessee (where votes were suppressed by 2.2 to 3.2 percent) and in Kansas (where votes were suppressed by 1.9 to 2.2 percent) (Government Accountability Office 2014).

Another voting feature restricted by recent laws is the option of same day registration. Though not all scholars are as yet convinced, proponents of these measures contend that same-day registration has a significant positive effect (7.92 percentage points) on levels of turnout compared with states not providing this facility (Carbo and Eaton, 2010; McElwee 2014b). Although the Republicans would have won big in 2014 even without their recent vote suppression measures (aided by historically low turnout), there is reason to believe that the new laws did magnify their victories, to an extent that it will take scholars some time to assess.

Even so, preservers of the old racial ordering of America, including the disproportionate political power possessed by Whites, face substantial obstacles in maintaining it in the twenty-first century. Indeed, we do not believe in the long run they can prevail. Along with other Democratic partisans, the modern race conscious policy alliance is robust enough to insure that in many states a variety of civil rights advocacy and litigation groups will challenge voter ID laws and other restrictive initiatives.

Although, as we have seen, the Supreme Court defeated their efforts in three cases in the fall of 2014, anti-restrictive cases have done better in lower courts, with the decisions sometimes allowed to stand. One federal judge invoked the VRA's Section 3 to reinstate oversight of voting practices in Mobile, Alabama. Another invalidated Pennsylvania's ID law for burdening voting rights without any evidence that the law aided accurate voting. And again, in Wisconsin, litigants successfully challenged the state's voter ID law for racially discriminatory effects. On August 5, 2015, the Fifth Circuit Court of Appeals even struck down the Texas Voter ID provisions as a violation of Section 2 of the VRA (*Veasey v. Texas*).[18] Bi-partisan sponsors in Congress are seeking to take up the Court's invitation to amend the Voting Rights Act, including a new coverage formula, even if enactment in the foreseeable future remains improbable. It is clear that this crucial battleground for political power will continue to be a site of intense political and legal contests, with mixed results that will include some wins for racial minority voters.

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Most importantly, vote suppression laws would have to be far more sweeping in their impacts than those now being enacted or proposed to disfranchise substantial percentages of the growing numbers of Black and especially Latino Americans who will otherwise be eligible to vote. That is why we believe that in the long run, efforts at vote suppression will not prevent those voters from gaining greater power in relation to the declining White share of the national population. Unless today's racialized voting patterns change, these trends mean that Republicans will have great difficulty winning presidential elections from 2020 and on. But political scientists and GOP strategists are right to argue that their party has real prospects of success in 2016, and that they have the potential to control congressional and state districts gerrymandered in their favor for years after that. And again, a party in power has many means to stay in power, even when it is facing rising outside forces.

Current conservative efforts to restrict voting rights in ways that disproportionately affect racial minorities, like the accompanying efforts to discourage especially Latino immigration, probably will prove to be the "last stand" of efforts to preserve American electoral institutions, politics, and policies ordered in ways that most advantage Whites. But the near term forecast is for increased turbulence. Americans face costly and time-consuming battles in their courts over voting rights in their electoral campaigns, in their legislatures, and in their law enforcement agencies' operations. In some instances, they will throw election results into doubt, delaying much of the work of the affected governments. In many instances they will produce political gridlock or majorities that will ardently resist efforts to change the patterns of the past, and that may seek further means to preserve them. Only if most Republicans and conservatives decide these are fights they don't want to have or can't win will these outcomes be avoided. Only then will America, in regard to voting rights, cease to be a "house divided."

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NOTES

1. Voting Rights Act of 1965, Public Law 89-110, 79 Stat. 437. As Amended through PL 110-258. Enacted July 1, 2008; *Shelby County v. Holder*. Opinion available at http://www.supremecourt.gov/opinions/12pdf/12-96_6k47.pdf (accessed July 22, 2015).
2. For a view that Congress ignored hard questions about the efficacy of the VRA's Section 4(b) criteria in combating "second generation" barriers to voting, see Richard Pildes (2006). He advocates a national uniform standard policy rather than the pre-existing covered jurisdictions framework.
3. A bill, entitled the Voting Rights Amendment Act, introduced concurrently to the House and Senate in January 2014, quickly foundered.
4. The patterns of African-American underrepresentation have run deep in Ferguson, where prior to April 7, 2015, despite a two-thirds African American population, the mayor, city manager, and five of its six City Council members were White. Two additional African Americans won City Council seats in the first elections following the death of Michael Brown (Salter and Suhr, 2015).
5. There is considerable debate about whether this heightened ideological conservatism is primarily an elite phenomenon or whether it has begun to extend more deeply into the electorate (Fiorina and Levendusky, 2006; Levendusky 2009).

6. For recent compelling journalistic overviews of the deep divides in American racial conditions and attitudes, see, e.g., Ta-Nehisi Coates (2014); Nicholas Kristoff (2014) (and preceding columns in the same series). And see King and Smith (2011).
7. Some commentators argue the GOP has absorbed policy positions and constituencies from overtly White supremacist candidate (Alford 2015; Robinson 2015).
8. See for example *Fisher v. University of Texas*, 133 S. Ct. 2411 (2013) (holding that the use of racial categories only to supplement primarily race-neutral admission policies still required strict scrutiny); *Schuette v. Coalition to Defend Affirmative Action* (2014) available at http://www.supremecourt.gov/opinions/13pdf/12-682_8759.pdf (accessed July 22, 2015) (upholding Michigan's power to repeal affirmative action in higher education through popular referendum); *Ricci v. De Stefano*, 557 U.S. 557 (2009) (ruling that a municipal fire department could not shift to a new race-neutral assessment system that promised to produce a more racially inclusive work force unless failure to do so would clearly subject it to litigation).
9. Journalist Aaron Blake (2013) cites a Washington Post poll from 2012 finding that "nearly three-quarters support requiring voters to show photo ID."
10. For the legislation, see http://www.ncga.state.nc.us/Sessions/2013/Bills/House/PDF/H589v9.pdf (accessed July 22, 2015). For discussion, see Blake (2013) and Renee Davidson (2013).
11. *North Carolina v. League of Women Voters of North Carolina* (2014), dissent of Justice Ginsburg, available at http://www.supremecourt.gov/orders/courtorders/14A358.pdf (accessed July 22, 2015).
12. Because voting was so imminent, the Texas appeals court concluded it was too late to halt the law.
13. *Veasey v. Perry*, U.S. District Court, Southern District of Texas, Corpus Christi Division, Civil Act. No. 13 CV-00193, October 9, 2014. Opinion available at http://electionlawblog.org/wp-content/uploads/20141009-TXID-Opinion.pdf (accessed July 22, 2015).
14. Ibid.
15. Justice Ginsberg's dissent can be found at http://www.supremecourt.gov/opinions/14pdf/14a393_08m1.pdf (accessed July 22, 2015).
16. Ibid. Emphasis added.
17. In a statistical study of attitudes amongst Whites living in Southern counties that had high shares of slave populations at the time of the Civil War, three researchers find that voters there now evince more conservative attitudes than in other counties (Acharya et al., 2014).
18. For stories detailing these efforts, see http://topics.nytimes.com/top/reference/timestopics/subjects/v/voter_registration_and_requirements/index.html (accessed July 22, 2015).

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