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**Times Taxes¹ and Voting Queues:
The Voting Rights Act after *Shelby County, Alabama v. Holder* (2013)**

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Abstract

The United States Supreme Court effectively dismantled the pre-clearance provision of the Voting Rights Act in *Shelby County, AL v. Holder (2013)*. The majority asserts that “times have changed” and the relevant provisions of the VRA are now obsolete. This paper examines whether dismantling preclearance adversely affects how long racial and ethnic voters must wait to vote. The results show that the VRA reduces the time minority voters waited in line by one-half in the covered jurisdictions. After preclearance is dismantled, however, that benefit vanishes. Further, minority voters in covered jurisdictions continue to wait longer to vote compared to white voters and that increment reduces their turnout in small but potentially consequential amounts. We argue that dismantling Section 5 creates an environment where inconvenient voting requirements are now acceptable. Fundamentally, when citizens are not treated similarly with regard to democratic practices such as voting then the country’s democratic culture is threatened.

Keywords: voting rights, voting behavior, race and politics, election administration

. . . , things have changed dramatically. *Shelby County* contends that the preclearance requirement, even without regard to its disparate coverage, is now unconstitutional. Its arguments have a good deal of force. In 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. . . .”

At the same time, voting discrimination still exists; no one doubts that. The question is whether the Act’s extraordinary measures, including its disparate treatment of the States, continue to satisfy constitutional requirements. As we put it a short time ago, “the Act imposes current burdens and must be justified by current needs.”

Chief Justice John Roberts, Shelby County, AL v. Holder (2013)

“Throwing 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.”

Justice Ruth Bader Ginsberg, Shelby County, AL v. Holder (2013)

Introduction

James Madison reassures the public that democracy is protected through the exchanges emerging naturally from a broad republic because it enlarges the number of policy concerns demanded by the public thereby forcing elites to compromise these diverse interests rather than succumb to the passions of factions. (*Federalist 10*). Guaranteeing broadly inclusive political participation then seems essential to protect the character of democratic government. Political institutions alone though do not necessarily ensure democracy. A commitment to democratic values, ideals, and practices by citizens and officials contribute to stable democratic government (Dahl 1998). A democratic political culture must recognize that all citizens should be treated similarly when exercising their democratic rights such as voting. This paper argues that the election environment following the Supreme Court’s decision in *Shelby County, AL v. Holder (2013)* reduces the opportunities for Madison’s call for diverse participation that leads to an

enlarged public view. More importantly, the Shelby decision creates an environment in certain jurisdictions that tolerates election day obstacles thereby threatening democratic culture.

Underlying the logic of the majority opinion in *Shelby County* is that the intrusive tools used in the Voting Rights Act (also VRA) to root out discriminatory voting practices are no longer needed. In fact, it is due to the Voting Rights Act's success that its coverage formula in Section 4(b) is unnecessary. Registration rates for African Americans are virtually equal to those of the white population and minority elected officials are in assemblies at all levels of government. The problem is that this very success leads to the majority decision that the expansive reach of the VRA no longer is justified.

Indeed, Justice Ginsberg in dissent argues that the advances of minority voters and representatives would be threatened by the elimination of Section 4(b). The deterrent effect and oversight are still needed because some jurisdictions continue to attempt to dilute minority voter strength (Kousser 2015; Lopez 2014; Greenbaum, et. al. 2015). Between January 1995 and June 2014, more than 300 lawsuits or Department of Justice administrative determinations led to the rejection, abandonment, or modification of proposed changes to voting practices. Of those 300 plus actions, there were 113 denials of proposed voting changes in 15 states using preclearance (National Commission on Voting Rights 2014).

The benefits of the VRA also extend to the type of representation provided by members of Congress. Congresspersons from covered jurisdictions are more supportive of civil rights legislation compared to legislators representing non-covered districts (Schuit and Rogowski 2017). Further, there is evidence that racial polarization has increased in the covered jurisdictions over the past decade thereby calling for the continuance of the VRA (Ansolabehere 2009; Ansolabehere, Persily, and Stewart 2010).

We apply what we know about the determinants of participation from voting theory with whether election-day obstacles continue to exist in VRA covered jurisdictions. Present-day discrimination is frequently subtle and nuanced. It can take the form of seemingly neutral policies yet they can exert a consequential negative impact. Further, relatively minimal inconveniences to voting can reduce the likelihood to participate—particularly among low-propensity voters (Verba, Schlozman, Brady, Nie 1993; Leighly and Nagler 2014). Has the *Shelby* decision changed the participatory environment in measurable ways? One possible metric that can be used to assess irregularities is the length of time citizens must wait to vote. We find that the pre-clearance provisions reduced the length of time minority citizens waited to vote in covered jurisdictions, but in the post-*Shelby* era those benefits disappear.

The Significance of *Shelby County v. Holder*

The Voting Rights Act of 1965 is one of the most momentous and far-reaching civil rights policies of the last century. By prohibiting massive discrimination in voting by states and local jurisdictions with a history of voter exclusion it transformed the political landscape in the South, and then later in other parts of the United States through its extension to include language minorities. For example, between 1965 and 1985 the disparity between white and black registration rates in covered jurisdictions declined from 30% to 8% (Brennan Center for Justice 2018), and the number of African American elected officials serving in public office in the original six states covered by the Voting Rights Act increased from 345 in 1965 to more than 3,700 in 2006—a 1000% increase (H. R. Report 2006, 18; Grofman and Handley 1991). The VRA is seen as contributing to the partisan realignment of the South where race-sensitive white voters move to the Republican Party as newly enfranchised African Americans identify with the

Democratic Party (Huckfeldt and Kohfeld 1989; Black and Black 2003). It is beyond question that the Voting Rights Act changed the electoral environment and substantially shaped politics for the last fifty years.

Why is the decision in *Shelby County v. Holder* consequential? In order to understand the significance of the Court's decision it is necessary to understand how Sections 4 and 5 of the Voting Rights Act operated. The Congressional authors of the VRA designed a flexible and powerful policy that can adapt to different circumstances in its effort to fight vote discrimination. Section 2 affirms the Fifteenth Amendment by providing a litigative avenue for citizens to sue in a federal district court who believe they are wrongly denied their right to vote (VRA 1965 Public Law No. 89-110). Litigative strategies though are time consuming and expensive, and therefore an inadequate remedy for large-scale voter discrimination.

Sections 4(b) and 5 (Preclearance) should be understood as operating in tandem to counter the problems of broad vote denial (VRA 1965 Public Law No. 89-110). Section 4(b) specifies a formula designed to thwart widespread vote denial that is resistant to the litigative remedy available in Section 2. If less than 50% of the eligible population either voted in the 1964 presidential election or were registered in 1964 and that jurisdiction maintained a voter qualification device such as a literacy test then the mechanism is *triggered*. The coverage formula though has not been updated since the 1975 Amendment to the VRA when Congress added language minorities as a protected class which increased the number of covered jurisdictions subject to preclearance. Since 1975, the coverage formula relies on data from the 1968 and 1972 presidential elections (VRA 1965 as amended in 1975, Sec. 202 and Sec. 203). Once the Section 4(b) formula is triggered then that jurisdiction is now automatically covered and its voting arrangements are suspended. Section 5 requires that any covered jurisdiction must

submit proposed changes to their voting rules or structures to either the Department of Justice or the U.S. District Court in the District of Columbia for approval (U.S. Department of Justice, Civil Rights Division). Section 5—known as ‘preclearance’—is a uniquely effective provision that prevented attempts at vote dilution by covered jurisdictions. Jurisdictions, knowing that proposed changes to their voting rules must gain approval, are reluctant to suggest any alteration that would have a negative impact on minority voting. Importantly, Section 5 is meaningless without the coverage formula of Section 4(b); if a jurisdiction is not covered by the formula then changes to its election arrangements do not require prior approval.

The reach of the VRA is beyond question. After adoption in 1965 the entire states of Virginia, South Carolina, Georgia, Alabama, Mississippi, Louisiana, 40 counties in North Carolina, and 5 counties in Florida violated the automatic trigger (U.S. Department of Justice, Civil Rights Division 2015). Subsequent amendments to the VRA designed to protect language minorities added Arizona, Texas, Alaska, and selected counties across the United States (United States Department of Justice 2016).

The Supreme Court decided in *Shelby County* that the Section 4(b) coverage formula is unconstitutional because it relies on data that is 40 years old. The Court only needed to strike down Section 4(b) in order to render Section 5 empty. The majority reasoned that the United States made dramatic progress removing racial barriers to voting since 1965. Further, Justice Roberts acknowledges in the majority opinion that discrimination still exists. If Congress believes that the intrusive federal remedy of preclearance is necessary then the coverage formula must be modernized to reflect contemporary conditions. Consequently, challenges to new voting rules or political structures such as adopting stricter voter identification requirements or moving from a single-member district system to at-large representation can now be challenged only

through Section 2. But litigative remedies are difficult, slow, expensive, and limited in their reach. Further, the high burden of proving discriminatory intent is placed on the plaintiff and not the state when using Section 2. A degree of transparency is lost, too. Under Section 4(b), jurisdictions' proposed changes to voting procedures must be announced and reviewed by a third party.

After *Shelby*, formerly covered jurisdictions no longer need to report their voting changes to the Department of Justice or the District Court. Almost immediately after the Court announced its decision several previously covered states including Texas, Alabama, and North Carolina declared plans to adopt new stricter voter identification laws (Brennan Center for Justice 2014). In North Carolina, for example, the legislature enacted an election reform package which required changes to the state's voting procedures. The Fourth Circuit enjoined the proposed election law modifications finding that they targeted African American voters (Harvard Law Review 2017). Nor is there clear evidence that the elections of Barack Obama in 2008 and 2012 demonstrated that the United States is now a 'post-racial' society across all states—there is persistent evidence of racially polarized voting, especially in the covered jurisdictions. “There can be no question that the gap in vote preferences between white and minority voters is larger in the covered than the noncovered states” (Ansolabehere, Persily, and Stewart 2010, 6; see also Kimball 2013, 8). In short, the decision in *Shelby County* fundamentally changes the environment for voting procedures in states.

Voter Participation and Election Administration

Rational theories of political participation are often seen as inadequately explaining why citizens vote (Achen and Bartels 2016; Blais and Young 1999). However, they do offer a useful insight into evaluating the effects of obstacles experienced by voters on election day. Rational

models rest on the basic assumption that citizens vote when they recognize their perceived net benefits from participating exceed the net costs they incur from abstaining (Downs 1957; Rosenstone and Hansen 2003). Citizens can calculate their expected utility in numerous ways. They can estimate their perceived material benefit by comparing the policies of parties and candidates. More likely voters are motivated by a diverse set of psychological factors such as fulfilling their civic duty through voting, heeding the encouragement of family, friends, and co-workers, or responding to pleas by party contacts. The ‘costs’ associated with participating are numerous and diverse, too. These can range from the difficulty connected to registration, monetary loss due to missing hours at one’s job, or the bother of waiting in line on election day are real costs incurred by citizens.

A cost associated with voting does not need to be high in order to deter someone from participating. This can be understood from the *paradox of voting* (Blais and Young 1999). In large mass democracies it is natural that any individual will understand their single vote infinitesimally determines the outcome of an election. An individual may conclude s/he benefits from a particular party’s candidate but believing their single vote will decide the election is another matter. This outlook leads many citizens to conclude that because their vote does not matter or have much impact—or at least, does not matter very much—they abstain so as to avoid incurring the direct costs of participating while still collecting any collective policy benefit. In other words, they ‘free ride.’ The paradox is given the trifling weight of anyone’s single ballot it is remarkable that a citizen votes at all.

Nor does the participation price fall uniformly on all citizens. For some citizens a very small cost connected to voting can decrease their likelihood to participate. Generally, individuals who are poor, possess low levels of education and political efficacy, and not embedded in social

networks experience the expenses connected to participating more heavily than other citizens. Racial and ethnic minorities, persons for whom English is not their first language, and the elderly are vulnerable to hurdles to voting. Hence, activists and scholars assert that lowering the inconveniences linked with voting will improve turnout because it increases the net benefit citizens receive from participating (Wolfinger and Rosenstone 1980; Rosenstone and Hansen 2003; Verba, Schlozman, Brady, Nie 1993; Riker and Ordeshook 1968).

Election administration can be another source of participation expense. These costs are commonly incurred through registration practices, convenience voting, and variations in resource allocations across precincts. The general conclusion is that strict registration identification requirements reduces minority and Democratic turnout while increasing the gap between white and minority voter participation (Hajnal, Lajevardi, Nielson 2017; GAO 2014), although Ansolobehere (2009) finds a different outcome. Early voting and mail-in ballot opportunities increase participation (Wolfinger and Rosenstone 1980; Rosenstone and Hansen 2003), especially among Democratic partisans and the elderly (Ashoke, et. al. 2016). Reducing the early voting window is projected to depress minority turnout (Herron and Smith 2012), however, other research finds that early voting depresses turnout because it reduces the excitement of election day (Burden, et. al. 2014). In 2011 the Florida legislature reduced early voting from 14 to 8 days. Importantly, the Sunday prior to the election—a day used heavily by racial and ethnic minorities who go to the polls following church services—was removed by the new early voting schedule. The expectation is that minority turnout in Florida will decline (Herron and Smith 2012).

Finally, the allocation of election-day implementation resources also is important. Turnout rises when the density of early voting sites and other precinct-level resources available

to citizens increases (Fullmer 2015, Herron and Smith 2016). The implication is that making more early voting sites available to citizens reduces their cost of participating which in turn marginally improves turnout. The importance of resource allocation decisions can be seen when examining precinct congestion data from Florida (Herron and Smith 2015). Precinct closing times indicate how efficiently citizens are processed at polling stations. Less efficient precincts likely will have later closing times thereby indirectly measuring the inconvenience of voting. Herron and Smith find in their extensive sample of Florida precincts that (1) there is considerable variation in closing times across precincts, and (2) Hispanic precincts closed unusually later than other locations.

Less is known about the effects of how long voters wait in line at their polling stations. Elora Mukherjee (2009) classifies waiting in line as a “time tax” that discourages many from voting across the United States. Mukherjee finds that the *time tax* disproportionately affects minority voters and voters in the South or those voters most at risk from participation costs. Of course, multiple factors likely influence the length of voting queues on election day. The closeness of the election, voters’ interest in the outcome, and the demographics of each precinct are related to the level of participation in communities. It is possible that notoriously long waiting lines might dissuade some voters from even trying to participate. Commonly known long queues combined with the new election environment created by the removal of the most effective voting protection in the VRA can discourage participation in the covered jurisdictions.

Considerable variation exists in the length of time voters experience across states, regions, and demographic groups (Stewart 2013). For example, voters had shorter wait times in less populous states compared to large population centers. Voters in the South waited longer than those in northern states, and nationally African American and Hispanic voters waited nearly

twice as long as white voters. There is also evidence that the length of time minority voters must wait in line increases as the racial or ethnic population concentration increases in precincts. Voters in largely minority precincts wait considerably longer in line to vote—sometimes three times as long—as white voters (Pettigrew 2017). How long citizens must wait to vote offers a glimpse into the consequences of invalidating Section 4(b) of the Voting Rights Act and offers insight into the consequences of the post-*Shelby* voting rights environment in covered jurisdictions.

Data and Method

This analysis uses data from the Cooperative Congressional Election Surveys for 2008, 2012, 2014, and 2016. The CCES² is a 50,000 plus national stratified sample survey that permits analysis of demographic subgroups within each state or groups of states. The research procedure is straightforward. The years selected create a pre-*Shelby* (2008 and 2012) and post-*Shelby* (2014 and 2016) quasi-experimental design. One might worry that the strategy includes one off-year election among presidential elections. Ideally, the design would compare 2010 to 2014, however, the question regarding length of time citizens wait to vote is not included in the earlier survey. Moreover, 2014 and 2016 are the only elections after the Court dismantled the coverage formula. We explore whether there is a change in the racial patterns of voter inconvenience before and after the *Shelby* decision. The first election following the *Shelby* decision is the 2014 off-year Congressional election. Typically, off-year elections have lower turnout and voters are strong partisans. While the point estimates for specific variables might be less precise in 2014, the tests for statistical significance for variables of interest should continue to hold. The dependent variable is question CC404, “approximately, how long did you have to wait in line to vote.” The possible responses for wait time range from (1) no wait at all, (2) less than 10 minutes, (3) 10 –

30 minutes, (4) 30 minutes to one hour, and (5) more than one hour. In order to make wait time more intuitively meaningful we convert each category to its mid-point in minutes, or (1) no wait = 0, (2) less than 10 minutes = 5, (3) 10-30 minutes =20, (4) 30-60 minutes=45, and (5) more than one hour=75.³

The length of time required to vote is an inconvenience that theoretically exerts a small, disparate impact on certain types of voters. Two critical issues emerge. First, is there evidence of a disparity between the waiting times for minority voters and white voters? If “things have changed dramatically” as asserted in the majority opinion, then only minor and random differences in wait times should exist between white and minority voters. Second, is there evidence that pre-clearance mitigated any racially-patterned effects? And the corollary is whether the benefits of preclearance—if any—disappear beginning in 2014. Hence, we are keenly interested in what happens to the interactions between racial and ethnic groups and the covered jurisdictions, before and after the Shelby decision. A related issue is whether increased wait time decreases the likelihood that some voters ultimately participate. Presumably, as the time required to vote increases then a small number of eligible citizens will be deterred from voting; minimally, they must accommodate the inconvenience compared to advantaged voters.

The length of time is predicted by typical demographic factors we know explain civic participation such as age, education, marital status, household income, and home ownership. Additionally, controls for factors related to citizens’ engagement in politics such as attention to the news and a constructed index variable measuring involvement and interest in campaigns and politics are included in the model. Also included in the model is a scaled variable that measures racial resentment. This allows us to test whether jurisdictions that exhibit increased levels of racial umbrage also have unusually high wait times. Finally, a series of dummy variables are

created to measure the impact of race and ethnicity as well as whether a jurisdiction was originally covered by the VRA.

Primary interest is in the sign and statistical significance of the dummy variables and interactions. A positive coefficient for the covered jurisdictions indicates that waiting to vote lengthens in counties *covered* by the VRA. Similarly, positive coefficients for each racial or ethnic group indicates that they must wait in line longer compared to white voters. Next is a test for whether pre-clearance protected minorities in covered jurisdictions from the inconvenience of lengthy voting time, and what happens—if anything—following the *Shelby* decision. Accordingly, we construct interaction terms for each racial or ethnic group and whether the county is covered by the VRA. The expectation is if preclearance protected minority groups' voting rights in covered jurisdictions then those coefficients will be negative and statistically significant indicating a reduction in the time required to participate. And if *Shelby* effectively removed those safeguards then the interaction terms will no longer be significant in the 2014 and 2016 elections.

Two equations are estimated for each election preceding and following the *Shelby* decision. The first equation establishes a baseline comparison by estimating the impact of factors on length of time required to vote for the United States. The second model re-estimates the original equation with a dichotomous variable for the jurisdictions covered by the Voting Rights Act,⁴ thereby demonstrating whether there is a difference in vote time between covered and non-covered jurisdictions.

Waiting to Vote Before and After Shelby

Generally, African American and Latino voters wait longer to vote than white citizens. Further, voters in the non-covered jurisdictions spend less time in line than citizens in the covered jurisdictions. This is the pattern before and after the *Shelby County* decision. Overall wait times decline in 2014 and 2016, however, whites still spend the least amount of time waiting to vote compared to minority citizens.

Both models for the two elections preceding *Shelby* demonstrate the consequence of minority status in the United States for the length of time required to vote. The baseline (constant) value for whites controlling for demographic and mobilization factors ranges from about 9 – 12 minutes—or the average white voter in the United States waits about 10 minutes to vote. Being black nearly doubles wait time. On average, African Americans report waiting an additional 8-12 minutes to vote or a total of 20 minutes. Latino wait times increase an average of 4 minutes. Nationally, race is clearly an important predictor of election day experience—members of minority groups pay a higher ‘time tax’ compared to white voters. Further, race is the single most powerful predictor of how long someone waits to vote after controlling for other factors such as demographic characteristics and level of political engagement. Educational level and owning your home marginally increase wait time as well as campaign interest and racial resentment—but only by small amounts. There is no other variable that approaches the dominance of race and ethnicity. Voters’ election day experience measured by the length of time waiting to vote reflects the continuing significance of race in American politics. See Figure 2.

Model 2 illustrates the effect of the Voting Rights Act on wait times in the covered jurisdictions. On average, living in one of the original covered states increases the length of time required to vote from 8-12 minutes. Separately, the impact of race and ethnicity continue to

increase wait times in the covered jurisdictions. What is the effect of pre-clearance on wait times? As hypothesized, the interaction terms for African Americans and Latinos are negative and highly significant in the pre-*Shelby* era. In fact, the point estimates for the interaction term for African Americans reduces wait time by 4 minutes in 2008 and 8 minutes in 2012. In other words, the effect of preclearance in 2012 counters nearly 80% of the effect of being black in a covered jurisdiction. Similarly, the interaction term for Latinos is properly (negatively) signed and statistically significant; the effect of preclearance reduces wait times by about 7 minutes for Latino voters. In the pre-*Shelby* era the pre-clearance provision appears to largely mitigate the effect of race and ethnicity on the length of time required to vote in the original covered areas.

Figure 3 re-estimates the above models for the post-*Shelby* elections. Similar to the results in Figure 2, average wait time increases for members of racial and ethnic groups both models. In contrast, white voters maintain their shorter wait times on election day. However, the results for Model 2 indicate the loss of pre-clearance. There is no longer a moderating impact on wait time in the covered and expanded-coverage states. The coefficients for the interaction terms in 2014 and 2016 are now statistically insignificant; there is no diminishing effect from the combination of being a member of a racial or ethnic minority and living in a covered jurisdiction after pre-clearance is dismantled. One of the goals of the VRA is covered jurisdictions must avoid sliding backward after making progress in ensuring voting rights. Yet the covered states now appear to lose ground by continuing to exhibit a racial and ethnic effect.

Figure 4 summarizes the results by comparing wait times in 2012 and 2016 for white, African American, and Hispanic voters. Notice that in 2012—prior to the *Shelby County* decision—preclearance decreases wait times for African American and Latino voters. However, in 2016 the reduction in wait time disappears. However, it is also important to note that overall

wait times declined in 2014 and 2016 for white and African American voters; the pattern is mixed for Latino voters. At the same time, while the overall pattern is declining wait time across jurisdictions in the United States minority voters still spend longer in voting queues compared to white citizens. A systematic racial pattern continues to prevail in the post-Shelby voting rights environment where voters are not treated similarly.

The Indirect Benefits of the Voting Rights Act

The results indicate that Section 5 preclearance reduced the length of time black and Hispanic voters waited to vote but that benefit vanishes following the *Shelby* decision. An important question is whether increased waiting times actually matters for citizens' likelihood to vote. Remember that the calculus of voting implies that small costs [inconveniences] associated with participating might be large enough to discourage some citizens from voting on election day. Relatively small reductions in participation can be consequential given winner-take-all electoral rules in the United States. Further, the effect of wait times cannot be evaluated in isolation from other inconveniences of voting. Restrictive identification requirements, purges of voters with irregular voting histories, errors on registration lists, and other costs in combination with wait time can exert small but real depressing effects on citizens' likelihood to vote. In order to gauge the effect (if any) of waiting in line we estimate a logistic function for the likelihood of either abstaining or voting (0/1) predicted by the demographic and political engagement variables used in the models. The length of time required to vote is now included as an independent variable and estimates the impact of each increasing time increment extending the wait to vote on the likelihood of voting.

Figure 5 reports the probability of voting for an average citizen who has no wait to those who waited in line for one hour in 2012 and 2016. Predictably, the relative contribution of

waiting in line is quite small—once voters are waiting in line, the likelihood is that they will complete their vote despite their election day experience. However, there is a small number of individuals who apparently depart out of frustration as their wait lengthens. In fact, there is virtually no difference across white, African American, or Hispanic voters; the inconvenience of moving from no wait to standing in line for one hour reduces the likelihood to vote by about one-third of one percent prior to the *Shelby* decision. What is striking, however, is the fact that there are increases in 2016 for all groups. Clearly, these are small increments—the largest increase is for African Americans whose probability of not voting increases by 0.9% and Latino voters whose likelihood of not voting increases by 0.4%. Further, these marginal increases suggest there are broader effects in the post-*Shelby* voting environment that are not simply associated with how long one must wait in line to cast their ballot. Also while these appear as small changes they are sufficiently large to influence the outcome of competitive races. Furthermore, the effects of waiting in line should be interpreted in combination with other voting administration obstacles which collectively exert a depressing effect on turnout. Figure 6 displays the pattern for each group and consistent with voting theory the largest depressing effects are felt by African American and Latino voters.

Also noteworthy is the probability that white citizens abstain from voting increases by 0.3% in the post-*Shelby* elections. In the years immediately following the adoption of the Voting Rights Act of 1965 there was evidence that previously disenfranchised white citizens—especially in rural counties—benefited from the pro-active measures taken by local governments to encourage participation. It appears that Section 4(b) might have provided an indirect benefit to all voters by making public officials sensitive to the importance of unhindered access at the polls. Perhaps an unintended but important outcome of the *Shelby* decision is it increases the

inconvenience of voting for all voters in the U.S. Perhaps one way of viewing the Voting Rights Act is that it created a uniform standard for election administration in the United States that benefitted all citizens regardless of race or ethnicity. This national standard for conducting elections appears to be lost by the *Shelby* decision. This in turn increases the likelihood of substantial variation in election administration across states and counties.

An important caveat must be recognized regarding estimating the likelihood that long wait times deters citizens from voting. The number of citizens who report waiting in line but do not vote is small. Therefore, the results should be interpreted cautiously because the outcomes predicted by the logistic function could be attributed to classification error by a low-frequency group of respondents in a large-n survey (Ansolabehere, Luks, Schaffner 2015). The results though call for the need for greater investigation of the effects of either waiting in long lines to vote or the perception there will be a long wait to vote on participation.

Discussion

The premise of Justice Roberts' majority opinion in *Shelby County v. Holder* is that because aggregate-level registration and turnout rates by race approached parity then the blatant intervention into states' conduct of elections triggered by Section 4(b) can no longer be justified. Yet the justices recognize that race-based discrimination in voting still occurs. One of the most serious concerns among voting rights advocates is that by dismantling Section 4(b) then Section 5 preclearance is no longer able to block or require modification of statewide voting changes that prior to *Shelby* would likely have been prohibited. Contemporary discrimination is rarely overt and perhaps is unintended in some circumstances. Latter-generation racial discrimination often is subtle and can assume a variety of forms. Hours after the Court announced the *Shelby* decision the state of Texas announced it would adopt new voter identification requirements that had been

previously blocked by the Department of Justice using preclearance. Similarly, North Carolina, Mississippi, and Alabama also announced new voter identification laws (Lopez 2014).

One unanticipated result is the inconvenience of waiting in line increased for white citizens, too. The likelihood of not participating because of the inconvenience of waiting in line increases for everyone after the *Shelby County* decision. Hence, adjusting the Voting Rights Act to “current needs” might benefit from greater standardization of election administration. The impact of voting obstacles is small but nevertheless consequential. In 2016, waiting longer than 30 minutes reduced the likelihood that an average white citizen votes by an additional 0.3% and an average black citizen by 0.9%. In a political system with plurality electoral laws small reductions in the vote can determine winners and losers as evidenced by the 2016 presidential election. The results also imply that state-level practices regarding election administration are significant. The relative weakness of demographic and political engagement factors predicting the length of time required to vote compared to the power of race and ethnicity indicate that the latter continue to be powerful divisions in American society.

Minority citizens often look to the national government and the Department of Justice in particular as a protector of their fundamental rights. Dismantling preclearance effectively changes that relationship and reasonably increases anxiety among minority voters. A practical consequence of the Court’s decision in *Shelby County* is that states are freer to create environments that are perceived as being either facilitating or discouraging to voters. The results above continue to show differential election day experiences largely explained by race and ethnicity; however, there are fewer remedies available to affected citizens. Robert Dahl observed, “The prospects for stable democracy in a country are improved if its citizens and leaders strongly support democratic ideas, values, and practices. The most reliable support comes

when these beliefs and predispositions are embedded in the country's culture In other words, the country possesses a democratic political culture (Dahl 1998, 157).”

A surprising and disconcerting result is the racial and ethnic patterns associated with long waiting times for the entire country. This suggests that the benefits of the VRA indirectly extend to the entire United States. In fact, in some covered and uncovered jurisdictions obstacles which increase the inconvenience of voting are advancing. The Brennan Center for Justice (2017) reports that since February 2017, the legislatures in 27 states introduced bills that restrict voting access. Many of these bills are introduced in states not originally covered by the Voting Rights Act.

An important caveat must be mentioned. The post-*Shelby* environment is examined using two elections—the only elections available since the Court decision. It is not possible to determine if a maturation process will eventually manifest itself in these communities. This calls for the need for additional research into election day experiences following the loss of preclearance.

It is difficult to directly connect the removal of Section 4(b) to racial and ethnic discrimination using only the length of time required to vote. The special election of Doug Jones to the United States Senate in Alabama is in part attributable to high African American turnout. Thus, it is possible that under the right conditions minority voting can be mobilized to decisive levels. Yet the results suggest something has meaningfully changed. The post-*Shelby* results imply an emerging environment in some states that is tolerant of increased burdens and inconveniences on voting for citizens in the United States. Perhaps in 1965 an unimagined benefit of the Voting Rights Act is it established a minimal, uniform expectation regarding voting procedures. Devolution though means that states enjoy much greater freedom to engineer

voting practices and these changes will be more difficult to remove using only litigative strategies available through Section 2. The result is likely to be much greater variation in election administration that is beyond remediation.

James Madison expounded on the benefits of an enlarged public view in Federalist 10. He reasoned that we should rightly fear the power of faction. The barest of majorities is capable of pursuing its self-interest in defiance of others and the collective welfare of the nation. Prejudice and jealousy confound the dangers factions pose. As a palliative to these concerns, Madison found some measure of safety in the breadth [geographic size] of the new republic. The diverse interests necessarily included in political discussion and decision making might forge compromise among the disputing factions. Democratic government needs an enlarged public view. Providing for an enlarged public view demands that needless obstacles to voting be removed—especially if they disadvantage marginalized groups in society.

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Figure 1

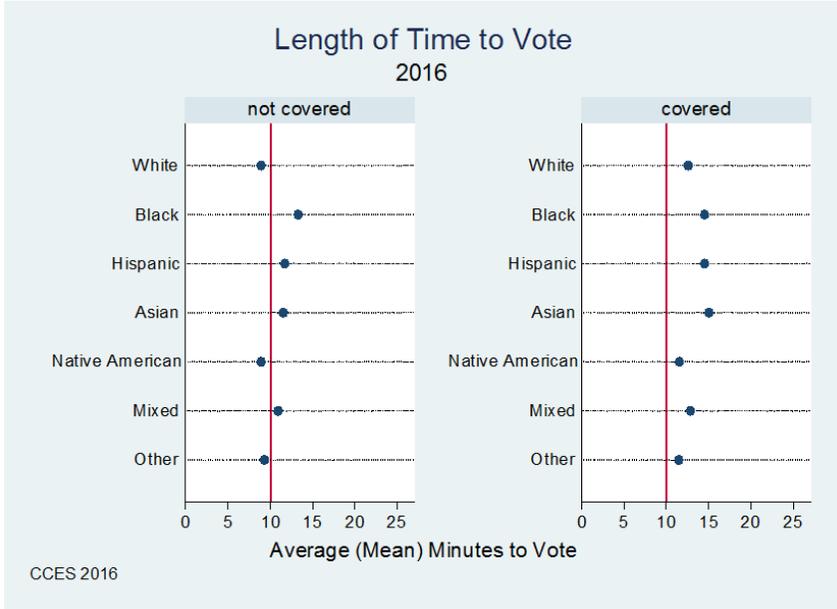
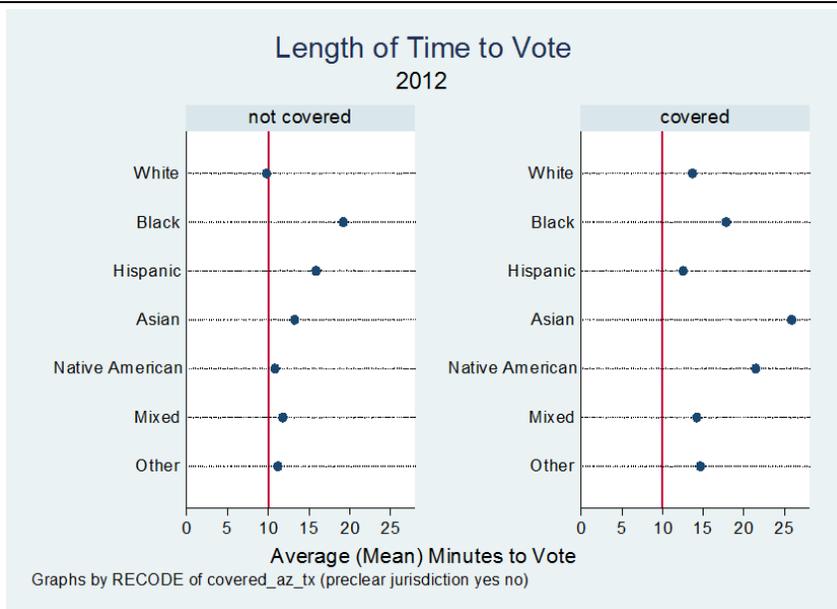


Figure 2
Minutes Waiting to Vote Pre-Shelby

	2008		2012	
	<i>Model 1 United States</i>	<i>Model 2 Covered Jurisdictions</i>	<i>Model 1 United States</i>	<i>Model 3 Covered Jurisdictions</i>
Age	-0.053***	-0.053***	-0.057***	-.058***
Education	0.579***	0.566***	0.434***	0.401***
Family income	0.939***	0.920***	0.8444***	0.813***
Married	-0.722**	-0.693**	-0.954***	-0.897***
Own home	0.304	0.408	0.966***	0.978***
News Interest	-0.562**	-0.577***	-0.399***	-0.350**
Party ID (7-cat)	-0.258***	-0.344***	-0.0029	-0.067
Campaign interest	0.466***	0.471***	0.294***	0.291***
Racial resentment	-0.461***	-0.519***	0.0007	-0.027
Dummy variables:				
Black	10.52***	10.228***	7.735***	8.851***
Hispanic	2.857***	3.625***	3.549***	5.104***
Asian	1.306	1.349	3.664***	1.953
Native American	0.728	.116	2.489*	2.160
Mixed	2.601*	2.055	0.872	0.675
Other	1.769	1.474	1.588*	1.244
Covered states		7.108***		4.602***
Interactions:				
White x covered		-1.354		-0.553
Black x covered		-3.973**		-6.238***
Hispanic x covered		-6.546***		-7.737***
Asian x covered		-1.821		8.105***
Constant	13.237***	12.669***	10.798***	10.516***
R-squared	0.033	0.045	0.028	0.036
N	18,989	18,989	25039	25,039
White is omitted category				
* $p < .10$, ** $p < .05$, *** $p < .01$				

Figure 3
Minutes Waiting to Vote Post-Shelby

	2014		2016	
	<i>Model 1 United States</i>	<i>Model 2 Covered Jurisdictions</i>	<i>Model 1 United States</i>	<i>Model 2 Covered Jurisdictions</i>
Age	-0.099***	-0.099***	-0.093***	-0.092***
Education	-0.118***	0.133***	0.322***	0.298***
Family income	-0.204**	-0.211**	0.056	0.049
Married	0.335**	0.331**	-0.274	0.262
Own home	-0.095	-0.089	-0.290	0.357*
News Interest	0.001	0.024	-0.538***	-0.495***
Party ID (7-cat)	-0.001	-0.021	-0.001	-0.049
Campaign interest	0.380***	373***	0.436***	0.438***
Racial resentment	0.065**	0.062**	0.091*	0.081
Dummy variables:				
Black	2.783***	2.687***	3.964***	4.061***
Hispanic	2.847***	3.286***	2.035***	1.864***
Asian	3.457***	2.862***	1.415**	1.451***
Native American	0.321	0.643	-0.367	-0.099
Mixed	0.537	0.823	1.101*	1.178*
Other	0.011	0.344	-0.387	-0.207
Covered states		-0.347		2.557***
Interactions:				
White x covered		1.566*		1.147
Black x covered		1.180		-1.18
Hispanic x covered		-0.523		0.483
Asian x covered		5.193***		1.245
Constant	8.967***	8.881***	11.707***	11.227***
R-squared	0.046	0.049	0.019	0.027
N	22,545	22,545	29,868	29,868
White is omitted category				
* $p < .10$, ** $p < .05$, *** $p < .01$				

Figure 4

**Minutes to Vote
(Covered Jurisdictions)**

Separate Effects in Minutes

Panel A

<i>Year</i>	<i>White</i>	<i>Black</i>	<i>Latino</i>	<i>Covered</i>	<i>Total White</i>	<i>Total Black</i>	<i>Total Latino</i>
2008	12.6	10.2	3.6	7.1	19.7	29.9	23.3
2012	10.5	8.8	5.1	4.6	15.1	23.9	20.2
2014	8.8	2.7	3.3	0	8.8	11.5	12.1
2016	11.2	4.1	1.9	2.5	13.7	17.8	15.6

Separate Effects in Minutes with Pre-Clearance

Panel B

		<i>Pre-Clearance (black)</i>	<i>Pre-Clearance (Latino)</i>		<i>Total White</i>	<i>Total Black</i>	<i>Total Latino</i>
2008		-4	-6.5		19.7	25.9	16.8
2012		-6.2	-7.7		15.1	17.7	12.5
2014		0	0		8.8	11.5	12.1
2016		0	0		13.7	17.8	15.6

Figure 5

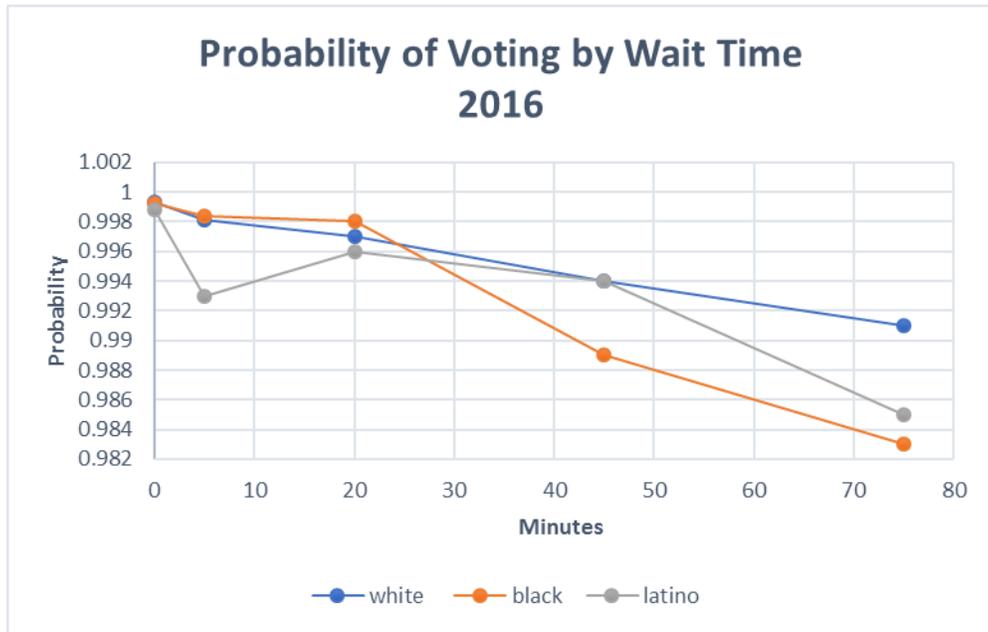
Probability of Not Voting derived from the Length of Time Required to Vote
(Interval is from “no wait at all” to “one hour”*)

	2012	2016
White	0.2 %	0.5 %
Black	0.2 %	1.2 %
Hispanic	0.7 %	1.1 %
All citizens	0.9 %	1.0 %

*The probabilities were retrieved from the following logistic function for the U.S.
All retrieved conditional probabilities are significant at $p < .01$

Voted (0/1) = α + age + education + family income + married + own home + investor + interest in public affairs + political engagement + racial resentment scale + partisanship + vote time + e

Figure 6



Endnotes

¹ The term, 'time taxes,' is used by Elora Mukherjee (2009).

² The CCES survey is made available by Harvard University and MIT. The survey is administered by YouGov/Polimetrix. Half of the questionnaire consists of Common Content asked of all 50,000+ people, and half of the questionnaire consists of Team Content designed by each individual participating team and asked of a subset of 1,000 people. The questions used in this analysis are from the Common Content module. For more information see: <https://cces.gov.harvard.edu/>

³ The strategy of converting each category to its midpoint in minutes is adapted from Stephen Pettigrew (2017).

⁴ The original covered states are Alabama, Georgia, Mississippi, Louisiana, Virginia, 40 counties in North Carolina, and 5 counties in Florida. After 1972 Texas and Arizona and selected counties in New York, California, Michigan and South Dakota are added by the automatic triggering mechanism in the Voting Rights Act.