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ARTICLES

A PSYCHOLOGICAL EXPLANATION FOR REINSTATING PRECLEARANCE UNDER THE VOTING RIGHTS ACT

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ABSTRACT

*The Voting Rights Act (VRA) was signed into law nearly sixty years ago. But in 2013, the Supreme Court's *Shelby County v. Holder* opinion effectively gutted the VRA's preclearance requirement, which required states with a history of discriminatory voting laws to submit proposed voting law changes for federal approval. The Supreme Court determined that the formula for determining the "covered jurisdictions" subjected to preclearance was outdated and unnecessary in light of "progress" and how the VRA "proved immensely successful at redressing racial discrimination and integrating the voting process."*

*This Article is the first to analyze *Shelby County* and preclearance from a psychological perspective. Specifically, this Article presents psychology research from the past decade that has documented the conditions under which white Americans experience status threat in light of the looming racial demographic shift in the U.S. population—a shift from majority-white to majority-minority. Psychology research has also documented backlash to racial progress, specifically the election of President Barack Obama. The discussed psychology research is complemented by other findings in political science and sociology.*

Taken together, the psychology research and social science findings provide strong support for reinstating preclearance to prevent reactionary steps taken by states to

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suppress voting by growing minority group populations. Moreover, the research warns that the “progress” championed by the majority in Shelby County comes at a cost—another reason to reinstate preclearance. By using the current psychological findings—and embarking on new avenues of psychological research—we can also better tailor the “covered jurisdictions” formula to put in place voter protections during periods of time surrounding “racial-shift events,” such as when a jurisdiction’s voter-eligible population shifts to majority-minority.

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INTRODUCTION

So long as I do not firmly irrevocably possess the right to vote, I do not possess myself. I cannot make up my mind—it is made up for me. I cannot live as a democratic citizen, observing the laws I have helped to enact—I can only submit to the edict of others.

*Dr. Martin Luther King, Jr., 1957, “Give Us the Ballot” Speech*¹

In its final season, HBO’s comedy *Curb Your Enthusiasm*—which stars Larry David, “the show’s curmudgeonly, faux-pas-prone protagonist”—featured an unlikely subject: Georgia’s Senate Bill (S.B.) 202, a suppressive voting law passed in 2021.² The comedic show put a spotlight on a law that others, such as those working at the Brennan Center for Justice, have explained “takes aim at all sorts of ways people vote” and “has faced extensive litigation.”³

1. Andrea Bernini, Giovanni Facchini, Marco Tabellini & Cecilia Testa, *Sixty Years of the Voting Rights Act: Progress and Pitfalls*, 40 OXFORD REV. ECON. POL’Y 486, 489 (2024).

2. Sam Levine, *Pretty, Pretty Bad: Curb Your Enthusiasm Takes on Voter Suppression*, THE GUARDIAN (Feb. 27, 2024, at 07:00 ET), <https://www.theguardian.com/tv-and-radio/2024/feb/27/curb-your-enthusiasm-voting-rights-larry-david> [https://perma.cc/2Y2M-6MMN]; see also Nick Corasaniti, *Georgia Election Official Responds to Critical ‘Curb Your Enthusiasm’ Plotline*, N.Y. TIMES (Apr. 2, 2024), <https://www.nytimes.com/2024/04/02/us/politics/larry-david-trump-georgia.html> (on file with the Temple Law Review) (discussing the episode and the response it elicited from then Georgia Secretary of State Brad Raffensperger).

3. Sara Carter, Andrew Garber, Catherine Silvestri & Connie Wu, *How Voting Laws Have Changed in Battleground States Since 2020*, BRENNAN CTR. FOR JUST. (Aug. 15, 2024), <https://www.brennancenter.org/our-work/research-reports/how-voting-laws-have-changed-battleground-states-2020> [https://perma.cc/DR9V-ZQHV]. Carter and her colleagues explain the various ways that Senate Bill 202 (“S.B. 202”) disrupted voting. *See id.* (providing examples). They argue that the law is “in response” to the sheer number of Georgians who voted by mail during the 2020 presidential election, particularly in areas like Fulton County, which encompasses most of Atlanta. *Id.* Fulton County is majority-minority, such that white people make up only forty-four percent of the county’s population. *Quick Facts: Fulton County, Georgia*, U.S. CENSUS

Unfortunately, S.B. 202 is just one of many restrictive voting laws passed since the majority in *Shelby County v. Holder* declared Section 4 of the Voting Rights Act (VRA) unconstitutional.⁴ Section 4 of the VRA provided the formula for determining what states were subjected to Section 5 “preclearance”—a process where states with a history of discriminatory voting laws could not change their voting procedures without first acquiring approval by the U.S. Attorney General or a panel of three federal judges.⁵ Without Section 4, there is no operable Section 5.

This Article is interested in some of the justifications Chief Justice Roberts and the rest of the *Shelby County* majority provided for gutting the VRA: increased voter registration, increased turnout among minority voters, and an increase in minority candidates elected to public office. The majority believed, in part, that because of so-called progress made by minority voters—which was not nearly as rosy as they portrayed—the preclearance requirement within the VRA was outdated, unnecessary, and unconstitutional. But a key aspect of this Article is what the majority overlooked and how *Shelby County* subjects voting rights to additional suppression efforts that stem from white Americans’ perceived status threat.

This Article proceeds in five parts. Section I provides a brief history of the events leading up to President Lyndon B. Johnson signing the VRA into law in 1965. It also introduces Sections 4 and 5 of the VRA and explains preclearance. Section I then discusses the 2013 *Shelby County* opinion and its immediate aftermath: a spike in states passing new laws that suppress minority voters.

Section II discusses the changing racial demographics of the United States from majority-white to majority-minority. Running alongside the “progress” cited by the *Shelby County* majority is an active shift in racial demographics in the United States—such that by the year 2044, the United States is projected to be majority-minority. Said another way, by 2044, white Americans will no longer be this country’s dominant racial group. While this diversity could be celebrated by all, threats to the right to vote and political backlash abound. The *Shelby County* majority should not have found solace and satisfaction in this “progress.” Instead, they should have kept in place the guardrails to protect the perceived progress from the threats and backlash discussed throughout this Article.

Section III discusses a growing body of psychological literature documenting white Americans’ reactions to the majority-minority racial shift. In particular, the Article focuses on the perceived “group status threat” experienced by some white Americans when faced with the knowledge that soon they will no longer be the majority racial group. The Article also discusses their reactive shift toward conservative political candidates and policies. This psychology work builds upon sociology’s group threat theory, which posits that perceived threats to the dominant racial group’s status result in prejudice towards racial minorities and an effort to reassert dominance.⁶

BUREAU, <https://www.census.gov/quickfacts/fact/table/fultoncountygeorgia/PST045224> (on file with the Temple Law Review) (last visited Feb. 25, 2025).

4. *Shelby County v. Holder*, 570 U.S. 529, 557 (2013).

5. 42 U.S.C. § 1973b(a)–(b), *invalidated by*, *Shelby County*, 570 U.S. at 557.

6. See *infra* notes 159–73 and accompanying text for a definition and general description of group threat theory.

Section IV discusses additional research from other social science disciplines that has shown similar backlash effects to racial progress, such as the historic election of President Barack Obama. To illustrate the presented research, this Article turns to several real-life examples of backlash and the reactions by some white Americans to growing minority groups: the rise of the Tea Party, the racial spillover effects from President Obama during the 2010 and 2014 midterm elections, and then-candidate Donald Trump's efforts to succeed President Obama in 2016.

Section V proposes reinstating preclearance in some form in light of the psychological findings discussed in this Article. One option is for Congress to enact the proposed (and stalled) John R. Lewis Voting Rights Advancement Act, which includes an updated preclearance formula. But Congress could also use the various psychology findings discussed below to better tailor the preclearance formula to protect against the backlash and reactionary behaviors associated with group status threat. This Article provides initial thoughts on how Congress could go about this. Finally, the Article discusses how psychologists can continue to build on the current research and turn their attention to voting laws.

I. BEFORE AND AFTER THE VOTING RIGHTS ACT OF 1965

The right to vote is a fundamental right.⁷ But the road to ensuring all Americans can exercise that right has been long, winding, and incomplete. Section I provides a brief history of the pivotal events surrounding voting rights, first starting with the ratification of the Fifteenth Amendment. From there, the Section discusses efforts by various states to prevent Black Americans from exercising their right to vote. Section I then introduces the VRA and its preclearance provisions. The Section concludes by examining the *Shelby County* opinion and exploring its immediate aftermath, as well as current-day voter suppression.

7. Joshua A. Douglas, *Is the Right To Vote Really Fundamental?*, 18 CORN. J.L. & PUB. POL'Y 143, 149 (2008) (“Most scholars have assumed that the right to vote is a fundamental right.”); Alex Pilla, Comment, *Making the Case for a Third Reconstruction Based on the State of Voting Rights in America*, 54 SETON HALL L. REV. 1509, 1509 (2024) (“The right to vote is pivotal, not just for its own sake but for what it represents and can create: equal dignity, access to education, economic opportunity, safety, and more.”). Although the “affirmative right to vote” is not explicitly provided for in the U.S. Constitution, “courts have declared the right to vote to be fundamental since the late nineteenth century.” Bertrall L. Ross II, *Fundamental: How the Vote Became a Constitutional Right*, 109 IOWA L. REV. 1703, 1706 (2024). And while Professor Bertrall Ross explains why this fundamental right might be “vulnerable to challenge,” particularly in light of the Supreme Court’s recent rejection of the right to an abortion, he argues the right to vote is protected by the Republican Form of Government Clause. *Id.* at 1706–07.

A. Disfranchisement and Racial Violence After the Ratification of the Fifteenth Amendment

In 1870, “in the wake of the Civil War,”⁸ the Fifteenth Amendment was ratified.⁹ It prohibits interference with the right to vote on the basis of one’s race or color.¹⁰ Following ratification, Black Americans’ participation in the electoral process increased.¹¹ Around the same time, Black Americans’ representation also increased. Mississippi and South Carolina elected the first Black members of the U.S. Congress in 1870, “and hundreds of [B]lack officeholders at all levels were elected in the following years.”¹²

But these changes were not long-lasting. Within two decades, all progress stalled, or more accurately, completely regressed.¹³ In the decades following the Fifteenth Amendment’s ratification, several states sought to interfere with and suppress Black voter registration and voting.¹⁴ Some states even “called constitutional conventions for the express purpose of enacting the means to prevent [B]lacks from voting.”¹⁵ Such practices, called “[d]isenfranchisement schemes,” “included poll taxes, literacy tests, and grandfather and old soldier clauses.”¹⁶

For example, “[i]n the 1890s, Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Virginia began to enact literacy tests for voter registration and to employ other methods designed to prevent African-Americans from voting.”¹⁷ Specifically, these states required registrants to be able to read and write and complete a

8. *Shelby County*, 570 U.S. at 536.

9. KEVIN J. COLEMAN, CONG. RSCH. SERV., R43626, THE VOTING RIGHTS ACT OF 1965: BACKGROUND AND OVERVIEW 1 n.1 (2015) [hereinafter COLEMAN, VRA BACKGROUND], https://digital.library.unt.edu/ark:/67531/metadc821511/m2/1/high_res_d/R43626_2015Apr14.pdf [https://perma.cc/PD7L-K632].

10. U.S. CONST. amend. XV, § 1 (“The right of citizens in 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.”).

11. COLEMAN, VRA BACKGROUND, *supra* note 9, at 5.

12. *Id.* at 1. Former Confederate states saw “hundreds of [B]lack officeholders” elected during Reconstruction: “Alabama (167), Georgia (108), Louisiana (210), Mississippi (226), North Carolina (180), and South Carolina (316).” *Id.* at 5. Black people took on other positions, too, such as “ambassadors, Census officials, customs appointments, U.S. marshals and Treasury agents, and mail agents and Post Office officials.” *See id.* at 5. Others have provided in-depth accounts of Reconstruction. *See generally* BROOKS D. SIMPSON, THE RECONSTRUCTION PRESIDENTS (1998) (providing a detailed account of the Reconstruction era); COLEMAN, VRA BACKGROUND, *supra* note 9, at 1–5 (same); Pilla, *supra* note 7, at 1511–15 (discussing Reconstruction and the Civil Rights Movement).

13. COLEMAN, VRA BACKGROUND, *supra* note 9, at 1 (explaining that “a little more than [twenty] years after the Reconstruction era ended, no African Americans served in Congress and all of the former Confederate states had rewritten their constitutions to exclude African Americans from voting”).

14. *Id.* Threats also abounded leading up to the amendment’s ratification. For example, “[t]he Ku Klux Klan was founded in 1866 in Tennessee and soon unleashed across the South a ‘reign of terror’ against ‘Republican leaders [B]lack and white’ that included assassinations of political leaders.” *Id.* at 6 (quoting ERIC FONER, RECONSTRUCTION: AMERICA’S UNFINISHED REVOLUTION, 1863–1877, at 342 (1st ed. 1988)).

15. *Id.* at 8.

16. *Id.* (explaining the types of disenfranchisement schemes). The Congressional Research Service has compiled the various disenfranchisement schemes adopted between 1890 and 1918 in Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia. *See id.* at 9 tbl. 2 (citing JERROLD G. RUSK, A STATISTICAL HISTORY OF THE AMERICAN ELECTORATE 33–35 (2001)).

17. *Shelby County v. Holder*, 570 U.S. 529, 536 (2013).

form.¹⁸ At the time, less than a third of Black adults were able to read or write, whereas more than three-quarters of white adults could do so.¹⁹

Backlash to Black emancipation and enfranchisement also fomented an intense period of racial violence, including racialized public murders and lynching.²⁰ Although an exact number is hard to ascertain, it is estimated that from 1884 to 1900, 2,500 lynchings occurred across the nation—mostly of Black individuals.²¹ The most lynchings were committed in “Alabama, Georgia, Mississippi, and Louisiana.”²²

Unfortunately, both these legislative and violent efforts to interfere with and intimidate Black voting worked. Consider the sharp decrease in the number of registered Black voters in Louisiana in a span of just four years: In 1896, 130,344 were registered, whereas in 1900 only 5,320 were registered.²³ The decrease in Black voter registration in other Southern states is just as startling:

Black registration was reduced to single digits in most southern states after disenfranchising laws were enacted, according to estimates: 1.3% in Alabama in 1902, 4.3% in Georgia in 1910, 1.1% in Louisiana in 1904, 7.1% in Mississippi in 1904, 4.6% in North Carolina in 1904, between 3.8% and 13.8% in South Carolina between 1896 and 1904, and 15.2% in Virginia in 1904.²⁴

The late 1800s also saw the introduction of Jim Crow laws, which “segregated the races with respect to public places and accommodations, including on trains and in hotels, restaurants, barber shops, and theaters.”²⁵ The period after the ratification of the Fifteenth Amendment was also filled with substantial litigation²⁶ over issues like

18. *South Carolina v. Katzenbach*, 383 U.S. 301, 310–11 (1966).

19. *Id.* at 311. In many of the slave states prior to the Civil War, it was a crime to teach Black people “how to read and write.” *Id.* at 311 n.10. The referenced states created alternative tests for white Americans who could not read, so that their right to vote was undisturbed. *Id.* at 311. “These included grandfather clauses, property qualifications, ‘good character’ tests, and the requirement that registrants ‘understand’ or ‘interpret’ certain matter.” *Id.*

20. COLEMAN, VRA BACKGROUND, *supra* note 9, at 8–9.

21. *Id.* at 9.

22. *Id.*

23. *Id.*

24. *Id.* at 10 n.47 (citing J. MORGAN KOUSSEY, THE SHAPING OF SOUTHERN POLITICS: SUFFRAGE RESTRICTION AND THE ESTABLISHMENT OF THE ONE-PARTY SOUTH, 1880–1910, at 61 (1974)).

25. *Id.* at 10; *see also* MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS 32–44 (10th Anniversary ed. 2020) (providing a broad discussion of the laws and political climate following the Civil War and Jim Crow).

26. *See South Carolina v. Katzenbach*, 383 U.S. 301, 311–12 (1966) (collecting cases involving Fifteenth Amendment litigation that “demonstrates the variety and persistence of these and similar institutions designed to deprive Negroes of the right to vote”). Justice Ginsburg would later characterize these “[e]arly attempts to cope with this vile infection” as “resembl[ing] battling the Hydra.” *Shelby County v. Holder*, 570 U.S. 529, 560 (2013) (Ginsburg, J., dissenting). That is, “[w]henever one form of voting discrimination was identified and prohibited, others sprang up in its place.” *Id.*

grandfather clauses,²⁷ the so-called white primary,²⁸ racial gerrymandering,²⁹ and the use of voting tests.³⁰ Despite the Fifteenth Amendment, racial discrimination in and outside the voting booth persisted.

B. On the Heels of Bloody Sunday, the VRA Is Proposed and Passed into Law

Despite these extreme and oppressive measures, Black Americans continued to pursue equal enfranchisement and the ability to effectuate their rights as promised by the Fifteenth Amendment. In the 1960s, the Student Nonviolent Coordinating Committee, a key organization in the American Civil Rights Movement, organized several campaigns aimed at registering Black voters in Selma, Alabama.³¹ When they started their efforts, 15,000 Black citizens were eligible to vote, but only 156 of them were registered.³² On “March 7, 1965, hundreds of marchers tried to cross the Edmund Pettus Bridge on the highway from Selma to Montgomery . . . to demonstrate on behalf of their voting rights,”³³ where they were “brutally attacked” by “a small army of state troopers.”³⁴ That day would be remembered as “Bloody Sunday” because of its “brutality and horror.”³⁵

A little over a week after Bloody Sunday, President Johnson stood before Congress and proposed the VRA.³⁶ He signed it into law just months later on August 6, 1965, after its landslide victory in the House and passage in the Senate.³⁷

The VRA put in place the infrastructure “for expanding voting rights for all Americans”³⁸:

It suspended literacy tests across the South, authorized the U.S. [A]ttorney [G]eneral to file lawsuits challenging the poll tax, replaced recalcitrant

27. See *Guinn v. United States*, 238 U.S. 347, 356–58 (1915); *Myers v. Anderson*, 238 U.S. 368, 377 (1915).

28. See *Smith v. Allwright*, 321 U.S. 649, 650–51 (1944); *Terry v. Adams*, 345 U.S. 461, 462–63 (1953). The white primary “barred [Black Americans] from participating in Democratic primary elections where officeholders at all levels were effectively elected, due to the eventual decline of the Republican Party following Reconstruction.” COLEMAN, VRA BACKGROUND, *supra* note 9, at 10.

29. *Gomillion v. Lightfoot*, 364 U.S. 339, 340 (1960).

30. For example, Louisiana had one such test that required those interested in registering to vote to take a test that required them to “give a reasonable interpretation” of clauses found in the Louisiana Constitution or the U.S. Constitution. *Louisiana v. United States*, 380 U.S. 145, 148–49 (1965).

31. ARI BERMAN, *GIVE US THE BALLOT: THE MODERN STRUGGLE FOR VOTING RIGHTS IN AMERICA* 4–5 (2015).

32. *Id.* at 5.

33. ROBERT A. PRATT, *SELMA’S BLOODY SUNDAY: PROTEST, VOTING RIGHTS, AND THE STRUGGLE FOR RACIAL EQUALITY* 2 (2017). Future Congressman John Lewis—who was twenty-five years old at the time and chairman of the Student Nonviolent Coordinating Committee—told reporters that “[w]e’re marching today to dramatize to the nation and to the world . . . that hundreds and thousands of Negro citizens of Alabama, particularly here in the Black Belt area, are denied the right to vote.” BERMAN, *supra* note 31, at 5.

34. PRATT, *supra* note 33, at 2.

35. *Id.* at 3.

36. BERMAN, *supra* note 31, at 5–6.

37. COLEMAN, VRA BACKGROUND, *supra* note 9, at 12.

38. BERMAN, *supra* note 31, at 6. President Obama would one day call the VRA “one of the crowning achievements of our democracy.” *Id.* at 7. Others have commented that “[t]he voting rights of [B]lack Americans have been effectively guaranteed only since passage of the Voting Rights Act in 1965.” COLEMAN, VRA BACKGROUND, *supra* note 9, at 1.

registrars with federal examiners, dispatched federal observers to monitor elections, forced states with the worst histories of voting discrimination to clear electoral changes with the federal government to prevent future discrimination, and laid the foundation for generations of minority elected officials.³⁹

Ari Berman, national voting rights correspondent at *Mother Jones*, recently summarized the impact that the VRA had in the decades following its passage:

The results were almost unimaginable in 1965. In the subsequent decades, the number of [B]lack registered voters in the South increased from [thirty-one] percent to [seventy-three] percent; the number of [B]lack elected officials increased from fewer than 500 to 10,500 nationwide; the number of [B]lack members of Congress increased from [five] to [forty-four]. The four congressional reauthorizations of the VRA lowered the voting age to eighteen, eliminated literacy tests nationwide, and expanded protections for language-minority groups like Hispanics in Texas, Asian Americans in New York, and Native Americans in Arizona.⁴⁰

Because of the influence of the VRA, “minority voters emerged as a major electoral force.”⁴¹ And while some of the precise wording has changed over the years by way of amendments,⁴² the VRA generally “forbids any ‘standard, practice, or procedure’ that ‘results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color.’”⁴³

C. The VRA Includes a “Preclearance” Provision that Only Applies to Certain States Based on a Coverage Formula

Two sections of the VRA are particularly relevant to this Article: Sections 5 and 4. These sections are at the heart of the consequential case *Shelby County*, which is discussed in detail below.⁴⁴

Broadly, Section 5 “required States to obtain federal permission before enacting any law related to voting,” while Section 4 “applied that requirement only to some States.”⁴⁵ Congress’s authority to impose these restrictions is derived from the Fifteenth Amendment, “which authorizes the National Legislature to effectuate by ‘appropriate’ measures the constitutional prohibition against racial discrimination in voting.”⁴⁶

39. BERMAN, *supra* note 31, at 6.

40. *Id.*

41. *Id.* at 10.

42. See COLEMAN, VRA BACKGROUND, *supra* note 9, at 18–22 (summarizing the various amendments made to the VRA in 1970, 1975, 1982, 1992, and 2006). The renewals of the VRA have been signed by presidents of both parties, including Presidents Richard Nixon, Gerald Ford, Ronald Reagan, George H. W. Bush, and George W. Bush. *See id.*

43. *Shelby County v. Holder*, 570 U.S. 529, 537 (2013) (quoting 42 U.S.C. § 1973(a), which was the current version at the time *Shelby County* was decided).

44. *Id.* at 534–35.

45. *Id.* at 535; *see also Section 4 of the Voting Rights Act*, U.S. DEP’T OF JUST.: C.R. DIV. (Nov. 17, 2023), <https://www.justice.gov/crt/section-4-voting-rights-act> [<https://perma.cc/JW6N-M3V3>] (“Section 4[(b)] of the Act established a formula to identify those areas and to provide for more stringent remedies where appropriate.”).

46. *South Carolina v. Katzenbach*, 383 U.S. 301, 308 (1966); *see also* U.S. CONST. amend. XV, § 2 (“The Congress shall have power to enforce this article by appropriate legislation.”).

The purpose of Section 5 was to “prevent[] jurisdictions with a history of voting discrimination from implementing a new voting rule unless the jurisdiction could prove that the law would not discriminate against minority voters.”⁴⁷ The procedure for seeking permission to enact voting laws, as codified in Section 5, is called preclearance.⁴⁸ Preclearance was required for any changes to “voting qualification[s] or prerequisite[s] to voting, or standard[s], practice[s], or procedure[s] with respect to voting.”⁴⁹

Because of the preclearance requirement, “no change in voting procedures could take effect until it was approved by federal authorities in Washington, D.C.—either the Attorney General or a court of three judges.”⁵⁰ To obtain preclearance, a jurisdiction had to “prove[] that the change had neither ‘the purpose [nor] the effect of denying or abridging the right to vote on account of race or color.’”⁵¹

Which jurisdictions would be subjected to, or “covered” by, the Section 5 preclearance requirements was determined based on the qualifications outlined in Section 4, which acted as the legislation’s “triggering mechanism.”⁵² When the VRA was first enacted, the “‘covered’ jurisdictions were those States or political subdivisions that had maintained a test or device as a prerequisite to voting as of November 1, 1964, and had less than [fifty] percent voter registration or turnout in the 1964 Presidential election.”⁵³ A “test or device” was defined as “any prerequisite for registration or voting to demonstrate a person’s literacy, educational achievement or knowledge of any particular subject, good moral character, or [to] prove his or her qualifications by the voucher of registered voters or others.”⁵⁴ The thinking was “that low registration and

47. JOSHUA A. DOUGLAS, THE COURT V. THE VOTERS: THE TROUBLING STORY OF HOW THE SUPREME COURT HAS UNDERMINED VOTING RIGHTS 108 (2024). Said another way, Section 5 sought “to prevent states and political subdivisions from circumventing the goal of expanded [B]lack registration and voting by simply enacting new disenfranchisement practices and procedures, as had been done throughout the [twentieth] century.” COLEMAN, VRA BACKGROUND, *supra* note 9, at 16.

48. COLEMAN, VRA BACKGROUND, *supra* note 9, at 13, 16–17.

49. MICHAEL R. DIMINO SR., BRADLEY A. SMITH & MICHAEL E. SOLIMINE, UNDERSTANDING ELECTION LAW AND VOTING RIGHTS 46 (2017) (quoting 52 U.S.C. § 10304).

50. *Shelby County*, 570 U.S. at 537.

51. *Id.* (alteration in original) (quoting 42 U.S.C. § 1973b(a)(1)(A), *invalidated by*, *Shelby County*, 570 U.S. at 557); *see also* COLEMAN, VRA BACKGROUND, *supra* note 9, at 16 (explaining the process of submitting voting changes to the Attorney General or the U.S. District Court for the District of Columbia). Professor Joshua Douglas recently explained how the preclearance process differed from typical litigation:

This unique system changes the ordinary course of litigation in two ways. First, the law automatically puts new election rules on hold. In other words, a state or locality can’t pass a new law and begin implementing it right away. They must gain federal approval. Second, the burden of proof is shifted. Normally, a plaintiff must prove that a voting practice is unlawful. The typical presumption is that a law is valid unless the plaintiff brings sufficient evidence to challenge it. Under Section 5, however, the *jurisdiction* must prove that the law will *not* harm minority voters. Because of their history of discrimination, they essentially have to prove a negative—that the new law won’t discriminate.

DOUGLAS, *supra* note 47, at 108.

52. Julian Maxwell Hayter, Commentary, *Reimagining Resistance: The Voting Rights Act’s Immediate Resistance*, 17 LIBERTY U. L. REV. 473, 477 (2023).

53. *Shelby County*, 570 U.S. at 537.

54. COLEMAN, VRA BACKGROUND, *supra* note 9, at 15. The types of tests that the Act referred to “included literacy and knowledge tests, good moral character requirements, the need for vouchers from registered voters, and the like.” *Shelby County*, 570 U.S. at 537.

voting statistics in jurisdictions that required literacy tests and devices resulted from their discriminatory application.”⁵⁵

Section 4 also contained a “bailout provision,” which provided a way for states to “escape preclearance coverage” if they satisfied certain conditions.⁵⁶ The provision was created in recognition of the fact that certain jurisdictions swept up by the coverage formula may not be “guilty of any unlawful discriminatory voting practices.”⁵⁷

In 1965, six states were covered under Section 4’s formula: “Alabama, Georgia, Louisiana, Mississippi, South Carolina, and Virginia.”⁵⁸ It also covered “[thirty-nine] counties in North Carolina and one in Arizona.”⁵⁹

Sections 4 and 5 were initially intended “to expire after five years,”⁶⁰ but Congress continued to reauthorize the VRA.⁶¹ In the subsequent 1970 and 1975 authorizations, Congress also “extended the coverage formula in [Section] 4(b).”⁶² In 1970, the formula subjected additional counties to preclearance, including counties “in California, New Hampshire, and New York.”⁶³ Additional states and counties were added after the 1975 amendments: “Alaska, Arizona, and Texas” and “several counties in California, Florida, Michigan, New York, North Carolina, and South Dakota.”⁶⁴

When Congress reauthorized the VRA in 1982 for another twenty-five years, it did not alter or update Section 4’s coverage formula.⁶⁵ Congress did, however, add a “minority language provision,” which “included under the coverage formula those jurisdictions where voting information was provided only in English and members of a single language minority were more than [five percent] of the citizens of voting age.”⁶⁶

Prior to *Shelby County*, these measures were not set to expire until 2031, because in 2006 Congress again reauthorized the VRA for another twenty-five years.⁶⁷ The extension was largely bipartisan, passing with a ninety-eight to zero vote in the Senate

55. COLEMAN, VRA BACKGROUND, *supra* note 9, at 15.

56. Paul Winke, *Why the Preclearance and Bailout Provisions of the Voting Rights Act Are Still a Constitutionally Proportional Remedy*, 28 N.Y.U. REV. L. & SOC. CHANGE 69, 72 (2003).

57. Nw. Aus. Mun. Util. Dist. No. One v. Holder, 557 U.S. 193, 199 (2009) (internal quotation mark omitted) (quoting *Briscoe v. Bell*, 432 U.S. 404, 411 (1977)).

58. *Shelby County*, 570 U.S. at 537. Many of the states covered by preclearance were “states of the former Confederacy.” Peyton McCrary, Christopher Seaman & Richard Valely, *The End of Preclearance as We Knew It: How the Supreme Court Transformed Section 5 of the Voting Rights Act*, 11 MICH. J. RACE & L. 275, 277 (2006).

59. *Shelby County*, 570 U.S. at 537.

60. *Id.* at 538 (explaining that “Sections 4 and 5 were intended to be temporary”).

61. *Id.* at 538–39 (chronicling reauthorizations in 1970, 1975, 1982, and 2006).

62. *Id.* at 538. In 1970, coverage extended “to jurisdictions that had a voting test and less than [fifty] percent voter registration or turnout as of 1968.” *Id.* The 1975 formula “extended its coverage to jurisdictions that had a voting test and less than [fifty] percent voter registration or turnout as of 1972.” *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

66. COLEMAN, VRA BACKGROUND, *supra* note 9, at 16.

67. *Shelby County*, 570 U.S. at 535, 539. Professor Nathaniel Persily of Stanford Law School provides an excellent discussion of the legislative history of the 2006 reauthorization. See generally Nathaniel Persily, *The Promise and Pitfalls of the New Voting Rights Act*, 117 YALE L.J. 174, 178 (2007) (summarizing “the unique legislative history of the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006”).

and a three hundred ninety to thirty-three vote in the House of Representatives.⁶⁸ At the time of the 2006 extension, Congress again opted not to update Section 4's coverage formula.⁶⁹ Congress did, however, amend Section 5 to "forbid[] voting changes with 'any discriminatory purpose' as well as voting changes that diminish the ability of citizens, on account of race, color, or language minority status, 'to elect their preferred candidates of choice.'"⁷⁰

The most recent bailout provision required states seeking bailout to "seek a declaratory judgment" and "show that for the previous [ten] years it . . . ha[d] not been subject to any valid objection under [Section] 5, and ha[d] not been found liable for other voting rights violations."⁷¹

D. Shelby County Guts Preclearance

Just as Congress has interfaced with the VRA several times since its inception, so too has the Supreme Court.⁷² Following the VRA's initial enactment, it did not take long for Southern segregationists to challenge the Act.⁷³ The Supreme Court ultimately upheld the law in the face of this early challenge. In 1966, just a year after the VRA was passed, the Supreme Court explained in *South Carolina v. Katzenbach* that the VRA "was designed by Congress to banish the blight of racial discrimination in voting, which ha[d] infected the electoral process in parts of our country for nearly a century."⁷⁴

Fast forward nearly forty-five years later. In 2008, the City of Calera, Alabama, "adopted a redistricting plan that eliminated the only majority-[B]lack, single-member district in the City."⁷⁵ Calera is located in Shelby County, Alabama, a jurisdiction then-covered under Section 4 of the VRA, so it had to submit its redistricting plan to the U.S. Attorney General for review.⁷⁶ The Attorney General objected to the proposed redistricting plan.⁷⁷ Thereafter, in 2010, Shelby County challenged the 2006

68. James J. Sample, *Voting Rights or Voting Entitlements*, 60 HOU. L. REV. 51, 58 (2022). There were, however, some grumblings in conservative corners. *Id.* at 59 ("Specifically, conservative government officials expressed their disdain for preclearance, believing that the practice of needing 'to win Justice Department approval . . . [felt like a] punishment . . . for racist practices that were overcome long ago.'") (alteration in original) (quoting *Bush Signs Voting Rights Act Extension*, CBS NEWS (July 27, 2006, at 10:02 ET), <https://www.cbsnews.com/news/bush-signs-voting-rights-act-extension/> [https://perma.cc/HK2E-NLHC])).

69. *Shelby County*, 570 U.S. at 539.

70. *Id.* (quoting 42 U.S.C. § 1973c(b)-(d)).

71. Nw. Aus. Mun. Util. Dist. No. One v. Holder, 557 U.S. 193, 199 (2009).

72. See Richard L. Hasen, *Shelby County and the Illusion of Minimalism*, 22 WM. & MARY BILL RTS. J. 713, 715–22 (2014) (discussing efforts to challenge the "VRA as exceeding congressional power").

73. DOUGLAS, *supra* note 47, at 110 ("Southern segregationists immediately challenged the Voting Rights Act of 1965 after its enactment, taking the case directly to the U.S. Supreme Court. . . . The challengers, led by a delegation from South Carolina, argued that the law violated principles of state sovereignty. The federal government, they claimed, should not have the ability to encroach upon a state's right to run its elections as it wished.").

74. 383 U.S. 301, 308 (1966).

75. Brief for the Attorney General as Appellee at 7, *Shelby County v. Holder*, 679 F.3d 848 (D.C. Cir. 2011) (No. 11-5256); see also BERMAN, *supra* note 31, at 268–71 (providing a detailed account of the local elections that led up to the filing of the suit underlying *Shelby County*).

76. Brief for the Attorney General as Appellee, *supra* note 75, at 7.

77. *Id.*

reauthorization of the VRA, seeking a declaratory judgment that Sections 4(b) and 5 of the VRA were facially unconstitutional.⁷⁸ Eventually, the matter wove its way up to the Supreme Court. At the same time, the once bipartisan support for the VRA began to wane.⁷⁹ In fact, 2011 and 2012 saw a wave of lawsuits challenging the constitutionality of Section 5 of the VRA—more challenges “than during the previous four decades combined.”⁸⁰

1. Chief Justice Roberts Pens the Majority—Joined by Justices Scalia, Kennedy, Thomas, and Alito

In *Shelby County*, the Supreme Court held Section 4(b) of the VRA unconstitutional.⁸¹ Writing for the majority, Chief Justice Roberts characterized the VRA as a departure from federalism and equal sovereignty.⁸² He wrote that “despite the tradition of equal sovereignty, the Act applies to only nine States (and several additional counties).”⁸³

Moreover, Chief Justice Roberts and the majority perceived a change in the landscape.⁸⁴ They first referenced the perspective held by the Court in *Katzenbach*: “In 1966, [the Court] found [the VRA’s] departures from the basic features of our system of government [to be] justified” in light of the racial discrimination pervading the exercise of voting.⁸⁵ However, in 2013, the *Shelby County* majority confidently stated that things had “changed dramatically” in the subsequent fifty years.⁸⁶ Specifically, “[i]n the covered jurisdictions, ‘[v]oter turnout and registration rates now approach parity. Blatantly discriminatory evasions of federal decrees are rare. And minority candidates hold office at unprecedented levels.’”⁸⁷ Relatedly, tests and devices used to block access

78. *Shelby County v. Holder*, 570 U.S. 529, 540 (2013).

79. BERMAN, *supra* note 31, at 271–73 (“[T]he bipartisan consensus that supported the VRA for nearly fifty years, including in 2006, had collapsed.”).

80. *Id.* at 273.

81. *Shelby County*, 570 U.S. at 557.

82. *See id.* at 542 (“The Federal Government does not, however, have a general right to review and veto state enactments before they go into effect.”). As to equal sovereignty, the *Shelby County* majority reiterated that the United States “was and is a union of States, equal in power, dignity and authority.” *Id.* at 544 (quoting *Coyle v. Smith*, 221 U.S. 559, 567 (1911)).

83. *Id.*; *see also* Leah M. Litman, *Inventing Equal Sovereignty*, 114 MICH. L. REV. 1207, 1209 (2016) (discussing equal sovereignty). Although equal sovereignty is not the focus of this Article, Litman argues that “*Shelby County* was wrong to broaden the equal sovereignty doctrine” and that “[t]here is little basis in the constitutional text or the drafting history for any constitutional rule that requires Congress to treat the states equally.” *Id.* at 1229.

84. Interestingly, others have suggested that Chief Justice Roberts has long harbored reservations about portions of the VRA. *See Sample, supra* note 68, at 61 (explaining and tracing how Chief Justice Roberts “has a long career opposing and dismantling the VRA, which can be documented back to the early 1980s when he was the Special Assistant to the Attorney General and wrote over twenty memos outlining his perceived shortcomings of it”). Similar long-standing objections have been lodged by Justice Alito and the late Justice Scalia. *See id.* at 63–64 (detailing past writings and works).

85. *Shelby County*, 570 U.S. at 545.

86. *Id.* at 547.

87. *Id.* (alteration in original) (quoting *Nw. Aus. Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193, 202 (2009)).

to voting had been banned nationwide for more than forty years.⁸⁸ The majority also looked at voter registration rates for 1965 and 2004, which had been compiled by Congress.⁸⁹ They discussed the progress cited by Congress when reauthorizing the Civil Rights Act in 2006—specifically, the progress “made in eliminating first generation barriers experienced by minority voters.”⁹⁰

On top of this, the majority placed particular weight on the fact that at the time of its decision, two towns with histories of racial violence—Philadelphia, Mississippi, and Selma, Alabama—had Black mayors.⁹¹

In light of this progress in enfranchisement made by voters of color—which the majority recognized was “in large part *because* of the [VRA]”⁹²—the majority could not understand why Congress had not “eased the restrictions in [Section] 5 or narrowed the scope of the coverage formula in [Section] 4(b) along the way.”⁹³ They effectively determined it was “irrational for Congress to distinguish between States in such a fundamental way based on [forty]-year-old data, when today’s statistics tell an entirely different story.”⁹⁴ The Supreme Court suggested Congress could draft a new formula “based on current conditions,” which would be a “prerequisite to a determination that exceptional conditions still exist justifying such an ‘extraordinary departure from the traditional course of relations between the States and the Federal Government.’”⁹⁵ The Court did not believe the Fifteenth Amendment was meant to be used to “punish for the past,” but instead, “its purpose [was] to ensure a better future.”⁹⁶

Perhaps unsurprisingly, the “progress” described by the *Shelby County* majority was an ongoing process. At the time of *Shelby County*’s oral argument, various forms of voting restrictions were still being implemented by states covered by Section 5 of the VRA. Two-thirds of the “nine fully covered states under Section 5” in 2013 had implemented new laws restricting voter registration and access in the prior three years, “including voter ID laws (Alabama, Mississippi, South Carolina, Texas, and Virginia), limits on early voting (Georgia), and restrictions on voter registration (Alabama and Texas)”—whereas “only one-third of noncovered jurisdictions” passed similar restrictions during that same time.⁹⁷

88. *Id.* at 551.

89. *Id.* at 547–48.

90. *Id.* at 562.

91. *Id.* at 548–49. The majority contrasted this fact with two key events that occurred around the inception of the VRA. Three men had been murdered in Philadelphia, Mississippi, during the so-called Freedom Summer of 1964. *Id.* at 548. The men had been registering the area’s Black voters. *Id.* And on Bloody Sunday, “police beat and used tear gas against hundreds marching in support of African-American enfranchisement.” *Id.* at 549.

92. *Id.* at 548.

93. *Id.* at 549.

94. *Id.* at 556.

95. *Id.* at 557 (quoting *Presley v. Etowah Cnty. Comm’n*, 502 U.S. 491, 500–01 (1992)).

96. *Id.* at 553.

97. BERMAN, *supra* note 31, at 277; *see also* Dale E. Ho, *Building an Umbrella in a Rainstorm: The New Vote Denial Litigation Since Shelby County*, 127 YALE L.J.F. 799, 799 (2018) (“In the run-up to the 2012 presidential election, nineteen states passed laws making it more difficult to register to vote or cast a ballot.”). Additionally, other “states like Kansas and Ohio and Pennsylvania and Wisconsin had adopted southern-born barriers to the ballot box.” BERMAN, *supra* note 31, at 277.

Nevertheless, the *Shelby County* majority's focus was not on the continued suppression efforts by many of the covered states. It was instead focused on the way Congress amended Section 5 in 2006—which, in its view—forced covered states and jurisdictions to jump through more hoops, despite what the majority perceived to be good behavior.⁹⁸ Specifically, Congress had, in part, amended Section 5 “to prohibit any voting law ‘that has the purpose of or will have the effect of diminishing the ability of any citizens of the United States,’ on account of race, color, or language minority status, ‘to elect their preferred candidates of choice.’”⁹⁹

The majority wanted nothing to do with any discussion of how Section 5 might act as a deterrence:

Respondents do not deny that there have been improvements on the ground, but argue that much of this can be attributed to the deterrent effect of [Section] 5, which dissuades covered jurisdictions from engaging in discrimination that they would resume should [Section] 5 be struck down. Under this theory, however, [Section] 5 would be effectively immune from scrutiny; no matter how “clean” the record of covered jurisdictions, the argument could always be made that it was deterrence that accounted for the good behavior.¹⁰⁰

In sum, the majority could not find support for Section 4(b)’s coverage formula. It argued that “[c]overage today is based on decades-old data and eradicated practices.”¹⁰¹ “And voter registration and turnout numbers in the covered States have risen dramatically in the years since.”¹⁰² To the majority, it boiled down to a simple dichotomy:

In 1965, the States could be divided into two groups: those with a recent history of voting tests and low voter registration and turnout, and those without those characteristics. Congress based its coverage formula on that distinction. Today the Nation is no longer divided along those lines, yet the [VRA] continues to treat it as if it were.¹⁰³

The Court focused on a narrow window of arguably incomplete progress from the VRA’s inception in 1965 to 2006 to conclude the VRA’s coverage formula was outdated:

In assessing the “current need” for a preclearance system that treats States differently from one another today . . . history cannot be ignored. During that time, largely because of the [VRA], voting tests were abolished, disparities in voter registration and turnout due to race were erased, and African-Americans attained political office in record numbers. And yet the coverage formula that Congress reauthorized in 2006 ignores these developments, keeping the focus

98. See *Shelby County*, 570 U.S. at 549–50 (“In light of those two amendments, the bar that covered jurisdictions must clear has been raised even as the conditions justifying that requirement have dramatically improved.”).

99. *Id.* at 549 (quoting 52 U.S.C. § 10304(b)).

100. *Id.* at 550.

101. *Id.* at 551.

102. *Id.*

103. *Id.*

on decades-old data relevant to decades-old problems, rather than current data reflecting current needs.¹⁰⁴

But as the dissent laid out, some progress—in the face of continued threats—was not a sufficient reason to remove the guardrails.

2. Justice Ginsburg Pens the Dissent—Joined by Justices Breyer, Sotomayor, and Kagan

Justices Ginsburg, Breyer, Sotomayor, and Kagan dissented from the majority's holding in *Shelby County*. Although the majority's narrow focus was, on its face, the constitutionality of Section 4(b)—the VRA's coverage formula for those jurisdictions subjected to preclearance—the dissenting justices clearly stated the consequences of the majority's holding: Without Section 4's formula, Section 5 was effectively “immobilized.”¹⁰⁵ Moreover, the dissent highlighted two reasons identified by Congress for why Section 5 should remain in place: (1) “continuance would facilitate completion of the impressive gains thus far made,” and (2) “continuance would guard against backsliding.”¹⁰⁶

The dissent recognized that despite the progress made since the VRA's passage in 1965, the threats facing minority voting had not been fully “eliminated.”¹⁰⁷ Justice Ginsburg argued that “[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.”¹⁰⁸

Moreover, there remained so-called second-generation barriers, which are “[e]fforts to reduce the impact of minority votes, in contrast to direct attempts to block access to the ballot.”¹⁰⁹ These efforts include racial gerrymandering¹¹⁰ and the “adoption of a

104. *Id.* at 552–53 (first alteration in original). Elsewhere in *Shelby County*, the majority further notes that Congress “could not have enacted the present coverage formula” in 2006 if it had “started from scratch.” *Id.* at 556 (“It would have been irrational for Congress to distinguish between States in such a fundamental way based on [forty]-year-old data, when today's statistics tell an entirely different story. And it would have been irrational to base coverage on the use of voting tests [forty] years ago, when such tests have been illegal since that time. But that is exactly what Congress has done.”).

105. *Id.* at 559 n.1 (Ginsburg, J., dissenting). Legal scholars evaluating the *Shelby County* decision agreed. *See, e.g.*, Sample, *supra* note 68, at 59 (“The . . . destruction of [S]ection 4(b) . . . rendered [S]ection 5 null . . .”). Professor Richard Hasen, a prominent election law scholar, argued that “the majority knew full well it was effectively overturning Section 5 because there will not be the political will to come up with a new coverage formula.” Hasen, *supra* note 72, at 737; *see also id.* at 744 (critiquing the majority opinion “[f]rom its expansion of the Tenth Amendment to its severe contraction of the Fifteenth Amendment”).

106. *Shelby County*, 570 U.S. at 559–60 (Ginsburg, J., dissenting).

107. *Id.* at 563 (“Although the VRA wrought dramatic changes in the realization of minority voting rights, the Act, to date, surely has not eliminated all vestiges of discrimination against the exercise of the franchise by minority citizens.”).

108. *Id.* at 590; *see also* BERMAN, *supra* note 31, at 277 (“But when the potent remedy of the VRA was needed the most, a majority on the Court seemed to believe that the illness of voting discrimination had been cured.”).

109. *Shelby County*, 570 U.S. at 563 (Ginsburg, J., dissenting).

110. Racial gerrymandering is the process of “redrawing . . . legislative districts in an ‘effort to segregate the races for purposes of voting.’” *Id.* at 563 (quoting *Shaw v. Reno*, 509 U.S. 630, 642 (1993)); *see also* William Jefferson Clinton, *The Voting Rights Umbrella*, 33 YALE L. & POL'Y REV. 383, 385–86 (2015) (“[S]tates . . . use redistricting practices . . . to dilute the impact of [African American] votes by concentrating them so heavily in

system of at-large voting in lieu of district-by-district voting in a city with a sizable black minority.”¹¹¹

As the dissent points out, Congress was presented with substantial evidence that the VRA and its coverage formula were still working: “[B]etween 1982 and 2006, DOJ objections blocked over 700 voting changes based on a determination that the changes were discriminatory.”¹¹² Congress determined “that the changes blocked by preclearance were ‘calculated decisions [by the covered jurisdictions] to keep minority voters from fully participating in the political process.’”¹¹³ Quite simply, evidence supported Congress’s belief that voters still suffered from racial discrimination in the covered jurisdictions.¹¹⁴ Based on this evidence, the dissent understood why Congress had “ever more reason to conclude that the time had not yet come for relaxed vigilance against the scourge of race discrimination in voting.”¹¹⁵ Unfortunately, the consequences of *Shelby County* were swift.

E. Shelby County’s Aftermath

In the wake of *Shelby County*,¹¹⁶ several of the jurisdictions previously covered by Section 4, now unfettered, immediately began to pass new laws aimed at restricting nonwhite voters.¹¹⁷ The Brennan Center for Justice also identified that “[s]oon after”

a few districts that as a practical matter they can influence *only* elections in districts dominated by their own race.”).

111. *Shelby County*, 570 U.S. at 563 (Ginsburg, J., dissenting). In at-large election systems, “everyone votes for all seats on a city council, such that a white majority can control every seat.” DOUGLAS, *supra* note 47, at 118.

112. *Shelby County*, 570 U.S. at 571 (Ginsburg, J., dissenting); *see also* Sheldon Whitehouse, *Knights-Errant: The Roberts Court and Erroneous Fact-Finding*, 84 OHIO ST. L.J. 837, 859 (2024) (discussing the congressional fact-finding process).

113. *Shelby County*, 570 U.S. at 571 (Ginsburg, J., dissenting) (quoting H.R. REP. NO. 109-478, at 21 (2006)).

114. *Id.* at 575 (quoting *Shelby County v. Holder*, 679 F.3d 848, 865 (D.C. Cir. 2012), *vacated*, 541 F. App’x 1 (D.C. Cir. 2013)). Senator Sheldon Whitehouse, a U.S. Senator from Rhode Island, has argued that Chief Justice Roberts has failed to approach each case with an open mind as he claimed he would during his 2005 confirmation hearings. *See* Whitehouse, *supra* note 112, at 892 (“[T]he Supreme Court has broken long-standing rules and practices to force desired results on the American people. One such violation has been its excursion into fact-finding, based not on the record before it, nor on factual findings of Congress, but on imagined or concocted findings that served ulterior purposes of the justices.”).

115. *Shelby County*, 570 U.S. at 575 (Ginsburg, J., dissenting). The dissent discusses at length the so-called Katz study, which found “that racial discrimination in voting remains ‘concentrated in the jurisdictions singled out for preclearance.’” *Id.* at 577. And elsewhere, other evidence “indicated that voting in the covered jurisdictions was more racially polarized than elsewhere in the country.” *Id.* at 578.

116. Although they are not the focus of this Article, the Supreme Court has also been busy post-*Shelby County* issuing several more decisions impacting voting rights and protections. For a succinct discussion of these cases, see Perry Grossman & Adriel I. Cepeda Derieux, *Reform Begins at Home: Integrating Voting Rights Litigation and Advocacy in Progressive States*, 74 RUTGERS U. L. REV. 1773, 1773–74 (2022) (first discussing *Husted v. A. Philip Randolph Inst.*, 138 S. Ct. 1833 (2018); and then discussing *Brnovich v. Democratic Nat’l Comm.*, 141 S. Ct. 2321 (2021)); *see also* Pilla, *supra* note 7, at 1521–26 (discussing *Brnovich* in detail).

117. Loren Jacobson, *Justice Ruth Bader Ginsburg: Asking No Favors, But Insisting on Justice*, UNT DALL. L. REV. ON THE CUSP, Spring 2021, at 6 (“After *Shelby County* came down, many of the jurisdictions no longer subject to the preclearance requirement immediately passed laws making it harder for minorities to vote, like voter ID laws and laws that purged voter rolls.”). Others have pointed out, however, that this wave of voter

Shelby County, additional discriminatory laws were passed in Alabama, Mississippi, and North Carolina.¹¹⁸ Other jurisdictions joined those efforts. One commentator, reflecting on Justice Ginsburg's umbrella metaphor, aptly noted, "sure enough, the rain came, as fifteen states passed or implemented new restrictions on voting leading up to the 2014 midterms."¹¹⁹ Senator Whitehouse went a step further and articulated the situation as being "an avalanche."¹²⁰ Some states have tried (disingenuously) to pass off these new laws as being aimed at upholding "ballot security."¹²¹

But many of these laws have disproportionately impacted people of color and the poor.¹²² Consider voter ID laws, which are particularly harmful to Black voters¹²³ and

law changes actually began in the handful of years leading up to the *Shelby County* decision. Mark E. Rush, *Voting Rights in a Politically Polarized Era . . . and Beyond*, 81 WASH. & LEE L. REV. 1183, 1185 (2024) (pointing to the Brennan Center's findings "that racial disparities in turnout were already growing around five years before the *Shelby* decision"). But not all scholars thought the voter ID laws would be problematic. Shortly after *Shelby County*, election law scholar Anthony Gaughan even offered "cautious optimism that the expansion of Voter ID laws across the South [would] not result in widespread minority disenfranchisement in the long run." Anthony J. Gaughan, *Has the South Changed? Shelby County and the Expansion of the Voter ID Battlefield*, 19 TEX. J. ON C.L. & C.R. 109, 134–35, 146 (2013) (arguing that "the controversy over Voter ID laws has produced a backlash effect," that is, it inspired Black voters to go to the polls, as seen by Black voter turnout exceeding white voter turnout in 2012). Nevertheless, others like voting rights scholar Gilda Daniels, have argued that "voter ID laws have suppressed the votes of African Americans, the elderly, young voters, and those from lower socioeconomic backgrounds." Gilda Daniels, *Ending the Cycles of Voter Suppression*, 60 HARV. C.R.-C.L. L. REV. 373, 388 (2025).

118. Max Feldman, *Voting Rights in America, Six Years After Shelby v. Holder*, BRENNAN CTR. (June 25, 2019), <https://www.brennancenter.org/our-work/analysis-opinion/voting-rights-america-six-years-after-shelby-v-holder> [https://perma.cc/W8QW-HB5Z].

119. Ho, *supra* note 97, at 800.

120. Whitehouse, *supra* note 112, at 860 ("From January through April 2021, states previously covered by preclearance 'introduced or enacted at least 108 bills . . . that would restrict voting rights.'" (omission in original) (quoting *Supreme Court Fact-Finding and the Distortion of American Democracy: Hearing Before the Subcomm. on Fed. Cts., Oversight, Agency Action, & Fed. Rts. of the S. Comm. on the Judiciary*, 117th Cong. 32 (2021) (statement of Paul M. Smith, Vice President of Legal Strategy, Campaign Legal Ctr.))). President Bill Clinton also weighed in on the "dramatic" consequences of *Shelby County*. See Clinton, *supra* note 110, at 384–85 (providing examples of how *Shelby County* permitted various "states to implement voting changes that had previously been blocked by Section 5" and "emboldened others across the country that had been moving forward with their own voting restrictions since 2010").

121. Erica L. Laroux, *Voting Rights Suspended Under the Guise of Federalism and Voter Fraud in the Wake of Shelby and Brnovich*, 49 S.U.L.REV. 441, 462 (2022).

122. See Courtney Lauren Anderson, *Post-Pandemic, But Not Post-Racial*, 15 ST. LOUIS U. J. HEALTH L. & POL'Y 221, 232–33 (2022) (discussing how new voting laws have made it difficult for Black and poor voters to vote). Dean Anderson also discusses how those with poorer health, such as those "from lower income, Black, or Latino backgrounds," are also less likely to vote. *Id.* at 233 ("Racial health disparities are positively associated with lower voter turnout.").

123. See Sample, *supra* note 68, at 75 (explaining that the new voter identification laws "disfavor [the types of] IDs [that] African American voters are most likely to possess, such as Medicaid and student ID cards"). In contrast, the types of "identification cards that white people have wide access to, such as concealed carry permits and hunting licenses, are acceptable forms of ID for voting privileges." *Id.* at 75–76. In the mid-2000s, Georgia "passed the first law requiring government-issued photo identification to cast a ballot." BERMAN, *supra* note 31, at 222. But because "[B]lack[] [people] were five times more likely than whites to not have cars, and thus not own driver's licenses, [they] were disproportionately more likely to lack the other forms of required ID." *Id.* at 223. On top of this, locations to obtain driver's licenses were not always nearby, particularly in areas where Black Americans lived in Georgia. *See id.* ("Only 56 of 159 counties in Georgia issued driver's licenses or photo IDs, and none were in metro Atlanta."). Professor Daniels argues that voter identification laws have

were passed in a number of jurisdictions post-*Shelby County*. For instance, the same day the Supreme Court issued its *Shelby County* opinion, Texas announced its plans to impose “a strict voter ID law that had previously been denied preclearance . . .”¹²⁴ New photo ID laws were also passed in Alabama and Mississippi, while “North Carolina passed an omnibus election law that included restrictions such as strict photo ID and cutbacks to early voting.”¹²⁵ Pro-democracy groups gave the North Carolina law nicknames like “Screw the Voter Act of 2013” and the “Longer Lines to Vote Bill.”¹²⁶ Several commentators have provided similar critiques of Arizona’s new voting laws.¹²⁷

This recitation, however, hardly begins to scratch the surface of the post-*Shelby County* efforts by states to pass restrictive voting legislation.¹²⁸ In fact, the Voting Rights Alliance has identified and documented “[seventy-two] [f]orms of [v]oter [s]uppression,”¹²⁹ in support of its mission “to restore and protect voting rights from concerted attacks that undermine our access to the polls, and to have our votes fairly counted.”¹³⁰ Some of these include: (1) “[f]ailure to accept government-issued state university and college student ID’s” as acceptable forms of identification, (2) “[p]olling place reductions or consolidations,” (3) “[p]olling place relocations,” (4) “[r]efusal to place polling sites on college campuses,” (5) “[p]roposing or passing legislation to

become a substitute for poll taxes. *See* Daniels, *supra* note 117, at 388. Specifically, she points to the “costs of obtaining” the various documents as a barrier for many voters. *Id.*

124. Feldman, *supra* note 118. Eventually, after “years of litigation,” the law would be “found to be discriminatory” by federal courts. *Id.*

125. *Id.*; *see also* BERMAN, *supra* note 31, at 286 (discussing North Carolina’s proposed voting laws, which “included requiring strict voter ID, cutting back early voting by a week, eliminating same-day registration during the early voting period, ending the two-thousand-dollar child dependency tax deductions for parents whose college students vote where they attend school, and rescinding the automatic restoration of voting rights for ex-felons”).

126. BERMAN, *supra* note 31, at 286.

127. Pilla, *supra* note 7, at 1529 (discussing the “eight restrictive voting laws” passed in Arizona post-*Shelby County*, “the highest of any one state previously subjected to preclearance”); Frances Krupkin, Comment, *Making the VRA Great Again: Arizona Discriminatory Voting Restrictions Cannot Stand After Brnovich*, 71 AM. U. L. REV. F. 14, 16–20 (2021) (describing how in the 2016 primary, “officials in Arizona’s largest County, Maricopa County, reduced the number of polling locations by [seventy percent] in advance of the 2016 primary,” which adversely affected Latino communities). The restrictions were passed after a historic level of diverse voters voted in the 2020 election. Pilla, *supra* note 7, at 1529.

128. States employed multiple tactics:

The impact of this new state legislation includes polling places closing in “heavily Black neighborhoods while increasing them in white ones, ending online voter registration, curtailing voting hours, making voting-by-mail harder, requiring photo ID, closing drive-through voting, eliminating drop boxes, empowering partisan poll-watchers to intimidate voters, preventing volunteers from giving voters water while they wait in long lines . . . [and] purging voters from the rolls,” to name a few.

Sample, *supra* note 68, at 59 (alteration in original) (omission in original) (quoting Jay Michaelson, *Jim Crow Is Back Because John Roberts Let It Happen*, DAILY BEAST (June 4, 2021, at 6:04 ET), <https://www.thedailybeast.com/jim-crow-is-back-because-john-roberts-let-it-happen/> (on file with the Temple Law Review)).

129. 72 *Forms of Voter Suppression*, VOTING RTS. ALL., <https://votingrightsalliance.org/voter-suppression-awareness/> [https://perma.cc/FDH4-ABJM] (last visited Dec. 15, 2025) [hereinafter *Voting Rights Alliance’s List of Suppression*].

130. *About Us*, VOTING RTS. ALL., <https://votingrightsalliance.org/about/> [https://perma.cc/9WEC-BY4Y] (last visited Dec. 15, 2025).

require fingerprints in order to vote,” and (6) “[b]arring Native American voters through residential address requirements for Native American lands which have PO [b]oxes.”¹³¹ In an extreme example, Georgia passed a law that banned the distribution of food and water to voters waiting in “hours-long lines” with violators facing criminal punishment.¹³²

In 2024, the Brennan Center for Justice released a report related to recent trends regarding the racial turnout gap.¹³³ The racial turnout gap, defined as “the difference in the turnout rate between white and nonwhite voters,” has been growing “since 2012 and is growing most quickly in parts of the country that were previously covered under Section 5” of the VRA.¹³⁴ The Brennan Center concluded that *Shelby County* and “the end of federal preclearance in regions with histories of racial discrimination increased the racial turnout gap.”¹³⁵

It is clear that post-*Shelby County* voter suppression is on the rise. This trend is predictable, because without the safeguards of Sections 4 and 5 of the VRA in place, states have more leeway to pass voting laws “that might be motivated by racially discriminatory intent or have discriminatory effects.”¹³⁶ As one legal scholar put it, the Supreme Court’s impact on Sections 4 and 5 made “modern-day voter discrimination a legislative free-for-all among states formerly covered under preclearance.”¹³⁷ While preclearance largely worked, its removal has been devastating to the progress previously made because of the VRA.¹³⁸

But aside from the dismantling of nearly sixty years of voter protections ensured by the VRA, another concern is looming: the reactions and political backlash by white Americans to a growing majority-minority U.S. population.

131. *Voting Rights Alliance’s List of Suppression*, *supra* note 129. The Alliance labeled one form of suppression as “Jim Crow 2.0”: “[r]equiring formerly incarcerated persons whose rights have been restored in the state of their offense to now pay fines, fees and restitution prior to restoration of the right to vote in a new state to which they have moved.” *Id.*

132. Maureen Edobor & Christopher B. Seaman, *Foreword: Voting Rights in a Politically Polarized Era*, 81 WASH. & LEE L. REV. 965, 966 n.4 (2024) (discussing S.B. 202, 2021 Gen. Assemb., Reg. Sess. (Ga. 2021)).

133. See generally KEVIN MORRIS & CORYN GRANGE, BRENNAN CTR. FOR JUST., GROWING RACIAL DISPARITIES IN VOTER TURNOUT, 2008–2022 (2024) (documenting the racial turnout gap in voting).

134. *Id.* at 3.

135. *Id.* at 21.

136. David Landau & Rosalind Dixon, *Abusive Judicial Review: Courts Against Democracy*, 53 U.C. DAVIS L. REV. 1316, 1386 n.321 (2020).

137. Sample, *supra* note 68, at 59.

138. See Edobor & Seaman, *supra* note 132, at 968–69 (“The preclearance requirement was remarkably effective at blocking hundreds of voting-related laws with either a racially discriminatory intent or effect, and it likely deterred an even greater number of discriminatory changes covered by jurisdictions.”).

II. THE UNITED STATES IS UNDERGOING A RACIAL DEMOGRAPHIC SHIFT

A racial demographic shift is underway in the United States.¹³⁹ The U.S. Census Bureau estimates that by 2044, the U.S. population will be majority-minority.¹⁴⁰ The white population's proportion of the total population has been declining for years. In 1980, the total U.S. population was nearly eighty percent white.¹⁴¹ By 2000, that number dropped to 69.1%.¹⁴² In 2011, the United States experienced the first so-called "majority-minority" birth cohort, which is characterized as "the first cohort in which the majority of U.S. babies were nonwhite minorities, of which Hispanics constituted the biggest minority group—more than one-quarter of all births."¹⁴³ As of the 2020 census, "nearly four of [ten] Americans identify with a race or ethnic group other than white."¹⁴⁴

Dr. William Frey, a senior fellow at the Brookings Institution, traced "minority and white population shifts" that "suggest[] that in much of the Melting Pot and increasingly in the New Sun Belt, the nation's growing diversity is leading to majority-minority areas."¹⁴⁵ The Melting Pot includes California, New Mexico, Texas, Florida, Illinois, New York, New Jersey, and Hawaii, and the New Sun Belt includes "Idaho, Utah, Colorado, Arizona, and the Southeast corridor of Georgia and the Carolinas, among others."¹⁴⁶

By 2060, white Americans are expected to comprise forty-four percent of the U.S. population.¹⁴⁷ Single-race non-Hispanic children will make up only thirty-six percent of all children, as compared to the current fifty-two percent of all U.S. children being single-race non-Hispanic.¹⁴⁸ Finally, the population of Asians, Hispanics, and multiracial persons is expected to grow significantly. Between 2014 and 2060, the Asian and

139. See JONATHAN VESPA, LAUREN MEDINA & DAVID M. ARMSTRONG, CENSUS BUREAU, DEMOGRAPHIC TURNING POINTS FOR THE UNITED STATES: POPULATION PROJECTIONS FOR 2020 TO 2060, at 7–8 (2020), <https://www.census.gov/content/dam/Census/library/publications/2020/demo/p25-1144.pdf> [<https://perma.cc/67U9-NN6S>]; WILLIAM H. FREY, DIVERSITY EXPLOSION: HOW NEW RACIAL DEMOGRAPHICS ARE REMAKING AMERICA 1–2 (2015) [hereinafter FREY, DIVERSITY EXPLOSION]; RUY TEIXEIRA, WILLIAM H. FREY & ROB GRIFFIN, STATES OF CHANGE: THE DEMOGRAPHIC EVALUATION OF THE AMERICAN ELECTORATE, 1974–2060, at 2 (2015), <https://www.americanprogress.org/wp-content/uploads/sites/2/2015/08/SOC-reportAugust15.pdf> [<https://perma.cc/AUQ3-ABBU>].

140. *New Census Bureau Report Analyzes U.S. Population Projections*, U.S. CENSUS BUREAU (Mar. 3, 2015), <https://www.census.gov/newsroom/archives/2015-pr/cb15-tps16.html> [<https://perma.cc/G8ZK-5RG6>].

141. William H. Frey, *The Nation Is Diversifying Even Faster than Predicted, According to New Census Data*, BROOKINGS (July 1, 2020) [hereinafter Frey, *The Nation Is Diversifying Even Faster than Predicted*], <https://www.brookings.edu/articles/new-census-data-shows-the-nation-is-diversifying-even-faster-than-predicted> [<https://perma.cc/8XF8-DSM3>].

142. *Id.*

143. FREY, DIVERSITY EXPLOSION, *supra* note 139, at 21.

144. Frey, *The Nation Is Diversifying Even Faster than Predicted*, *supra* note 141.

145. FREY, DIVERSITY EXPLOSION, *supra* note 139, at 60.

146. *Id.* at 44–46.

147. William H. Frey, *New Projections Point to a Majority Minority Nation in 2044*, BROOKINGS (Dec. 12, 2014) [hereinafter Frey, *New Projections Point to a Majority Minority Nation*], <https://www.brookings.edu/articles/new-projections-point-to-a-majority-minority-nation-in-2044> [<https://perma.cc/2N7S-WPMX>].

148. *New Census Bureau Report Analyzes U.S. Population Projections*, *supra* note 140.

Hispanic populations are expected to “more than double,” and the multiracial population is expected to “more than triple.”¹⁴⁹

Certain states have already attained majority-minority populations, such as Hawaii, California, New Mexico, Texas, and Nevada, as well as the District of Columbia.¹⁵⁰ Many other states have not. In a February 2015 report, scholars such as Dr. Ruy Teixeira predicted when other state populations will turn majority-minority.¹⁵¹ For example, some predict that “Alaska, Louisiana, and New York” will flip to majority-minority in the 2030s, and “Connecticut, Delaware, Illinois, Mississippi, Oklahoma, and Virginia” will flip in the 2040s.¹⁵²

Dr. Teixeira and colleagues took their projection a step further and made an interesting distinction. Specifically, they predicted when the population of *eligible voters* for a given state would become majority-minority (given that a total population count includes those under eighteen, which means that the year a state is predicted to flip to a majority-minority general population may not be the same year as when its voting population flips majority-minority).¹⁵³

This predicted shift in racial demographics has seemingly been met with mixed, and often negative, reactions. As one commentator noted, “This impending demographic shift received significant coverage in mainstream news media.”¹⁵⁴ New York University law professor Brittany Farr’s analysis revealed that “news coverage of demographic changes has regularly used anxiety-provoking rhetoric to link the majority-minority shift to white decline.”¹⁵⁵

Section III discusses the reaction to these predictions via findings from psychologists who are studying white American responses to the impending demographic shift.

III. PSYCHOLOGICAL RESEARCH ON THE MAJORITY-MINORITY RACIAL SHIFT

To better explain the shortcomings of *Shelby County* and why federal preclearance should be reinstated—and how its coverage formula should be tailored—this Section

149. Frey, *New Projections Point to a Majority Minority Nation*, *supra* note 147.

150. Dudley L. Poston, Jr. & Rogelio Sáenz, *U.S. Whites Will Soon Be the Minority in Number, But Not Power*, BALT. SUN (June 7, 2019, at 08:51 ET), <https://www.baltimoresun.com/2017/08/08/us-whites-will-soon-be-the-minority-in-number-but-not-power/> (on file with the Temple Law Review). “Majority-minority” is defined as “a population where less than half of the individuals are identified as non-Hispanic whites.” TEIXEIRA ET AL., *supra* note 139, at v.

151. TEIXEIRA ET AL., *supra* note 139, at 2–3.

152. *Id.* at 2. For a table of “[m]ajority-minority tipping years,” see *id.* at 3.

153. *Id.* at iv, 3 (defining “eligible voters” as “the portion of the population that is ages [eighteen] and older and is also a citizen of the United States”).

154. Brittany Farr, Essay, *A Demographic Moral Panic: Fears of a Majority-Minority Future and the Depreciating Value of Whiteness*, U. CHI. L. REV. ONLINE (2021), <https://lawreview.uchicago.edu/online-archive/demographic-moral-panic-fears-majority-minority-future-and-deprecating-value> [https://perma.cc/QQZ9-3LLQ].

155. *Id.* Professor Brittany Farr illustrates this with several examples of headlines. One U.S. News headline was “The Declining Influence of White Christian America, in Charts.” *Id.* A National Geographic piece was titled, “As America Changes, Some Anxious Whites Feel Left Behind.” *Id.*

delves into the various research efforts by psychologists to understand the public's reactions to racial demographic shifts and the societal advancement of people of color.

A. Perceived Status Threat

This Article's analysis of psychological research begins with the basic concept of *threat* or, more specifically, *status threat*. As one scholar defined it, “[s]tatus threat is the *social psychological* component of a broader theory of reactionary politics in which dominant groups seek a return to a time during which their dominance remained unquestioned.”¹⁵⁶ Social psychologists Dr. Maureen Craig and Dr. Jennifer Richeson are leading researchers in this burgeoning area of psychology,¹⁵⁷ which looks to study how white Americans respond to America's “growing racial diversity.”¹⁵⁸ The research on this topic is directly relevant to what the majority overlooked in *Shelby County*, the surge of attacks on voting rights since, and the future threats facing the right to vote.

1. Sociology's Group Threat Theory

Psychology's research on status threats stands on the shoulders of early sociologists such as Dr. Hubert Blalock, who originally proposed group threat theory, or racial threat theory,¹⁵⁹ and Dr. Herbert Blumer, who established the framework that “racial prejudice is connected to a sense of group position.”¹⁶⁰ These sociologists and others have “long connected changing racial/ethnic demography with the perception of threat to the majority and the institutionalization of exclusionary barriers to preserve its social privileges.”¹⁶¹

Group size has come to be equated with group advantage and/or dominance.¹⁶² But what happens when other groups begin to grow in size? Dr. Blalock suggested that under

156. Christopher Sebastian Parker & Howard Lavine, *Status Threat: The Core of Reactionary Politics*, 46 ADVANCES POL. PSYCH. 80, 84 (2024) (emphasis added).

157. See Maureen A. Craig, Julian M. Rucker & Jennifer A. Richeson, *Racial and Political Dynamics of an Approaching “Majority-Minority” United States*, ANNALS AM. ACAD. POL. & SOC. SCI., May 2018, at 204, 206 [hereinafter Craig et al., *Approaching a Majority-Minority U.S.*] (noting the research in this area “is still quite young”).

158. See *id.* at 205, 211 (reviewing the growing body of “literature on the psychological, social, and political implications of making salient projected changes in the racial/ethnic demographics of the United States”); Maureen A. Craig, Julian M. Rucker & Jennifer A. Richeson, *The Pitfalls and Promise of Increasing Racial Diversity: Threat, Contact, and Race Relations in the 21st Century*, 27 CURRENT DIRECTIONS PSYCH. SCI. 188, 188 (2018) [hereinafter Craig et al., *Pitfalls and Promise*] (reviewing “research on the effects of actual racial and ethnic diversity on intergroup outcomes, followed by the emerging research examining the broad effects of anticipated increases in the racial diversity of the nation”).

159. See generally HUBERT M. BLALOCK, JR., TOWARD A THEORY OF MINORITY-GROUP RELATIONS (1967) (developing group threat theory to explain racial conflict); Cindy Brooks Dollar, *Racial Threat Theory: Assessing the Evidence, Requesting Redesign*, J. CRIMINOLOGY, Jan. 2014, at 1, 1 (reviewing and critiquing evidence and empirical work related to racial threat theory and proposing future scholarship regarding “police expenditures, arrests, sentencing, and capital punishment”).

160. Richard Alba, Rubén G. Rumbaut & Karen Marotz, *A Distorted Nation: Perceptions of Racial/Ethnic Group Sizes and Attitudes Toward Immigrants and Other Minorities*, 84 SOC. FORCES 901, 901 (2005).

161. *Id.* at 901–02.

162. E.g., Herbert Blumer, *Race Prejudice as a Sense of Group Position*, 1 PAC. SOC. REV. 3, 4 (1958) (identifying the “basic types of feeling that seem to be always present in race prejudice in the dominant group”);

group threat theory, perceived power threats to the majority's status increase with greater proportions of minority members in the total population.¹⁶³ Failure to reduce the minority group's resources or to lower the minority's numbers will then result in the majority group's "need for a high degree of mobilization of resources in order to maintain dominance."¹⁶⁴ Resources, in this context, specifically refer to sources of power or the ability to exercise power,¹⁶⁵ such as money, authority, memberships in certain organizations, and voting rights.¹⁶⁶

In 1967—only two years after President Johnson signed the VRA into law—Dr. Blalock theorized how the majority responds to a threat and maintains their dominance, stating:

Organizational effectiveness must be improved if the power advantage is to be sustained. Ideological systems will usually be developed (or revived) which explicitly call the nature of the minority threat to the attention of the dominant-group members. Deviants are more likely to be defined as traitors, and the more threatening stereotypes of the minority may be emphasized. Justifications for modifying the rules of fair play may be developed and, in extreme situations, the violent actions of organizations such as the Ku Klux Klan may be ignored or even justified. It becomes especially necessary to reduce the organizational strength of the opposing group through threats of violence, dividing its leadership, or offering compensatory inducements to cooperation.¹⁶⁷

Dr. Blalock also proposed three general types of discrimination or prejudice commonly deployed by the majority when faced with a power threat: (1) the majority limits political rights of minority groups, (2) the majority spreads symbolic segregation, and (3) the majority adopts threat-oriented ideological systems.¹⁶⁸

Other sociologists have contributed to this line of work. For example, Dr. Blumer theorized "four basic types of feeling that seem to be always present in race prejudice in the dominant group."¹⁶⁹ First, the dominant group is expected to have a sense of superiority, which results in labeling the subordinate group with disparaging qualities, such as "laziness, dishonesty, greediness, unreliability, stupidity, deceit[,] and immorality."¹⁷⁰ Second, dominant groups treat the minority/subordinate group as

Craig et al., *Pitfalls and Promise*, *supra* note 158, at 188 ("Longstanding theoretical work posits that minority group size is commonly used as a proxy for estimating that group's political . . . power and, further, that larger or growing minority groups elicit feelings of threat in the dominant majority that often engender prejudice." (citations omitted)).

163. BLALOCK, *supra* note 159, at 148; see also Apoorva Sarmal, Leah Cha & Allison L. Skinner, *Shifts in Racial Inequalities and White Backlash in the 21st Century U.S.*, PERSONALITY & SOC. PSYCH. BULL., Sep. 7, 2024, at 1, 7 ("[R]acial threat theory posits that when people of color progress, dominant group members are threatened by the diminishing gap between the groups.").

164. BLALOCK, *supra* note 159, at 154.

165. *Id.* at 113.

166. *Id.*

167. *Id.* at 160.

168. *Id.* at 159.

169. Blumer, *supra* note 162, at 4.

170. *Id.*

different, or alien.¹⁷¹ Third, the dominant group believes that it holds a proprietary right to certain privileges and advantages.¹⁷² Last, the dominant group fears the minority group intends to threaten the position of the majority group.¹⁷³

2. Psychology Looks at the Majority Group's Feelings for (and Biases Against) the Minority/Subordinate Group

Psychologists like Dr. Craig and Dr. Richeson—along with their collaborators and students—have continued to build off of and extend Dr. Blalock and Dr. Blumer's foundational work. They have examined how individuals respond to what has been termed “racial demographic shift or racial shift information.”¹⁷⁴

A key contribution by psychologists is their implementation of experimental methods. One of the typical experimental paradigms for this line of research is described below:

[R]esearchers expose[] participants to (generally accurate) information about demographic trends, with [w]hite people in historically White-dominated countries becoming less than 50% of the total population in a matter of decades In control conditions, participants are often exposed to information reflecting demographic stability or information irrelevant to the interracial dynamic under investigation (e.g., control information about an aging population or about growing minority populations in another country).¹⁷⁵

a. *Exposure to Racial Shift Information Causes White Americans To Endorse Conservative Candidates and Policies*

Dr. Craig and Dr. Richeson employed such a paradigm to explore whether white individuals would be more likely to endorse political conservatism after being exposed to information about an “impending majority-minority racial demographic shift.”¹⁷⁶

They presented their participants—white Americans who self-identified as politically independent—one of two surveys that varied on whether or not participants were told about the looming “majority-minority racial shift.”¹⁷⁷ Participants in the racial-shift condition were asked “if they had heard that California had become a

171. *Id.* The minority is characterized as “not of our kind.” *Id.*

172. *Id.* This could include “the claim to certain positions of control and decision-making as in government and law.” *Id.* Dr. Blumer does not explicitly delineate the president of the United States as one such position, *id.*, but I doubt he would object to this formulation.

173. *Id.*

174. Gordon Hodson, Megan Earle & Maureen A. Craig, *Privilege Lost: How Dominant Groups React to Shifts in Cultural Primacy and Power*, 25 GRP. PROCESSES & INTERGROUP RELS. 625, 628 (2022).

175. *Id.*

176. Maureen A. Craig & Jennifer A. Richeson, *On the Precipice of a “Majority-Minority” America: Perceived Status Threat from the Racial Demographic Shift Affects White Americans’ Political Ideology*, 25 PSYCH. SCI. 1189, 1190 (2014) [hereinafter Craig & Richeson, *On the Precipice*]. The authors later corrected some of their findings due to an error in a statistical package. See Maureen A. Craig & Jennifer A. Richeson, *Corrigendum: On the Precipice of a “Majority-Minority” America: Perceived Status Threat from the Racial Demographic Shift Affects White Americans’ Political Ideology*, 26 PSYCH. SCI. 950, 950 (2015) [hereinafter Craig & Richeson, *Corrigendum*].

177. Craig & Richeson, *On the Precipice*, *supra* note 176, at 1190.

majority-minority state.”¹⁷⁸ Remarkably, when Dr. Craig and Dr. Richeson analyzed the responses of individuals living closest to the shift—the West Census Region—individuals in the racial-shift condition were three times more likely to lean towards the Republican Party when compared to individuals in the control condition.¹⁷⁹

The researchers then explored whether “group-status threat” explained the shift in political ideology.¹⁸⁰ In the next iteration, participants read one of two press releases. In the racial-shift condition, the press release projected racial minorities would constitute the majority of the U.S. population by 2042.¹⁸¹ In the control condition, the press release discussed changes in geographic mobility in the United States.¹⁸² After reading the press release, participants were asked about the threat they perceived to white Americans’ social status.¹⁸³ Specifically, participants were asked about three race-related and two non-race-related political issues. The race-related questions “asked participants to indicate the extent to which the required time to be eligible for U.S. citizenship should be increased or decreased, the extent to which foreign immigration to the United States should be increased or decreased, and their degree of support for affirmative action.”¹⁸⁴ The policy questions were aimed at determining the extent that individuals would endorse conservative policies.¹⁸⁵

Dr. Craig and Dr. Richeson found that the participants in the racial-shift condition demonstrated greater support for conservative policies.¹⁸⁶ These same participants also “perceived more group-status threat.”¹⁸⁷

Taken together, the studies revealed how white Americans—the current majority group—respond to the simple manipulation of making salient looming racial demographic shifts. The looming shift evokes a sense of threat to their racial group’s standing in society, which then compels them to endorse more conservative positions on a variety of race-related and non-race-related issues.¹⁸⁸

Although Dr. Craig and Dr. Richeson do not mention voting-related issues, their takeaways are particularly relevant to this Article: “[White Americans] may be increasingly motivated to support conservative candidates and policies in response to these demographic changes, which may lead to an increasingly polarized political landscape.”¹⁸⁹ This is relevant because voter suppression laws aimed at voters of color

178. *Id.*

179. Craig & Richeson, *Corrigendum*, *supra* note 176, at 950.

180. Craig & Richeson, *On the Precipice*, *supra* note 176, at 1191.

181. *Id.*

182. *Id.*

183. *Id.* To investigate “perceived group-status threat,” Dr. Craig and Dr. Richeson “asked participants to indicate their agreement with the idea that increases in racial minorities’ status will reduce [w]hite Americans’ status.” *Id.*

184. *Id.* at 1191–92.

185. *Id.* at 1192.

186. Craig & Richeson, *Corrigendum*, *supra* note 176, at 951.

187. *Id.*

188. *Id.* at 952.

189. *Id.* This appears to complement findings that “white[] Americans] who live in areas with more [B]lack neighbors are more likely to both register as Republican and vote for a Republican candidate than white[] Americans] who live in areas with fewer [B]lack neighbors.” Maureen A. Craig & Jennifer A. Richeson, *Majority No More? The Influence of Neighborhood Racial Diversity and Salient National Population Changes*

are ostensibly a Republican-led effort.¹⁹⁰ For example, states like Florida, Georgia, and Texas passed radical changes to their election laws following Republican efforts—led by President Donald Trump—questioning the accuracy of the 2020 presidential election by spreading allegations of fraud.¹⁹¹

Other research complements Dr. Craig and Dr. Richeson's findings and shows how the racial demographic shift may lead to once-dominant racial groups supporting conservative political candidates. For example, a 2018 study examined group status threat and how the changes to America's racial demographics could have explained white Americans' support for President Trump and his policies.¹⁹² Interestingly, this study suggests that the perceived threat resulting from the demographic shift may depend on an individual's level of ethnic identification—or the degree that race or ethnicity is a key part of that individual's identity.¹⁹³

The participants—all white Americans—were exposed to the same press release materials as used by Dr. Craig and Dr. Richeson.¹⁹⁴ After being shown the press releases, the participants then indicated their support for presidential primary candidates from the Republican and Democratic parties.¹⁹⁵ They were also assessed on “anti-immigrant attitudes, opposition to political correctness, and ethnic identification.”¹⁹⁶ As to ethnic identification, the researchers predicted that white Americans who considered their race or ethnicity to be a “central aspect of their identity” would be more likely to feel threatened by the press release that projected a coming increase in ethnic diversity.¹⁹⁷

The findings revealed that perceived threat varied based on ethnic identification. Specifically, status threat only appeared among white Americans that reported higher ethnic identification.¹⁹⁸ These Americans showed greater group status threat in the

on Whites' Perceptions of Racial Discrimination, RUSSELL SAGE FOUND. J. SOC. SCI., Aug. 2018, at 141, 142 (first citing Micheal W. Giles & Kaenan Hertz, *Racial Threat and Partisan Identification*, 88 AM. POL. SCI. REV. 317 (1994); and then citing Ryan D. Enos, *What the Demolition of Public Housing Teaches Us About the Impact of Racial Threat on Political Behavior*, 60 AM. J. POL. SCI. 123, 126 (2016)).

190. See Katherine Hapgood, *See Which States Are Expanding—or Restricting—Voting Rights*, CTR. FOR PUB. INTEGRITY (Oct. 27, 2023), <https://publicintegrity.org/politics/elections/who-counts/see-which-states-are-expanding-or-restricting-voting-rights/> [https://perma.cc/U98Q-XXPB] (finding in an investigation of all fifty states that twenty-six states restricted voting for people of color and others “following former President Donald Trump’s 2020 re-election defeat” and that all twenty-six of those states were “under Republican control”). Professors Robert Lieberman and Daniel Schlozman found “that highly competitive states with high levels of white population decline [and] racially polarized states are in fact more prone to Republican-led electoral backsliding than states in other categories.” Robert C. Lieberman & Daniel Schlozman, *Democratic Backsliding and Ethnic Politics: The Republican Party in the United States*, 2024 COMPAR. POL. STUD. 1, 23. Such “states have been among the states most prone to broad-gauge racially targeted voter suppression efforts.” *Id.*

191. Lieberman & Schlozman, *supra* note 190, at 23.

192. See Brenda Major, Alison Blodorn & Gregory Major Blascovich, *The Threat of Increasing Diversity: Why Many White Americans Support Trump in the 2016 Presidential Election*, 21 GRP. PROCESSES & INTERGROUP RELS. 931, 937 (2018).

193. *Id.* at 937.

194. *Id.* at 933.

195. *Id.* (including Donald Trump, Ted Cruz, John Kasich, Hillary Clinton, and Bernie Sanders).

196. *Id.*

197. *Id.*

198. *Id.* at 934.

racial-shift condition compared to the control condition.¹⁹⁹ But for the white Americans that were low in ethnic identification, there was no effect of condition—meaning, the racial-shift condition did not evoke greater threat. On top of this, the individuals that were high in ethnic identification *and* placed in the racial-shift condition showed “marginally greater positivity towards [President] Trump” and were more likely to vote for him.²⁰⁰

According to the researchers, the current political climate suggests these findings could have large implications for American politics:

As [w]hite Americans’ numerical majority shrinks and they increasingly feel that their group’s status is threatened, [w]hite identity will become increasingly salient and central to [w]hite Americans. To the extent that their ethnic identity as [w]hite becomes an important part of their self-concept, it is likely to guide [w]hite Americans’ political preferences in the future, especially on policies and issues closely related to group status threat, such as those related to immigration and tolerance of diversity.²⁰¹

The fact that participants with greater group status threat supported President Trump dovetails with another recent study that suggests the feelings of threat associated with changes in group status depend on political ideology.²⁰² In that study, white conservatives demonstrated more group status threat than white liberals across both experimental conditions (racial-shift and race-neutral). Interestingly, white liberals in the racial-shift condition actually experienced *less* group status threat compared to the liberals in the race-neutral condition.²⁰³

b. Exposure to Racial Shift Information Causes Increased Racial Bias—Both Implicit and Explicit

Related research has shown that exposure to the racial shift leads to more racial bias, such that white Americans prefer interactions with fellow white Americans as opposed to members of racial minorities, as the latter causes discomfort.²⁰⁴ Exposure to the racial shift also leads to greater pro-white and anti-minority sentiment,²⁰⁵ implicit bias towards minority groups that are not primarily responsible for the racial demographic shift in the United States,²⁰⁶ and negative attitudes towards Black, Latino,

199. *Id.*

200. *Id.* at 935.

201. *Id.* at 938.

202. Xanni Brown, Julian M. Rucker & Jennifer A. Richeson, *Political Ideology Moderates White Americans’ Reactions to Racial Demographic Change*, 25 GRP. PROCESSES & INTERGROUP RELS. 642, 656 (2022) (“[T]he level of threat or alarm triggered by this racial shift information differs for [w]hite liberals and conservatives.”).

203. *Id.* at 654–55.

204. See Maureen A. Craig & Jennifer A. Richeson, *More Diverse Yet Less Tolerant? How the Increasingly Diverse Racial Landscape Affects White Americans’ Racial Attitudes*, 40 PERSONALITY & SOC. PSYCH. BULL. 750, 751–53 (2014) [hereinafter Craig & Richeson, *More Diverse Yet Less Tolerant*] (predicting that making salient a shift in racial demographics will result in white Americans “perceiv[ing] the shifting racial demographics as a group status threat and, thus, express[ing] greater racial bias”).

205. *Id.* at 754.

206. *Id.*

and Asian Americans.²⁰⁷ Other work complements these findings and suggests that in communities with larger Black populations, white majority community members harbor more negative racial attitudes compared to those in communities with smaller Black populations.²⁰⁸

c. Exposure to Racial Shift Information Affects Emotion

White Americans also demonstrate emotional changes when presented with information about the pending racial demographic shift. In one study, white Americans considered a future where their group was no longer the numerical majority anymore. They “reported feeling more angry and fearful of ethnic minorities,” and they also “reported feeling greater sympathy toward their [in-group].”²⁰⁹ The researchers explained that these feelings likely serve “to encourage members of advantaged groups to try to maintain existing power differences between groups.”²¹⁰

d. Research on Group Status Threat Informs Preclearance

The above psychology findings on group status threat²¹¹ can inform Congress’s next steps in crafting a new preclearance coverage formula. The most recent coverage formula, which was held unconstitutional in *Shelby County*, focused on jurisdictions “that had a voting test and less than [fifty] percent voter registration or turnout as of 1972.”²¹² This formula focused on the past. While that past may still be important for identifying states with a history of discriminatory election laws and to prevent backsliding, that formula failed to consider how *future* events, like a state tipping from majority-white to majority-minority, may cause a state to react (because of perceived status threat) in ways that suppress voting.

As the above research shows, information about the United States becoming majority-minority can lead to white Americans perceiving a threat to their group’s status. This is particularly true for white Americans with higher ethnic identification. Group status threat can motivate white Americans to support conservative policies and candidates, and those Republican candidates, in turn, tend to lead voter suppression efforts (which this Article explores in greater detail below). Without preclearance for these efforts in place, status threat will continue to pose a challenge to equal access to the vote.

207. *Id.* at 756–57. Not all of the research out there is doom and gloom. See Craig et al., *Pitfalls and Promise*, *supra* note 158, at 189 (discussing intergroup contact theory, which “presents the ideal circumstances for contact . . . that can reduce intergroup anxiety, feelings of threat, and hostility towards racial out-groups”). In fact, a line of work “suggest[s] that proximity with minority outgroup members can have positive implications for majority group members’ intergroup attitudes.” *Id.*

208. E.g., Alba et al., *supra* note 160, at 910–12 (evaluating how majority-group respondents’ distorted perceptions of minority group size resulted in negative attitudes towards immigrant, Black, and Hispanic people).

209. H. Robert Outten, Michael T. Schmitt, Daniel A. Miller & Amber L. Garcia, *Feeling Threatened About the Future: Whites’ Emotional Reactions to Anticipated Ethnic Demographic Changes*, 38 PERSONALITY & SOC. PSYCH. BULL. 14, 16 (2012).

210. *Id.* at 22.

211. See *supra* Part III.A.2.a–c.

212. See *Shelby County v. Holder*, 570 U.S. 529, 538–39 (2013) (explaining how the 2006 renewal of the VRA essentially adopted the formula that was put into place in 1975).

The root cause of group status threat is the racial demographic shift. Therefore, any future preclearance coverage formula must take racial demographic shifts into consideration, as this Article discusses more in Section V.

B. Psychology Research on President Obama and Backlash Effects

Relatedly, positive strides made by members of racial minority groups may trigger negative psychological reactions in members of the racial majority group. The *Shelby County* majority acknowledged that presently “minority candidates hold office at unprecedented levels.”²¹³ They lauded these “great strides” made because of the VRA and rebuked Congress for “ignor[ing] these developments.”²¹⁴ Psychological research, however, suggests that a more appropriate course of action would be to batten down the hatches. As described here and in more detail below, progress made by people of color in holding public office—such as this Article’s focus, President of the United States—actually results in backlash effects. This Article focuses specifically on the example of President Obama’s election.

The election of President Obama as the first African American president and the impact of his election and presidency on human behavior caught the interests of psychologists.²¹⁵ Initially, social psychologists hypothesized that President Obama was “a single role model powerful enough to positively influence fellow African Americans and intergroup relations in general.”²¹⁶

Social cognitive psychologists coined the term the “Obama effect” to “classify the beneficial consequences of [President] Obama as a single significant African-American exemplar on self-perception, person perception, the development of social cognition, and the intersection of affect and cognition.”²¹⁷ When social psychologist Ashby Plant and

213. *Id.* at 531 (quoting Nw. Aus. Mun. Util. Dist. No. One v. Holder, 557 U.S. 193, 202 (2009)).

214. *Id.* at 549, 553.

215. The journal *Social Cognition* devoted an entire special issue to the psychological legacy of President Obama. See, e.g., Luis M. Rivera & E. Ashby Plant, *The Psychological Legacy of Barack Obama: The Impact of the First African-American President of the United States on Individuals’ Social Cognition*, 34 SOC. COGNITION 495, 497 (2016) (introducing the special issue and describing its purpose as seeking “to revisit the Obama effect and further understand its consequences on attitudes toward African Americans and the self-concept of African Americans themselves”).

216. *Id.* at 496.

217. *Id.* at 496–97 (citing Corey Columb & E. Ashby Plant, *Revisiting the Obama Effect: Exposure to Obama Reduces Implicit Prejudice*, 47 J. EXPERIMENTAL SOC. PSYCH. 499, 501 (2011) (finding “direct evidence that exposure to [President] Obama can reduce implicit prejudice”); Thomas E. Fuller-Rowell, Anthony L. Burrow & Anthony D. Ong, *Changes in Racial Identity Among African American College Students Following the Election of Barack Obama*, 47 DEVELOPMENTAL PSYCH. 1608, 1608 (2011) (finding that President Obama’s election led to increases in identity exploration among African American college students); David M. Marx, Sei Jin Ko & Ray A. Friedman, *The “Obama Effect”: How a Salient Role Model Reduces Race-Based Performance Differences*, 45 J. EXPERIMENTAL SOC. PSYCH. 953, 953 (2009) (finding President Obama’s election had a positive influence on Black Americans’ academic performance); Anthony D. Ong, Anthony L. Burrow & Thomas E. Fuller-Rowell, *Positive Emotions and the Social Broadening Effects of Barack Obama*, 18 CULTURAL DIVERSITY & ETHNIC MINORITY PSYCH. 424, 424 (2012) (finding that writing about President Obama increased positive emotions in African American college students); E. Ashby Plant, Patricia G. Devine, William T.L. Cox, Corey Columb, Saul L. Miller, Joanna Goplen & B. Michelle Peruche, *The Obama Effect: Decreasing Implicit Prejudice and Stereotyping*, 45 J. EXPERIMENTAL SOC. PSYCH. 961, 961 (2009) [hereinafter Plant et al., *The Obama Effect*] (finding that an extensive exposure to President Obama reduced implicit bias)).

her colleagues first discussed the Obama effect in 2009, there was a certain sense of hope embodied in their conclusion that his election “produced a fundamental change” in “the minds of the American public.”²¹⁸ Although they were encouraged, they acknowledged “the full impact of his historic election will play out over time.”²¹⁹

However, in the years since President Obama’s first election, the political climate has dramatically changed. In 2016, psychologist Dr. Allison Skinner and sociologist Dr. Jacob Cheadle considered whether President Obama’s election evoked feelings of threat to white Americans’ status in the United States.²²⁰ Dr. Skinner and Dr. Cheadle’s hypothesis incorporates the previously discussed theories, stating, “[g]roup threat theory suggests that highlighting the historic importance of the election of President Obama as a racial milestone may threaten the dominant position of [white Americans] in the U.S. government, thereby increasing racial bias.”²²¹

In their investigation, Dr. Skinner and Dr. Cheadle found that framing President Obama’s election “as a contemporary racial milestone” increased white Americans’ implicit racial bias.²²² This was particularly true of white Americans who were not motivated to control their prejudice towards Black Americans. For them, “[President] Obama may pose an enduring threat to their racial privilege.”²²³ This may be because he is “a lasting reminder of the erosion of [w]hites’ exclusive hold on power in the [United States].”²²⁴

This finding, read together with other social science research and events discussed below, strongly suggests that President Obama is threatening to some white Americans, and perhaps that even the 2016 election results—and President Trump’s campaign—were backlash to his election.²²⁵ For instance, Joshua Inwood, professor of geography at Pennsylvania State University, documented how President Trump delivered a message at a 2016 presidential election rally “calculated to drive home the fears of whites who were worried about the demographic transitions occurring in the United States as well as the threats to their marginalized economic position.”²²⁶ And well before that, after President Obama surprisingly won Indiana in the 2008 presidential election, the state’s “GOP-dominated state legislature” passed an election law “designed to prevent [Black Americans] from having that kind of influence at the ballot box ever again.”²²⁷ The

218. Plant et al., *The Obama Effect*, *supra* note 217, at 961–64.

219. *Id.* at 963.

220. Allison L. Skinner & Jacob E. Cheadle, *The “Obama Effect”? Priming Contemporary Racial Milestones Increases Implicit Racial Bias Among Whites*, 34 SOC. COGNITION 544, 545 (2016).

221. *Id.* at 546.

222. *Id.* at 551.

223. *Id.* at 554.

224. *Id.*

225. See Ho, *supra* note 97, at 823 (“And the forty-five-year period of progressive expansion of the right to participate in elections from 1965 to 2010, which produced the nation’s first African-American President, has now been met with a ferocious backlash in the form of registration and voting restrictions that disproportionately affect precisely those segments of the electorate that emerged in record numbers in 2008, carrying Barack Obama to victory.”).

226. Joshua Inwood, *White Supremacy, White Counter-Revolutionary Politics, and the Rise of Donald Trump*, 37 ENV’T & PLAN. C: POL. & SPACE 579, 592 (2019).

227. CAROL ANDERSON, ONE PERSON, NO VOTE: HOW VOTER SUPPRESSION IS DESTROYING OUR DEMOCRACY 151 (2018) [hereinafter ANDERSON, ONE PERSON, NO VOTE].

Indiana law, which limited early voting sites in counties containing 325,000 residents or more, directly impacted Marion County, “home to Indianapolis and the lion’s share of African Americans in the state”—which played a large role in President Obama’s victory in Indiana.²²⁸

Without preclearance, states are free to pass discriminatory laws like Indiana’s. But even if the VRA’s pre-*Shelby County* formula had remained in place, some states—such as Indiana, which was not subjected to preclearance²²⁹—would be able to fly under the radar. As discussed in this Article’s proposal, an updated coverage formula could take into consideration minority-specific electoral milestones, such as the election of a person of color as president. One of the problems the *Shelby County* majority had with the VRA’s preclearance coverage formula was that it was not “grounded in current conditions.”²³⁰ By tailoring the formula to guard against racial backlash effects, including the ones discussed below, the formula will accommodate current conditions in real time.

Taken together, the current psychological findings demonstrate that some white Americans—members of the current racial majority in the United States—experience feelings of “threat to their dominant (social, economic, political, and cultural) status” when faced with the coming majority-minority shift.²³¹ This perceived threat results in white Americans growing more protective of their group (the in-group), while exhibiting hostility to the out-group and the policies that support it.²³² Moreover, racial progress by minority candidates appears to come at a cost in the form of backlash effects, as discussed in more detail below.

IV. FINDINGS FROM OTHER DISCIPLINES, PRESIDENT OBAMA’S PRESIDENCY, AND THE 2016 ELECTION COMPLEMENT AND ILLUSTRATE THE PSYCHOLOGY FINDINGS

A. *Group Threat Drives Political Mobilization and Voting Behavior*

While the psychological research on group status threat has not fully explored voting behavior, political scientists have. This work complements the findings discussed above in Section III.

Political scientists have found that changes in minority populations and perceived group threat manifest in changes in political mobilization, as evidenced by voting behavior and partisan preferences. In one such study on this topic, Professor Ryan Enos, a political scientist at Harvard University, found direct evidence of how the size of the minority population bears upon voting behaviors of the threatened majority.²³³ The study measured how the demolition of a large-scale public housing project in Chicago, which was mostly occupied by Black families, influenced white political mobilization in the

228. *Id.*

229. *Jurisdictions Previously Covered by Section 5*, U.S. DEP’T OF JUST.: C.R. DIV. (May 17, 2023), <https://www.justice.gov/crt/jurisdictions-Previously-covered-section-5> [https://perma.cc/C24T-5F34].

230. *Shelby County v. Holder*, 570 U.S. 529, 554 (2013).

231. Craig et al., *Approaching a Majority-Minority U.S.*, *supra* note 157, at 206.

232. Craig et al., *Pitfalls and Promise*, *supra* note 158, at 189.

233. See Enos, *supra* note 189, at 138–39.

surrounding area, as measured by turnout between the 2000 and 2004 elections.²³⁴ The demolition, which began around 2000, involved “[twelve] large public housing projects in Chicago,” and it “removed roughly [twenty-five thousand] people from the Chicago neighborhoods in which they had lived.”²³⁵ Almost all of these were Black families. Some of these “demolished housing projects were in close proximity to predominantly white neighborhoods.”²³⁶ The turnout of white voters living near the low-income housing decreased by 13.4 percentage points after the demolitions took place.²³⁷ The findings illustrate how the very presence of a subordinate group within the proximity of a majority group can influence the majority’s behavior.

Additionally, political scientists have shown how racial threats affected white voters’ preferences to vote along Republican party lines. For example, in the above Chicago voter study, Professor Enos found that the pro-Republican preferences held by white voters were the product of a racial threat the white voters felt from their Black neighbors.²³⁸ Specifically, the study revealed that white voters who lived closer to the low-income housing were more likely to vote for conservative candidates compared to white voters living farther away—but the difference disappeared after the Black families were removed.²³⁹

In another article published in 1994, political scientists Dr. Micheal Giles and Dr. Kaenan Hertz evaluated fifteen years of voting behavior in Louisiana between 1975 and 1990—closely coinciding with the VRA’s conception and expansion.²⁴⁰ They found that in Louisiana, as the percentage of Black Americans that could vote increased within a given parish (or county), so did the percentage of white Americans registering with the Republican party.²⁴¹ The white voters were leaving the Democratic Party.²⁴² This link was found primarily in parishes “with lower white median incomes.”²⁴³

234. *Id.* at 123–24, 128.

235. *Id.* at 123.

236. *Id.*

237. *Id.* at 130.

238. *Id.* at 137.

239. *Id.* at 124.

240. Giles & Hertz, *supra* note 189, at 323. The specific theoretical lens Dr. Giles and Dr. Hertz adopted was “power theory,” which “views relationships between groups as a function of their competitive positions in political, economic, and social arenas.” *Id.* at 317. “In contexts where the threat posed by a minority group is high, the dominant group’s response is predicted to be more hostile than in contexts where that threat is low.” *Id.*

241. *Id.* at 323.

242. Dr. Giles and Dr. Hertz recognized that while this could be in part due to racism, they could not rule out the possibility that “whites who exit the Democratic party in response to its increasingly [B]lack makeup may be seen as exiting an organization that in reality is less sensitive to their interests.” *Id.* at 324. As to the racism angle, other research had shown that “[w]hite electoral support for David Duke, an avowed racist, in his candidacy for the U.S. Senate in 1990 and the governorship of Louisiana in 1991 was positively linked to the percentage of registered voters who were [B]lack.” *Id.* at 319 (citing Micheal W. Giles & Melanie Buckner, *David Duke and Black Threat: An Old Hypothesis Revisited*, 55 J. POL. 702, 702 (1993)). But for a discussion of diverging views on this finding, see Enos, *supra* note 189, at 124.

243. Giles & Hertz, *supra* note 189, at 323.

Discussions about status threat are ongoing among political scientists. One group commented on it recently in 2024 and connected it to immigration and topics frequently at the heart of modern U.S. culture wars:

[S]tatus threat is occasioned by immigration—mainly from the global South (e.g., [President] Trump’s reference to “shithole” countries), along with a transformation of moral norms and social policies (e.g., DEI efforts in higher education) in which being [w]hite, Christian, male, heterosexual, etc., no longer ensures a first-among-equals position in American society. This naturally dovetails with the anxiety felt by groups that are in cultural decline and concerned about being “replaced.”²⁴⁴

Their research revealed that status threat predicted “beliefs in conspiracies (paranoid social cognition), feelings about demographic change, belief in a sexism shift, and the Great Replacement Theory.”²⁴⁵

Just as with psychology’s group status threat, the voting behaviors described here are driven by changes in the minority population. The direct evidence of changes in voting behavior demonstrates (again) the need for crafting an updated preclearance coverage formula to include consideration of racial demographics.

Without preclearance, America’s electoral process is endangered by those who feel threatened by changes in the minority population. Those who feel threatened are inclined to vote along Republican party lines, which others have shown is the party that perpetuates voter suppression laws.²⁴⁶ For example, in 2023, the majority of the fourteen states that passed restrictive voting laws were “Republican controlled.”²⁴⁷

B. Illustrations of the Threat Felt by White Americans of Group Status Threat: The Mobilization of the Tea Party

Again, think back to the *Shelby County* majority, which described how “minority candidates hold office at unprecedented levels.”²⁴⁸ It is useful to see how far they missed the mark and overlooked the status threat, racial anxiety, and the backlash caused by so-called progress. To illustrate the backlash that can arise, the modern-day Tea Party serves as a fitting case study.

On February 19, 2009, CNBC reporter Rick Santelli delivered a two-minute rant against the Obama administration and its mortgage policies in which he floated the proposal for a kind of Chicago Tea Party—alluding to the Boston Tea Party of the American Revolution, which was an act of protest against a tyrannical government.²⁴⁹

244. Parker & Lavine, *supra* note 156, at 87.

245. *Id.* at 99. The “Great Replacement” is the belief “that non-[w]hite immigrants are being brought to America deliberately to replace [w]hite Americans.” *Id.* at 87.

246. See Aaron Mendelson, *A Headlong Rush by States To Attack Voting Access—or Expand It*, CTR. FOR PUB. INTEGRITY (Oct. 6, 2022), <https://publicintegrity.org/politics/elections/who-counts/a-headlong-rush-by-states-to-attack-voting-access--or-expand-it/> [https://perma.cc/26VV-BPPL].

247. Hapgood, *supra* note 190.

248. *Shelby County v. Holder*, 570 U.S. 529, 547 (2013) (quoting Nw. Aus. Mun. Util. Dist. No. One v. Holder, 557 U.S. 193, 202 (2009)).

249. Ed Pilkington, *How the Tea Party Movement Began*, THE GUARDIAN (Oct. 5, 2010, at 07:05 ET), <https://www.theguardian.com/world/2010/oct/05/us-midterm-elections-2010-tea-party-movement> [https://perma.cc/T54W-SJU8] (explaining the formation of the Tea Party).

His call to action gained traction on the internet and ten days later the first Tea Party rally occurred in several cities, including Washington D.C. and Chicago.²⁵⁰

It is undeniable that an economic element motivated the Tea Party movement,²⁵¹ but something more sinister also lurked within the movement. Professor Matt Barreto—a political scientist at UCLA—and his colleagues captured this sentiment, stating that Tea Party supporters appeared “united in their fervent disdain for President Barack Obama, and seem[ed] to be squarely opposed to any policies that might benefit minority groups.”²⁵² The researchers suggested that racial resentment had reached “a new level of fuel with the country led” by America’s first African American president, drawing on other scholarship suggesting that “racial resentment is fueled by the gains and growing demands of [B]lack Americans.”²⁵³ To support this proposition, Professor Barreto and colleagues performed a content analysis of Tea Party websites.²⁵⁴ The analyzed websites focused over fifty percent of their content on conspiracy theories and attacks against President Obama, gay people, or immigrants in the name of “tak[ing] our country back.”²⁵⁵

Relatedly, Stanford University sociology professor Robb Willer and his colleagues tested across a series of studies their hypothesis “that trends and events . . . beginning in late 2008 threatened the standing of whites in America, leading whites to greater resentment of minorities and motivation to support policies and movements that would restore their group’s standing.”²⁵⁶ First, in a study that presented to participants a picture that manipulated the shade of President Obama’s skin (by either artificially lightening or darkening the shade), they found that white participants were more likely to report Tea Party support when they saw the picture of President Obama with darker skin, which made his African American heritage more salient.²⁵⁷ In a second study, white participants demonstrated greater support for the Tea Party and higher levels of racial resentment towards African Americans when shown a graph depicting a decline in the white population, resulting in a majority-minority population shift by 2042.²⁵⁸ Finally, in

250. *Id.*

251. Ronald T. Libby, *Has the Tea Party Eclipsed the Republican Establishment in the 2016 Presidential Elections?*, J. POL. SCI. & PUB. AFF., Dec. 1, 2015, at 1, 2 (discussing economic motivation for the modern-day Tea Party).

252. Matt A. Barreto, Betsy L. Cooper, Benjamin Gonzalez, Christopher S. Parker & Christopher Towler, *The Tea Party in the Age of Obama: Mainstream Conservatism or Out-Group Anxiety?*, 22 POL. POWER & SOC. THEORY 105, 106 (2011).

253. *Id.* at 115. This is in line with the empirical evidence by Dr. Craig and Dr. Richeson, described above. See Craig & Richeson, *More Diverse Yet Less Tolerant*, *supra* note 204, at 754.

254. See Barreto et al., *supra* note 252, at 124–27 (analyzing and comparing Tea Party websites with the *National Review Online* (i.e., a mainstream conservative website) and the *Glenn Beck Show* (i.e., a “less traditional conservative talk show”)).

255. *Id.* at 126.

256. Robb Willer, Matthew Feinberg & Rachel Wetts, *Threats to Racial Status Promote Tea Party Support Among White Americans* (Stan. Graduate Sch. of Bus., Working Paper No. 3422, 2016), <https://paescenter.stanford.edu/wp-content/uploads/2019/06/SSRN-id2770186-1.pdf> [https://perma.cc/K526-F56Z]. All analyses focused on white participants only. *Id.*

257. *Id.*

258. *Id.* (explaining the second study’s method). Participants were split into two groups (“majority stable” vs. “majority threat”) and reviewed one of two demographic reports. *Id.* In the majority stable condition, “the

another study, Professor Willer and colleagues found that white Americans who felt that their racial status was threatened had a more positive view of the Tea Party because of the Tea Party's association with racial resentment.²⁵⁹ They labeled the Tea Party's positions as a "pro-white, anti-minority movement, making support for the movement attractive to racially-threatened whites motivated to restore the symbolic status of whites in America."²⁶⁰

Professor Barreto and colleagues also found that Tea Party members were more aware of politics and more active in politics as compared to the public at large.²⁶¹ This behavior would seem to fall in line with group threat theory. As Dr. Blalock originally formulated, "the need for a high degree of mobilization of resources in order to maintain dominance becomes extremely great as the minority becomes larger."²⁶² That is, the Tea Party was an effort by individuals to reassert their dominance in the face of a growing minority population—found within a nation with a Black man as the president.

The Tea Party's constant attacks on President Obama sought to label him as illegitimate and as operating with the purpose to destroy white America.²⁶³ Professor David Goldberg drives home the threat faced by white America: "Fear of a [B]lack state is linked to worries about a [B]lack planet, of alien invasion and alienation, of a loss of the sort of local and global control and privilege long associated with whiteness."²⁶⁴

The above case study on the Tea Party provides another reason—again, based on the perceived threat experienced by members of the current racial majority—to reinstate preclearance. By 2012, the Tea Party had mobilized an effort across "at least [thirty] states" to review voter registration lists and monitor polls, all in an effort to allegedly "make sure that elections are free from voter fraud."²⁶⁵ Several groups were created by active Tea Party members, including the Virginia Voters Alliance and True the Vote.²⁶⁶ Critics noted the campaign sought "to suppress the votes of minorities, students and others who tend to vote Democratic."²⁶⁷ For instance, critics alleged that "True the Vote [wa]s aligned with conservatives and Republicans who are behind a wave of new voter ID laws, which opponents sa[id] will block some legitimate voters from the ballot box."²⁶⁸ Because the Tea Party was "pro-white, anti-minority," and "attractive to racially-threatened whites motivated to restore the symbolic status of whites in

report emphasized that whites remain the largest ethnic group in the U.S.," whereas in the majority threat condition, "the report emphasized that the white majority in the U.S. is steadily declining." *Id.*

259. *Id.*

260. *Id.*

261. Barreto et al., *supra* note 252, at 127.

262. BLALOCK, *supra* note 159, at 154.

263. Darrel Enck-Wanzer, *Barack Obama, the Tea Party, and the Threat of Race: On Racial Neoliberalism and Born Again Racism*, 4 COMM'C'N CULTURE & CRITIQUE 23, 27 (2011).

264. DAVID T. GOLDBERG, THE THREAT OF RACE: REFLECTIONS ON RACIAL NEOLIBERALISM 337 (2009) (emphasis omitted).

265. Pam Fessler, *Tea Party Spawns New Effort Against Voter Fraud*, NPR (Mar. 13, 2012, at 17:18 ET), <https://www.npr.org/2012/03/13/148518795/tea-party-spawns-new-effort-against-voter-fraud> [https://perma.cc/STU3-JD2C].

266. *Id.*

267. *Id.*

268. *Id.*

America,”²⁶⁹ the future of preclearance must have an eye toward racial demographic shifts.

Today, America continues to face threats of (unsubstantiated) allegations of voter fraud. President Trump claimed he lost the popular vote in the 2016 presidential election against Hillary Clinton because of voter fraud.²⁷⁰ President Trump “set[] the stage for the future implementation of voter suppression laws” with these allegations, which “give Republican-led state legislatures a platform to make a case to enact new voter regulations.”²⁷¹ In discussing efforts over the last decade to combat alleged “voter fraud,” Senator Dick Durbin of Illinois explicitly labeled them as “voter suppression laws” and as driven by “the same animus that led to” literacy tests and poll taxes.²⁷²

C. *A Second Illustration of Group Status Threat: President Trump’s Campaigns*

The 2016 presidential election is another illustration of the types of anxiety, threat, and backlash that arise because of the demographic shift occurring in the United States. Nowhere was this more pronounced than in then-candidate Donald Trump’s plea to white voters to “Make America Great Again.”

President Trump’s group threat rhetoric began when he first rose to Republican political prominence through perpetuating birtherism claims against President Obama.²⁷³ He “attack[ed] President Obama in ways reminiscent of past campaigns to paint African Americans as not only threats to the racial order, but as illegitimate members of . . . society.”²⁷⁴ Historically, when white Americans have viewed Black Americans as making progress or threatening white Americans’ societal position, they have increasingly engaged in white supremacist violence and have acted in “opposition to the legal progress.”²⁷⁵ For example, in 2016, the FBI reported an upsurge in white supremacist hate crimes.²⁷⁶ The Southern Poverty Law Center reported that the increase in hate crimes marked a five-year high.²⁷⁷ Many of the reported hate crimes occurred at President Trump’s rallies.²⁷⁸

President Trump’s closest advisors helped him craft a campaign that appealed to white voters experiencing racial resentment and group threat. Several of his advisors had

269. Willer et al., *supra* note 256, at 5 (emphasis added).

270. Matthew Murillo, *Did Voter Suppression Win President Trump the Election?: The Decimation of the Voting Rights Act and the Importance of Section 5*, 51 U.S.F. L. REV. 591, 610 (2017).

271. *Id.* at 611.

272. ANDERSON, ONE PERSON, NO VOTE, *supra* note 227, at x.

273. Inwood, *supra* note 226, at 584. “Birtherism” was a widely-circulated social media and alternative-right (“alt-right”) theory that President Obama was born in Indonesia or Kenya, which would have disqualified him from being President. *Id.* The “birther theory” debate is connected to anti-Black racism and how “foreignness” is perceived as a threat. *Id.* Professor Matthew Hughey’s work describes the “Lost Cause narrative,” which “included delegitimizing newly empowered African American citizenry by representing African Americans as a threat to the national order, and in many cases contextualizing [B]lackness as foreigners usurping US democracy.” *Id.* (internal quotation marks omitted).

274. *Id.*

275. *Id.* at 585.

276. *Id.*

277. *Id.*

278. *Id.*

connections to the alt-right,²⁷⁹ including campaign director Steve Bannon²⁸⁰ and campaign manager Kellyanne Conway.²⁸¹ Professor Inwood wrote the following about one of President Trump's rallies:

[Appealing to his] fans . . . [then-candidate] Trump declared that this was going to be the last election when (white) voters would genuinely be able to decide the outcome because so many minority groups were coming across to the United States that it would not be possible to elect the next President should [Hillary] Clinton win. His message was calculated to drive home the fears of whites who were worried about the demographic transitions occurring in the United States as well as the threats to their marginalized economic position. Through his public declarations and his openly racist message, [President] Trump has expanded the global danger of race to a range of groups that are deemed to pose a challenge to the nation.²⁸²

President Trump's appeal was part of a strategy advanced by Kellyanne Conway, referred to as the "missing whites theory"—the idea is that many white Americans were sitting on the sidelines and, if activated, would provide electoral victories without racial minorities.²⁸³ The theory claimed that Republican elected officials did not have to chase after "minority voters"; rather, they could just appeal "directly to white working and middle class" voters and push policies that "took advantage of white antipathies towards persons of color."²⁸⁴

In his article, Professor Inwood argued that to understand President Trump's election, "it is necessary to understand how whiteness acts as a counter-revolutionary bulwark against progressive and even radical change in the United States."²⁸⁵ The United States, by electing its first Black president, threatened "the psychological benefits that come from whites' dominant position in U.S. society."²⁸⁶ Professor Inwood draws on W. E. B. Du Bois's concept of a "psychological wage" of whiteness, such that workers are compensated for any economic deficiencies by a public and psychological benefit in their racial status.²⁸⁷

In 2019, political scientists Alan Abramowitz and Jennifer McCoy stated that President Trump's rhetoric was polarizing and divided the country between "us" and

279. The alt-right is defined as "a set of far-right ideologies, groups, and individuals whose core belief is that 'white identity' is under attack by multicultural forces using 'political correctness' and 'social justice' to undermine white people and 'their' civilization." *Id.* at 590 (citing *Extremists, Groups, & Ideologies*, S. POVERTY L. CTR., <https://www.splcenter.org/resources/extremist-files/alt-right/> [https://perma.cc/5GLW-MU3C] (last visited Dec. 15, 2025)).

280. *Id.* at 590–91. Steve Bannon ran Breitbart, an alt-right online news resource, which had previously published stories about the end of the white majority. *Id.*

281. *Id.* at 590. Conway operated a consulting firm associated with the alt-right. *Id.*

282. *Id.* at 592.

283. *Id.* at 590.

284. *Id.*

285. *Id.* at 583.

286. *Id.* at 586.

287. *Id.* at 585. Inwood pulls from W. E. B. Du Bois's original introduction of the "psychological wage" in 1935. *Id.* at 585–86. "According to Du Bois, the psychological wage undermined working class unity, and perverted whites into believing that they must defend their position in society through an any means necessary approach that included violence, fraud and the inscription of inequality into the legal framework of the nation." *Id.* at 586.

“them.”²⁸⁸ Additionally, both candidate and President Trump made “explicit appeals to white resentment of the increasing visibility and influence of racial and ethnic minorities.”²⁸⁹ This was most apparent in his connection of the United States’ economic woes to Mexico and China.²⁹⁰ He tied poor economic prospects to immigrants taking American jobs.²⁹¹

Fast forward to the 2024 presidential election and President Trump’s second term—both of which are reminders for the need to update and reinstate preclearance. In the campaign leading up to the November 2024 election, then-Vice President Kamala Harris and then-former-President Trump had very different positions on voting rights.²⁹² The American Civil Liberties Union previewed what President Trump’s second term would look like for voting rights.²⁹³ Its assessment anticipated that “a second Trump administration would mean a reversal of nonpartisan federal efforts to promote and expand access to voting, particularly for marginalized communities.”²⁹⁴ It also anticipated some actions that would suppress voting, particularly among minority voters:

To respond to protests at or near polling locations or to purportedly protect the right to vote under the guise of false election fraud allegations, [President] Trump might improperly deploy federal law enforcement agents to monitor the administration of elections in majority-minority communities, stop the counting of mail-in ballots, or to create a hostile environment for voters or election workers.²⁹⁵

Sure enough, once sworn in, President Trump did not waste any time. On Inauguration Day, he rescinded Executive Order 14019, signed by President Joe Biden in 2021, which “expanded access to voting and accurate election information in many ways, such as allowing federal agencies to share data with states that seek to establish automatic voter registration efforts and making federal workers and resources available to assist at polling locations.”²⁹⁶ Right before personally visiting the Los Angeles areas

288. Alan I. Abramowitz & Jennifer McCoy, *United States: Racial Resentment, Negative Partisanship, and Polarization in Trump’s America*, ANNALS AM. ACAD. POL. & SOC. SCI., Jan. 2019, at 137, 138–39. “Us” referred to “the ‘real’ Americans who hungered for a return to an idealized past when industrial jobs provided for upward mobility and white males were in charge in the workplace and the family.” *Id.* “Them” referred to “the immigrants, minorities, and liberal elites who had wrought an ‘American carnage.’” *Id.* at 139.

289. *Id.* at 143. Abramowitz and McCoy use racial and ethnic minorities to encompass groups such as Mexican, Chinese, and Muslim people. *Id.*

290. *Id.*

291. *Id.*

292. See Hansi Lo Wang, *The Stark Divide Between Harris and Trump on Voting Rights*, NPR (Oct. 13, 2024, at 05:00 ET), <https://www.npr.org/2024/10/13/65150093/kamala-harris-voting-rights-trump> [<https://perma.cc/RD86-EHHB>].

293. See generally ADRIEL I. CEPEDA DERIEUX, JONATHAN TOPAZ, MOLLY MCGRATH, SARAH BRANNON, SOPHIA LIN LAKIN, THERESA J. LEE & XAVIER PERSAD, ACLU, TRUMP ON VOTING RIGHTS (2024), https://www.aclumaine.org/sites/default/files/trump_memo_voting_rights.pdf [<https://perma.cc/9AN5-JX2A>] (discussing ways that democracy and voting rights would be threatened should President Trump be reelected).

294. *Id.* at 2.

295. *Id.* at 8–9 (footnote omitted).

296. Courtney Cohn, *Trump Revokes Biden’s 2021 Executive Order Expanding Voting Access*, DEMOCRACY DKT. (Jan. 21, 2025), <https://www.democracydocket.com/news-alerts/trump-revokes-bidens-2021-executive-order-expanding-voting-access/> [<https://perma.cc/LZ4A-JXS9>]; see also CEPEDA DERIEUX ET AL., *supra* note 293, at 2 (“[Executive Order 14019] includes measures aimed at increasing language access,

affected by the January 2025 wildfires, President Trump suggested federal disaster aid would be contingent on “requiring voter ID at the polls.”²⁹⁷

In the summer of the first year of his second term, President Trump urged Republican-controlled state legislatures “to re-draw their districts . . . to prevent his party from losing control of the House in the November midterm elections.”²⁹⁸ Texas has answered the call, creating five new seats for President Trump. Critics have argued the “new maps will dilute voting power from minorities.”²⁹⁹

These are just the beginning of President Trump’s efforts to revamp election law.³⁰⁰

Taken together, the above findings from political science and sociology complement the psychology research demonstrating a status threat among white Americans arising from an ongoing racial demographic shift in the United States, as well as backlash to minority prosperity and advancement.

V. REINSTATE PRECLEARANCE

In *Shelby County*, the majority pronounced that “things have changed dramatically” compared to the “blight of racial discrimination in voting” that had previously justified preclearance.³⁰¹ They noted how “[v]oter turnout and registration rates now approach parity” and how “minority candidates hold office at unprecedented levels.”³⁰² Of course,

mitigating barriers for individuals with disabilities, and increasing voter education and registration opportunities under the National Voter Registration Act.”).

297. Blake Jones, Melanie Mason & Lindsey Holden, *Trump LA Disaster Aid Salvo Riles California’s Delegation*, POLITICO (Jan. 24, 2025, at 17:51 ET), <https://www.politico.com/news/2025/01/24/trump-la-disaster-aid-salvo-riles-californias-delegation-00200586> [https://perma.cc/FH6G-KAQM]. According to Politico, President Trump “has claimed, against polling and years of election results indicating that the state is deeply liberal, that he would have won California had voters been required to show identification at polling locations in November.” *Id.*

298. Max Matza, *Indiana Joins Growing US Battle over Redrawing Electoral Maps*, BBC (Nov. 11, 2025), <https://www.bbc.com/news/articles/cdxydpr1zz2o> [https://perma.cc/3DGF-5K53].

299. *Id.*

300. See CEPEDA DERIEUX ET AL., *supra* note 293, at 1–2 (discussing “three areas that pose significant threats to democracy and voting rights should Trump be elected to a second term”); Kaei Li, *How Trump’s New DOJ Could Shape the Future of Voting Rights*, DEMOCRACY DKT. (Nov. 20, 2024), <https://www.democracydocket.com/analysis/how-trumps-new-doj-could-shape-the-future-of-voting-rights/> [https://perma.cc/7B7C-34JQ]. This Article was first submitted in February 2025. Throughout the editorial process, developments have continued. For example, on March 25, 2025, President Trump signed an executive order aimed at, at least in his view, “Preserving and Protecting the Integrity of American Elections.” Exec. Order No. 14,248, 90 Fed. Reg. 14005, 14005–10 (Mar. 25, 2025), *invalidated by*, League of United Latin Am. Citizens v. Exec. Off. of the President, Nos. 25-0946, 25-0952, 25-0955, 2025 WL 3042704 (D.D.C. Oct. 31, 2025). Attorneys general from nineteen states have since filed suit. Leah Willingham, *Lawsuit from State Attorneys General Challenges Trump’s Executive Order on Election Overhaul*, PBS NEWS (June 6, 2025, at 08:24 ET), <https://www.pbs.org/newshour/politics/lawsuit-from-state-attorneys-general-challenges-trumps-executive-order-on-election-overhaul> [https://perma.cc/JB82-FMM6]. Elsewhere, the House of Representatives has also passed the SAVE Act, which relates to a “proof-of-citizenship requirement for voting.” *Id.* And then by another round of edits in September 2025, the fight between Texas and California regarding their maps had occurred. Matza, *supra* note 298.

301. *Shelby County v. Holder*, 570 U.S. 529, 545–47 (2013) (quoting *South Carolina v. Katzenbach*, 383 U.S. 301, 308 (1966)).

302. *Shelby County*, 570 U.S. at 547 (alteration in original) (quoting *Nw. Aus. Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193, 202 (2009)).

as described throughout this Article, that very progress, and the future threats they ignore entirely, warrant continued vigilance—or keeping the umbrella for the next rainy day.³⁰³

Recall the work described above by social psychologist Maureen Craig and other psychologists and social scientists investigating threat, like group status threat. Those studies dealt with white Americans' reactions to a looming racial demographic shift and the advancement of people of color in positions of power, such as President Obama. Those reactions include white Americans endorsing conservative candidates and policies. And in turn, those Republican elected officials seeking to pass more laws aimed at voter suppression. Quite simply, the right to vote is under siege by those who feel threatened by growing minority groups and the success and progress exhibited by those groups. Carol Anderson, a professor of African American studies at Emory University, aptly captures this threat and response in the context of the 2016 presidential election:

Minority voters did not just refuse to show up; Republican legislatures and governors systematically blocked African Americans, Hispanics, and Asian Americans from the polls. Pushed by both the impending demographic collapse of the Republican Party, whose overwhelmingly white constituency is becoming an ever smaller share of the electorate, and the GOP's extremist inability to craft policies that speak to an increasingly diverse nation, the Republicans opted to disfranchise rather than reform.³⁰⁴

The growing body of psychological research on status threat—buttressed by the work of sociologists, political scientists, philosophers, and other scholars—provides additional support for reinstating preclearance.³⁰⁵ So where do we go from here?

As the following Section argues, Congress needs to act. The John R. Lewis Voting Rights Advancement Act is a good place to start. Second, Sections 4 and 5 of the VRA can continue to be tailored to be mindful of reactions to the racial demographic shift and backlash to people of color holding power. Third, psychologists must continue status threat research and tailor it to explore implications in the voting context.

A. *For Starters, Sign into Law the John R. Lewis Voting Rights Advancement Act—or Something Similar*

In January 2019, the For the People Act of 2019 was introduced in the House of Representatives. The bill referenced the *Shelby County* opinion and its impact on voters of color. Specifically, it noted the opinion “gutted decades-long [f]ederal protections for communities of color that face historic and continuing discrimination,” and how the opinion had the effect of “emboldening States and local jurisdictions to pass voter suppression laws and implement procedures, such as those requiring photo identification, limiting early voting hours, eliminating same-day registration, purging voters from the

303. *Id.* at 590 (Ginsburg, J., dissenting).

304. ANDERSON, ONE PERSON, NO VOTE, *supra* note 227, at 1–2.

305. Others have, of course, called for reinstating preclearance. See, e.g., Bernini et al., *supra* note 1, at 495 (“Although the VRA continues to protect minorities from overt violations of the [Fifteenth] Amendment, the absence of a mechanism requiring federal oversight of all changes in voting rules—including those applying at the local level—could undermine the progress achieved by the legislation since 1965.”). But this Article’s perspective uniquely focuses on using psychology to explain what new considerations should be considered within a revised preclearance coverage formula.

rolls, and reducing the number of polling places.”³⁰⁶ Congress determined that “[r]acial discrimination in voting is a clear and persistent problem.”³⁰⁷ The bill passed in the House but faltered in the Senate.³⁰⁸ It suffered the same fate after being “reintroduced in January 2021.”³⁰⁹

A more recent iteration of the Act is the John R. Lewis Voting Rights Advancement Act introduced in the House in September 2023 and in the Senate in February 2024.³¹⁰ The proposed Act revives the VRA’s preclearance requirement regarding “any newly enacted or adopted law, regulation, or policy that includes a voting qualification or prerequisite to voting, or a standard, practice, or procedure with respect to voting, that is a covered practice described in subsection (b).”³¹¹ The various “[c]overed [p]ractices” encompass multiple types of changes: (1) “[c]hanges to method of election”; (2) “[c]hanges to jurisdiction boundaries”; (3) “[c]hanges through redistricting”; (4) “[c]hanges in documentation or qualifications to vote”; (5) “[c]hanges to multilingual voting materials”; (6) “[c]hanges that reduce, consolidate, or relocate voting locations, or reduce voting opportunities”; and (7) “[n]ew list maintenance process.”³¹² The John R. Lewis Voting Rights Advancement Act also updates the VRA’s Section 4 preclearance coverage formula.³¹³ Recall, the Supreme Court in *Shelby County* found the VRA’s formula approved by Congress in 2006 “outdated.”³¹⁴ The new proposed formula applies to states and political subdivisions with the “existence of voting rights violations during [the] previous [twenty-five] years.”³¹⁵ Specifically, it applies if the following conditions are met for the “previous [twenty-five] calendar years”: (1) “fifteen or more voting rights violations occurred in the State”; (2) “ten or more voting rights violations occurred in the State,” and “at least one of which was committed by the State itself”; or (3) “three or more voting rights violations occurred in the State,” and “the State itself administers the elections in the State or political subdivisions in which the voting rights violations occurred.”³¹⁶

306. For the People Act of 2019, H.R. 1, 116th Cong. § 2001(4).

307. *Id.* § 2001(5) (“The actions of States and localities around the country post-*Shelby County*, including at least [ten] findings by [f]ederal courts of intentional discrimination, underscore the need for Congress to conduct investigatory and evidentiary hearings to determine the legislation necessary to restore the Voting Rights Act and combat continuing efforts in America that suppress the free exercise of the franchise in communities of color.”).

308. Paige E. Richardson, Note, *Preclearance and Politics: The Future of the Voting Rights Act*, 89 U. CIN. L. REV. 1089, 1100 (2021) (detailing the history of VRA congressional bills starting in 2019).

309. *Id.*

310. H.R. 14, 118th Cong. (2023); S. 4, 118th Cong. (2024).

311. H.R. 14 § 6 (inserting language in VRA, § 4A(a)(1)(A)).

312. *Id.* (providing proposed language for “[c]overed [p]ractices” in an updated VRA, § 4A(b)).

313. *The John R. Lewis Voting Rights Advancement Act*, BRENNAN CTR. FOR JUST. (Feb. 29, 2024), <https://www.brennancenter.org/our-work/research-reports/john-r-lewis-voting-rights-advancement-act> [https://perma.cc/74L3-X36V].

314. *Id.* (“In *Shelby County*, the Supreme Court struck down the Voting Rights Act’s preclearance formula, saying it was outdated. The bill updates the formula to ensure that state and local coverage is based on recent evidence of discrimination.”).

315. H.R. 14 § 5.

316. *Id.* (amending the VRA, § 4(b)(1)(A)). The first two subparts of the formula match the Senate’s bill. See S. 4, 118th Cong. § 104 (2024). The proposed language also provides guidance on what constitutes a voting rights violation. See L. PAIGE WHITAKER, CONG. RSCH. SERV., IF12015, THE JOHN R. LEWIS VOTING RIGHTS

B. Tailor Preclearance in Light of Status Threat

The preclearance provisions found in the John R. Lewis Voting Rights Advancement Act are a good starting point, but the formula the Act advances focuses primarily on concrete voting rights violations. This makes sense given the contents of its legislative predecessors; however, future amendments to the VRA—or other novel election law reforms—should consider modifying and/or updating the preclearance formula to incorporate the racial demographic shift and other factors that may trigger racial backlash.

The determination of which states should be required to seek preclearance could be tailored to take into account *when* states are anticipated to undergo racial shifts from white majority to majority-minority.

The psychology studies discussed above demonstrated a change in white American behavior. Recall the techniques by psychologists used to elicit those reactions. For example, Dr. Craig and Dr. Richeson asked some participants “if they had heard that California had become a majority-minority state,” and discussed with others—through the use of press releases—“projections that racial minorities will constitute [the] majority of the U.S. populace by 2042.”³¹⁷

The studies showed that in response to information about the racial demographic shift, some white Americans experience group status threat and show more support for conservative candidates and policies. This threatens access to voting because GOP-dominated state legislatures have been leading the charge in voter suppression. Examples abound, such as Indiana’s GOP-led legislature after President Obama’s election in 2008³¹⁸ and Texas’s GOP-led legislature recently answering President Trump’s call to rewrite their congressional maps.³¹⁹

Based on the documented reactions to the majority-minority racial shift, this Article proposes a so-called racial-shift window as a separate, additional trigger for when jurisdictions could be subject to preclearance. Specifically, a jurisdiction that is not already subject to preclearance (under whatever new scheme Congress creates) would be subjected to preclearance when it is facing what I call a “racial-shift event.” For now, this Article focuses on two racial-shift events: (1) a state’s overall population demographic shift from majority white to majority-minority, and (2) a state’s shift among *voter-eligible* population from majority white American citizens to majority-minority American citizens. Future research could identify other racial-shift events.

The “window” would be a period of time that includes both the year of the racial-shift event and a surrounding period of time leading up to and following the racial-shift event. The lead-up period takes into account the status threat described above, while the cool-down window would account for potential continued backlash efforts. Although it would take some fine-tuning—perhaps with the help of additional research from psychologists, as discussed more below—this Article proposes two years before and two years after the year encompassing the racial-shift event, which leads to a total

ADVANCEMENT ACT OF 2021, S. 4 (117TH CONG.): LEGAL OVERVIEW (2022) (summarizing the definition of “voting rights violation” (emphasis omitted)).

317. Craig & Richeson, *On the Precipice*, *supra* note 176, at 1190–91.

318. ANDERSON, ONE PERSON, NO VOTE, *supra* note 227, at 151.

319. Matza, *supra* note 298.

window of five years of imposing preclearance as a preventative measure.³²⁰ The two-year window before the racial-shift event would be identified based on the projections for when the racial-shift event is due to occur. This Article also proposes that during these racial-shift windows, states cannot take advantage of the VRA's current "bailout mechanism," which allows states to petition out of the preclearance requirement for demonstrating a "genuinely clean record."³²¹ This would only be a temporary suspension of the bailout provision.

The first racial-shift window would cover the period of time surrounding and including the year that a given state's population is predicted to turn majority-minority. During that period of time, that state would be subject to preclearance requirements. To illustrate, let us return to Dr. Teixeira's 2015 report that predicts when states will become majority-minority.³²² Take Florida as an example (assuming that at the time of the racial-shift window it was not already subjected to preclearance). If Florida's total population is expected to turn majority-minority in 2028,³²³ then it would be subject to its first preclearance window starting in 2026, which would then last through 2030.³²⁴

The second racial-shift window would cover the period of time surrounding and including the year that a given state's voter-eligible population is predicted to turn majority-minority. During that period of time, that state would be subject to preclearance requirements. Recall that Dr. Teixeira's projections also predicted when the eligible voters for a given state would become majority-minority.³²⁵ For Florida, that racial-shift event is scheduled for 2043.³²⁶ Under this Article's proposal, Florida would be again subjected to preclearance between 2041 and 2045.

Although much of the psychology work has focused on the racial demographic shift—without consideration for when those minority group individuals will be voter-eligible—it would make sense that the observed status threats would be felt (and perhaps amplified) when more members of the current racial minority groups suddenly hold more voting power, as measured purely by how many members of each group can cast a vote. Those who fear voters of racial minority groups would probably perceive voter suppression as a tool for mitigating this increased power.

As a brief departure and illustration, consider some of the states covered by the VRA's preclearance requirement at the time of *Shelby County*: Georgia, Louisiana,

320. My thought is that in the immediate years leading up to the demographic shift, an individual state's local media and organizations may give the shift more attention. Dr. Craig and Dr. Richeson's work stressed the idea of making the shift salient. The "window" period should be designed to capture a period of time where the racial-shift event is most salient for the population that is physically proximate to the unfolding shift.

321. *Shelby County v. Holder*, 570 U.S. 529, 539, 579 (2013) (describing the bailout procedure and requirements).

322. See TEIXEIRA ET AL., *supra* note 139, at 2. "Majority-minority" is defined as "a population where less than half of the individuals are identified as non-Hispanic whites." *Id.* at v.

323. *Id.* at 3.

324. Predictive data to determine when states become minority-majority could be drawn from reports such as Dr. Teixeria's and colleagues. *See id.* at 148. There, the study's authors used Census data and applied demography techniques to generate the compositions of projected populations. *See id.*

325. *Id.* at iv, 2-3 (defining "[e]ligible voters" as "the portion of the population that is ages [eighteen] and older and is also a citizen of the United States").

326. *Id.* at 3.

Mississippi, Virginia, Alaska, Arizona, and Texas.³²⁷ Lawmakers should, arguably, be particularly vigilant about how these states will respond when the voter-eligible population within their states turns majority-minority, considering the problematic election legislation passed in these jurisdictions after the overturning of the VRA.³²⁸

Pulling from Dr. Teixeira's report, those states are predicted to turn majority-minority—at least as of 2015—in whole population and voter-eligible population as follows³²⁹:

State	Whole Population	Voter-Eligible Population
Alaska	2030	2037
Arizona	2023	2038
Georgia	2025	2036
Louisiana	2039	2048
Mississippi	2043	2054
Texas	2004	2019
Virginia	2046	2057

Under this proposal, if Mississippi were not already subjected to preclearance, it would be subject to it starting in 2051, and last through 2055—the five-year period covering when its voter-eligible population is predicted to turn majority-minority.

C. Tailor Preclearance in Light of Backlash to Progress

Considering some of the psychological literature evaluating President Obama, as well as the work from other disciplines looking at the Tea Party and other backlash to his presidency, Congress could contemplate additional protections, such as the preclearance requirement, for certain racial milestones. While Congress can get creative, this Article offers, as a starting point, that Congress could instate preclearance when members of minority groups are elected to certain offices.

For example, preclearance could be triggered nationwide—for some period of time, such as a two-year window—when a person of color is elected as president of the United States. President Obama is, at the time of publishing, the only person of color who has served as president of the United States. So, we do not have many data points to work with to consider the effects of minority group members holding this position. (Of course, there is the possibility that former Vice President Kamala Harris's election resulted in backlash.)

Nevertheless, research supports that President Obama's presidency resulted in racial backlash. Political scientist Gary Jacobson found that when voters cast their votes in the 2010 midterm election, more voters than ever before were casting their vote as a referendum on a sitting president.³³⁰ Even though President Obama was not on the ballot,

327. See *Shelby County v. Holder*, 570 U.S. 529, 537–38 (2013).

328. Recall that the initial group of states covered in 1965 were “those with a recent history of voting tests and low voter registration and turnout.” *Id.* at 551.

329. TEIXEIRA ET AL., *supra* note 139, at 3 tbl. A.1. Alabama and South Carolina will only be “near majority-minority by 2060.” *Id.* at 4. Dr. Teixeira's report does not project beyond 2060.

330. Gary C. Jacobson, *The Republican Resurgence in 2010*, 126 POL. SCI. Q. 27, 34–35 (2011).

this finding suggests that voters voted as if he had been. Matthew Luttig, another political scientist also evaluating the 2010 midterm results, argued that voters' racialized evaluations of President Obama³³¹ had a spillover effect on their preferences and turnout for congressional candidates.³³² He argues that by being Black, President Obama acted as a racial cue and "chronically primed racial animosity."³³³ Professors Luttig and Matthew Motta also analyzed the 2014 midterm election and found that racial resentment influenced congressional vote choice, similar to findings from the 2010 midterm analysis.³³⁴

On top of this, other scholars like Professor Anderson have directly tied President Obama's 2008 election to new laws aimed at suppressing the votes of counties with large African American populations.³³⁵ She writes, "[President] Obama's election had been a catalyst for the most recent version of massive disfranchisement."³³⁶ Moreover, the Tea Party supporters, united in hatred for President Obama,³³⁷ have proceeded to suppress minority voters under the guise of voter fraud.³³⁸

A preclearance scheme tailored to consider racial progress could also look at requiring preclearance on states who elect a "first"—that being, the state's first nonwhite governor or U.S. senator. For example, if a state elected its first Black governor, this could trigger a mandatory two-year period (or potentially longer, such as four years or the number of years that the elected official's term lasts for) of the preclearance requirement period. In 2016, there were "[ten] states since Reconstruction where only white candidates have won contests for president, senator, governor and other nonjudicial offices elected statewide."³³⁹ These are rather high-ranking positions that have not been held by a person of color in these states. While we cannot predict how the citizens of these particular states would react to a "first," we have insight from President Obama's

331. See Michael Tesler, *The Spillover of Racialization into Health Care: How President Obama Polarized Public Opinion by Racial Attitudes and Race*, 56 AM. J. POL. SCI. 690, 691 (2012) (defining racialization as when "racial attitudes are brought to bear on political preferences").

332. Matthew D. Luttig, *Obama, Race, and the Republican Landslide in 2010*, 5 POL. GRPS & IDENTITIES 197, 197 (2017).

333. *Id.* at 200. Professor Luttig draws on Professors Michael Tesler and David O. Sears's past 2010 work demonstrating that "[r]acial attitudes were at the forefront of voters' minds when evaluating Obama through-out the 2008 campaign because Obama's race provided a direct and ever-present racial cue to voters." *Id.* at 199 (citing MICHAEL TESLER & DAVID O. SEARS, OBAMA'S RACE ch. 3 (2010)).

334. Matthew D. Luttig & Matthew Motta, *President Obama on the Ballot: Referendum Voting and Racial Spillover in the 2014 Midterm Elections*, 50 ELECTORAL STUD. 80, 88 (2017).

335. ANDERSON, ONE PERSON, NO VOTE, *supra* note 227, at 151; see also CAROL ANDERSON, WHITE RAGE 148 (2016) ("Barack Obama's election was a catalyst for a level of voter suppression activities that had not been seen so clearly or disturbingly in decades.").

336. ANDERSON, ONE PERSON, NO VOTE, *supra* note 227, at 151.

337. Barreto et al., *supra* note 252, at 106.

338. Pam Fessler, *Tea Party Spawns New Effort Against Voter Fraud*, NPR (Mar. 13, 2012, at 17:18 ET), <https://www.npr.org/2012/03/13/148518795/tea-party-spawns-new-effort-against-voter-fraud> [https://perma.cc/8EVC-E9NE].

339. Summer Ballentine, *Analysis: 10 States Still Haven't Elected Minority Statewide*, AP NEWS (Sep. 3, 2016, at 10:32 ET), <https://apnews.com/analysis-10-states-still-havent-elected-minority-statewide-6d70082a5f854109ace7874e915c6631> [https://perma.cc/8MF3-V8X3]. The states were Missouri, "Alabama, Arkansas, Nebraska, North Dakota, South Dakota, Tennessee, West Virginia, Wyoming[,] and Mississippi." *Id.*

election. President Obama's presidency caused racial resentment to soar, as evidenced in the actions and rhetoric of the Tea Party.³⁴⁰

D. Tailor Psychological Research To Look at Status Threat and Implications for Voting Laws

There is also still more work to be done on the psychology side. The field of psychology, with its experimental methods, needs to continue its investigation into how exposure to the looming majority-minority racial shift "affects racial attitudes and political outcomes such as ideology and policy preferences."³⁴¹ As Dr. Craig and Dr. Richeson have commented, this particular line of research in psychology "is still quite young."³⁴²

Attention must be given to understanding how status threat impacts support for voting laws—including those that are patent examples of voter suppression. To start, psychologists could continue to use the paradigm discussed above, where within the manipulation they make salient the looming racial demographic shift. Researchers could then measure differences between the manipulation and control condition groups in support for different forms of voter laws (or more accurately, voter suppression). Initially, psychologists could pull examples from the forms of voter suppression that continue to be compiled by the Voting Rights Alliance discussed above.³⁴³

Additional research is also needed to better understand the temporal nature of the intensity of status threat. That is, do individuals feel an increasing level of status threat as the projected year of the racial demographic shift comes closer into view? The current experimental paradigm has focused on explaining how white people will become "less than [fifty percent] of the total population *in a matter of decades*."³⁴⁴ How does the status threat fluctuate depending on whether white people become less than half of the population in two decades versus two years?

Attention should also be given to how support for certain voting laws varies based on exposure to a minority person holding certain positions of power, such as president of the United States or a state governor. This work would build upon the work psychologists conducted in light of the election of President Obama.

Legal scholars and voting rights advocates need to work towards incorporating findings from other disciplines. This need has been articulated by law professor Joshua Sellers, who argued "there has never been a coordinated, sustained, and interdisciplinary research program designed to improve election systems."³⁴⁵ Psychologists should have a seat at that table.

340. See Barreto et al., *supra* note 252, at 106.

341. Craig et al., *Approaching a Majority-Minority U.S.*, *supra* note 157, at 205.

342. *Id.* at 206.

343. *Voting Rights Alliance's List of Suppression*, *supra* note 129.

344. Hodson et al., *supra* note 174, at 628 (emphasis added).

345. Joshua S. Sellers, *Electoral Adequacy*, 132 YALE L.J.F. 352, 375 n.142 (2022) (citing Alexander Keyssar, *Overview: Election Reform*, in RACE, REFORM, AND REGULATION OF THE ELECTORAL PROCESS: RECURRING PUZZLES IN AMERICAN DEMOCRACY 178 (Guy-Uriel Charles, Heather K. Gerken & Michael S. Kang eds., 2011)) ("Despite a welcome increase in interdisciplinary projects, legal academics still tend to focus on court decisions; empirical political scientists gravitate toward issues that can be quantified; psychologists lean toward experiments. As a result, most scholarly work still tends to be fairly narrow, cast in disciplinary molds.").

E. The Way Forward Has Its Fair Share of Challenges: Objections and Counterarguments

There are several elephants in the room. We live in what some—if not many—perceive to be an anxious,³⁴⁶ polarized nation. Legal scholars have suggested “American democracy is under profound stress,”³⁴⁷ and “Americans may be suffering a crisis of faith . . . in elections.”³⁴⁸ Legal scholar Terry Smith argued that “American democracy is ailing because of the threat of its increasing heterogeneity.”³⁴⁹ That is, “[t]he prospect of more nonwhite voters—or simply greater numbers of all voters—exercising more power in the political process has not been greeted with uniform enthusiasm.”³⁵⁰ However, it seems fair to say that this anxiety may, in fact, be global.³⁵¹

The polarized nature of the country on the issue of voting is probably best seen in the events that unfolded at the United States Capitol on January 6, 2021. When it came time for Congress “to count the Electoral College votes cast for each candidate” in the 2020 presidential election, “then-Vice President Mike Pence refused to advance the false slates of electors as [President] Trump had urged.”³⁵² We all know what happened next. A violent “mob of [President] Trump’s supporters invaded the Capitol to interfere with Congress’s confirmation of [President] Joe Biden’s election.”³⁵³ What folks may not remember is that hours later, “138 Republican members of Congress voted to object on

346. Who wouldn’t be anxious? As Professors David Landau and Rosalind Dixon capture, the world is in a bit of turmoil. *See Landau & Dixon, supra* note 136, at 1315 (“Many in the United States fear that the country is living a precarious moment, and is potentially in danger of democratic breakdown.”). Constitutional scholar Miguel Schor has explained that factors such as “globalization, climate change, illegal immigration, and new information technologies” have “created an opportunity structure that populist authoritarians exploited to attack and undermine institutions.” Miguel Schor, *Trumpism and the Continuing Challenges to Three Political-Constitutionalist Orthodoxies*, 7 CONST. STUD. 93, 96 (2021).

347. Edobor & Seaman, *supra* note 132, at 965 (“Increasing polarization and a winner-take-all mentality to politics have led to increased conflict both within halls of Congress and nationwide. In an era of exceedingly close elections where control of the Presidency, Congress, and state governments can turn on a relative handful of votes, the laws and processes governing democracy have themselves become a battleground.”).

348. Derek T. Muller, *Faith in Elections*, 36 NOTRE DAME J.L. ETHICS & PUB. POL’Y 641, 641–44 (2022) (discussing examples of the use of the word “faith” when discussing the current state of perceptions about elections).

349. TERRY SMITH, *WHITELASH: UNMASKING WHITE GRIEVANCE AT THE BALLOT BOX* xii (2020). Professor Schor has also discussed how “[t]he United States is experiencing democratic erosion.” Miguel Schor, *American Constitutional Exceptionalism and Democratic Erosion*, in *COMPARATIVE CONSTITUTIONAL THEORY* 114 (Gary Jacobsohn & Miguel Schor eds., 2d ed. 2025). Professor Schor argues that “[t]he institutions the Framers designed in the late eighteenth century to stem the diseases incident to republican government are facilitating and accelerating democratic erosion in the twenty-first century.” *Id.* at 136.

350. SMITH, *supra* note 349, at xii.

351. *See* Parker & Lavine, *supra* note 156, at 81 (“Reactionary politics—marked by the retreat of democracy from Latin America to Europe—is on the march.”); SMITH, *supra* note 349, at 179–87 (discussing the globalization of “whitelash”); Landau & Dixon, *supra* note 136, at 1315 (“Constitutional democracy is in fact under threat worldwide, with leaders across a range of countries leading efforts to erode their liberal democratic orders.”).

352. Richard L. Hasen, *The Stagnation, Retrogression, and Potential Pro-Voter Transformation of U.S. Election Law*, 134 YALE L.J. 1673, 1721 (2025).

353. *Id.*

bogus grounds to the counting of Electoral College votes from Pennsylvania for [President-elect] Biden.”³⁵⁴

Of course, with President Trump occupying the White House again as of January 20, 2025—and buttressed by Republican control of both the House and the Senate—it is highly unlikely that anything remotely resembling the provisions of the John R. Lewis Voting Rights Advancement Act will come to pass in the immediate future.

And President Trump is not the only institutional force that may hinder meaningful change. Future legislation aimed at removing obstacles to voting, if challenged, would likely face an uphill battle before the current composition of the Supreme Court.³⁵⁵ Many have made such critiques of the current Court.³⁵⁶

The purpose of this Article is certainly not to accuse all white Americans of being racists. However, meaningful improvements to our election laws in the pursuit of racial equality can only come after critical (and psychological) analysis of white Americans in the face of changing demographics.³⁵⁷ Each year on the anniversary of the *Shelby County* opinion, Reverend Kenneth Dukes and retired teacher Bobby Pierson—“two civil rights champions who support the [VRA]”—“take to the steps of the Shelby County, Alabama, courthouse to protest the ruling and the continued assault on minority voting rights.”³⁵⁸ Reverend Dukes has argued that *Shelby County* “affected the whole nation,” but maintains, “not everybody is bad, but there are those with bad agendas.”³⁵⁹ Mr. Pierson

354. *Id.*

355. See Daniel Epps & Ganesh Sitaram, *How To Save the Supreme Court*, 129 YALE L.J. 148, 168 (2019) (“The new Supreme Court majority is arguably the most reliably conservative in history”). Professors Daniel Epps and Ganesh Sitaram argue that “there is reason to believe [the new majority] will strike down laws that progressives favor using doctrinal theories that are at least open to serious question—as the Court has already done in cases like *Shelby County* and *Janus*.” *Id.* (footnotes omitted). Another scholar, however, points out that this Court—which Professor James Sample characterizes as “our countermajoritarian Supreme Court, comprised of unelected Justices”—is willing to “reverse and destroy decades of improvement accomplished by collaborative, elected law makers of varying political ideologies.” Sample, *supra* note 68, at 59. See generally JOSEPH RUSSOMANNO, THE “STENCH” OF POLITICS: POLARIZATION AND WORLDVIEW ON THE SUPREME COURT (2022) (discussing the political and far-right shift on the Court).

356. See, e.g., Whitehouse, *supra* note 112, at 892–93 (arguing that the Court is “play[ing] fast and loose with the facts to suit the outcome its Republican supermajority wants”).

357. Robin DiAngelo, known for her thought-provoking thesis of “white fragility,” has argued that “[a] continual retreat from the discomfort of authentic racial engagement results in a perpetual cycle that works to hold racism in place.” Robin DiAngelo, *White Fragility*, 3 INT’L J.CRITICAL PEDAGOGY 54, 66 (2011). White fragility is defined as:

a state in which even a minimum amount of racial stress becomes intolerable, triggering a range of defensive moves. These moves include the outward display of emotions such as anger, fear, and guilt, and behaviors such as argumentation, silence, and leaving the stress-inducing situation. These behaviors, in turn, function to reinstate white racial equilibrium.

Id. at 54. See generally ROBIN DIANGELO, WHITE FRAGILITY: WHY IT’S SO HARD FOR WHITE PEOPLE TO TALK ABOUT RACISM (2018) (describing further the concept of white fragility).

358. DOUGLAS, *supra* note 47, at 104–05.

359. *Id.* at 105; see also Matthew Yglesias, *Obama Just Gave the Speech the Left’s Wanted Since He Left Office*, VOX (Sep. 7, 2018, at 15:30 ET), <https://www.vox.com/2018/9/7/17832276/obama-speech-trump-midterms> (on file with the Temple Law Review) (“Bigots and bigotry are real and a real problem, but it’s a problem that is deliberately fanned by the powerful to block collective action—and that’s the true issue.”).

expressed a similar sentiment: “If your vote didn’t count so much, they wouldn’t try and take it away from you.”³⁶⁰

Nor should we assume that a growth in minorities will always mean support for liberal policies or candidates. An influx of minorities does not by default mean opposition for conservative policies or candidates, which seems to be partially reflected in the 2024 election.³⁶¹ “[S]ince minorities are not monolithic in their policy or political preferences and because, in any case, those preferences may change over time, any assumption that majority-minority states will adopt a unified policy or political orientation would be unwise.”³⁶² In fact, as limited research has shown, minority groups also feel threatened when their own group status is challenged.³⁶³ It is an open question what this will mean for race relations and voting rights when members of the current racial minority groups collectively become the racial majority in the United States.

CONCLUSION

Psychology has much to offer and accomplish in the context of voting rights. In the last decade alone, the field has given us insight into white Americans’ reactions to the ongoing shift in racial demographics, as well as demonstrated backlash effects in response to racial progress. In light of the psychology findings discussed in this Article—and complementary findings in political science and sociology—there is strong support to reinstate the VRA’s preclearance requirement with an updated formula for covered jurisdictions.

The shift in demographics clearly has its challenges, but it comes with great opportunities too.³⁶⁴ Some warning remarks written by President Bill Clinton in 2015 still ring true ten years later:

America’s tremendous diversity can make us the world’s leading force for peace and prosperity for generations to come. But in order to give our children and grandchildren the future they deserve, we must remove barriers to participation and opportunity, not erect them. As a nation, we owe it to the

360. DOUGLAS, *supra* note 47, at 105.

361. President Trump made inroads with Latinos and non-white voters without a college education. See Ronald Brownstein, *Trump Made Historic Gains with Minority Voters in 2024. They Are Already Pulling Back in 2025*, CNN: POL. (May 11, 2025, at 06:00 ET), <https://www.cnn.com/2025/05/11/politics/gop-voter-coalition-2024-trump> (on file with the Temple Law Review).

362. TEIXEIRA ET AL., *supra* note 139, at 2.

363. See Maureen A. Craig & Jennifer A. Richeson, *Hispanic Population Growth Engenders Conservative Shift Among Non-Hispanic Racial Minorities*, 9 SOC. PSYCH. & PERSONALITY SCI. 383, 389 (2018). Dr. Craig and Dr. Richeson found that “Hispanic growth can elicit a shift in political attitudes (less liberal, more conservative) among members of non-Hispanic minority groups.” *Id.*

364. See FREY, DIVERSITY EXPLOSION, *supra* note 139, at 40–41 (“Thus, on a variety of levels, the continuing spread of new minorities from the bottom up of the nation’s age distribution creates important opportunities for the growth and productivity of the nation’s population and workforce. But that spread also presents challenges in light of the sharp cultural and generational differences that are emerging. The divide will require adaptation on all sides, and policymakers and citizens alike will need to approach these changes with a long view. Rather than seeing the inevitable changes as damaging to the American way of life, it will behoove the nation to consider the future of the country and prepare now for a country that will be majority-minority.”).

many heroes of the Civil Rights Movement who made our past progress possible, and to all those whose future progress depends on it.³⁶⁵

Preclearance must be reinstated as the first step to eradicating voter suppression. America's future—and the right to vote—may depend on it.

365. Clinton, *supra* note 110, at 386.