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# **The Winding Journey to Justice: An Analysis of the Voting Rights Act on Disenfranchised Populations and Its Impact in the State of Georgia**

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*Today, the American landscape is more racially and ethnically diverse, yet minority populations have been and will likely be disenfranchised in the Post-Section 4 era. Minority voter participation Post-VRA has experienced some gains but achieving equality in terms of access and civic participation may be compromised. Hence, section one of this research will provide an introduction and highlight the conceptual framework that guides it. Section II will first provide a historical analysis of the significance of the VRA and its impact on minority voting rights from 1965 to the present. Section III will outline the methodology and theoretical framework that will guide this research. Section IV will examine the impact of minority participation in the State of Georgia Post-VRA and its correlation to the recent Supreme Court decision to strike down the usage of Section 4 of the VRA. Section V will comprise of a policy analysis of the VRA while examining the political landscape in the state and the implementation of the controversial Voter ID legislation that for many resembles a return to tenets of the Jim Crow era while drawing conclusions of minority participation post Section 4 as it relates to future elections. Section VI will include future projections and concluding remarks and implications for future research.*

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**I**n celebration of the 50<sup>th</sup> Anniversary of Rev. Dr. Martin Luther King Jr.'s "I have a Dream speech," our country is faced with the daunting task of leveling the scales of justice to ensure the equal exercise of constitutional provisions for all Americans. The right to vote is central to King's dream of equality and access for all, particularly for African Americans. The historical nature of voting discrimination among persons of color was prevalent in the

Deep South where voting rights originally extended by the 15<sup>th</sup> Amendment were cast down by Southern interpretations of the law and the implementation of Jim Crow laws. Jim Crow laws coupled with the efforts of Southern White Confederates increasingly made efforts to undermine the Civil War amendments while simultaneously ushering in a social and political environment of marginalization and suppression of the Black vote. The proliferation of the new social and political norms in the South inaugurated the era of disenfranchisement advanced by discriminatory pathways to voting that included but were not limited to: literacy tests, poll taxes, voter intimidation in the form of lynching, burnings, killings, all-White Primaries, and White poll workers complicit in the denial of voter participation by Blacks. White registrants, southern confederates and other opponents of Black voter inclusion rode the wave of the social and political climate that assumed a “moral duty” to defend and protect the right to vote for a select portion of society. Kousser (1984) notes that the force of all the aforementioned created a perfect political storm that limited Black participation and representation in the electoral process while simultaneously generating a groundswell of grassroots mobilization among the disenfranchised, giving birth to the Civil Rights Movement.

Gurr (1970) argued that when changing social conditions cause people to experience ‘relative deprivation’ the likelihood of protest and rebellion significantly increases. Feelings of relative deprivation result from comparisons of one’s situation with some standard of comparison—be it one’s own past, someone else’s situation, or some cognitive standard. If one concludes that one is not receiving the rewards or recognition one deserves the feelings that accompany this assessment are referred to as relative deprivation. If people assess their personal situation this is referred to as egoistic or individual deprivation; if they assess the situation of their group it is called fraternalistic or group deprivation. Hence, the social and political climate pre-VRA left many Blacks feeling deprived and with few political opportunities. We investigate the micro-level factors that shape electoral participation among minorities in the south. Specifically, we examine the voting patterns of Black Southerners post the passage of the VRA and the ensuing legislative acts that emerged that disenfranchised and stifled sustained Black voter inclusion. The central research question seeks to understand the social climate in the State of Georgia after the VRA and if the state has implemented systematic legislation to suppress the Black vote, specifically with the introduction of voter ID laws? Controversial voter ID laws have emerged around the country with southern states leading the charge, yet research is often limited by linking the passage of these laws with a sustained political and social environment that disenfranchises the vote for Blacks, other racial/ethnic minorities, the poor and those in rural areas. Hence, this research will examine census data collected following the passage of the VRA as well as the enactment of laws specifically in the State of Georgia.

Our conceptual framework builds on and contributes to political opportunity theory by examining the impact of the social environment on one’s political behavior. Historically, the general inducement for participation in the electoral process is the voters’ enthusiasm for representation in legislative bodies that shape public policy, particularly those that impact them. Hence, voting creates an avenue for voters to exert political power and contribute to the political system that guides them. Unfortunately, historical patterns of voter discrimination have limited political opportunities for Blacks to engage in the most fundamental constitutional rights, the right to vote. It is intimated that Black voter turnout is generally lower than average for all citizens and this can be attributed to the effects of past

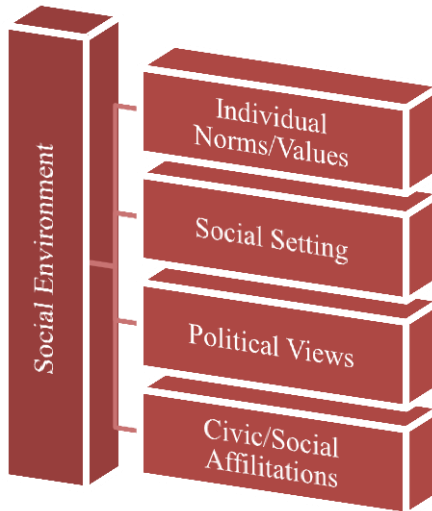
social, legal and political inequality. The impact of one's social and political environment is at the center of the work of other scholars' work (Cohen and Dawson 1993; Eagles 1995; Gilbert 1993; Huckfeldt and Sprague 1993). This presumption is predicated on the contention "that the political views and actions of individuals are not solely a product of individual characteristics but also reflect the attributes of other people in a shared social setting" (Burbank, 1997, 97).

The conceptualization of the social environment is comprised of the cultural, social, and political norms of individuals and the social constructs an individual emulates as directly associated with their civic and social organizations, civic and political affiliations. Contextual effects as established by Cox (1969) and Orbell (1970) and refined by Books and Prysby (1991, 47-81) focuses on individual and aggregate contexts and their relationships to one's political behavior. The approach utilized for this analysis will be based on the social environment that emerged during the Civil Rights era suggesting that political behavior during this era was largely influenced by information derived and enforced by the social environment as opposed to legislative mandates of the day. Burbank (1997) notes that one's:

...social environment consists of both the people (friends, family, neighbors, co-workers) and the institutions that structure interaction (churches, clubs, schools, businesses, and the like). The information individuals' encounter, however, is likely to be biased in accordance with the social composition of the local setting. For instance, people whose social surroundings are predominantly middle class are likely to be exposed to political information from a middle-class perspective, while individuals in working-class areas may well encounter political events and views with a different slant (p. 113).

Information derived through the various social settings can then lead to the establishment of contextual effects as a result of the structuring of political information by the social environment in such a way as to influence the impact on one's political and social actions. Political opportunity theory is examined and emphasized to highlight the role played by the social and political environment of the South in Black voter inclusion post the VRA. Within this context, we argue that during the Civil Rights Movement, the social environment was a dominate force influenced by several factors: Southern White Confederates along with Southern White Democrats who were committed to Jim Crow laws that prevented Blacks from participation in the electoral process in the South; White registrants who largely comprised the voting populace in the South thereby restricting Black representation and the implementation of laws that would increase the Black vote. Moreover, there is a sluggish legal system that supported the Southern norms of segregation and separation of Blacks in the electoral process, schools, government buildings, etc. The grassroots movements in the South helped to mobilize Blacks and fueled the Civil Rights Movement; however, the lack of political opportunity for Blacks was a double edge sword as mobilization efforts of Blacks post the Civil Rights Movement have been largely ineffective in impacting social and political norms, laws and values. Despite the passing of the VRA and subsequent civil rights legislation (laws of veiled enfranchisement particularly in the State of Georgia) many states have implemented new voting standards that some believe are a replication of Jim Crow laws. This dissension is predicated on the notion that since the Civil Rights movement, little has been done to ensure equality and justice for Blacks in the South. Hence, it is our contention that the aforementioned networks

constituted the social environment and a subset of political values that were incongruent to the Constitution and subsequent civil rights legislation. Figure 1.1 provides a depiction of the social environment and the contextual factors that influence it.



The social environment and the aforementioned contextual factors have lead researchers to theorize that the rise of the Civil Rights Movement and the succeeding civil rights legislation on behalf of disenfranchised Blacks was precipitated by at least three factors: political opportunities, indigenous organizational strength and cognitive liberation (McAdam, Tarrow and Tilly 2001). However, this research will focus specifically on political opportunities and the lack thereof for Blacks in the South. From this context, political opportunities result from “any event or broad social process that serves to undermine the calculations and assumptions on which the political establishment is structured” (p. 41). The social environment of the South with Jim Crow laws and segregation coupled with a largely White populace and ruling class created clear demarcations of political realignments and voting based on racial lines. Within this context, we argue that during the Civil Rights Movement, limited political opportunities for Blacks existed while social processes and the social environment prevented the passage of laws to enfranchise the Black vote well beyond the passage of the VRA.

### **Historical Analysis of VRA of 1965 to Present**

During the 1950s and 1960s, violent confrontations between Black and White registrants grew exponentially even with the passage of three progressive Civil Rights Acts in 1957, 1960 and 1964. The legislation passed during the Civil Rights Movement of the 1950s and 1960s primarily sought to increase Black voter inclusion. Unfortunately it was not until the passage of the Voting Rights Act of 1965, that the right to vote became a reality for Blacks. The Voting Rights Act of 1965 is “generally considered the most successful piece of civil rights legislation ever adopted by the United States Congress” (United States Department of Justice, Civil Rights Division, 2014). The Voting Rights Act (VRA) of 1965 banned the use of literacy tests, provided for federal oversight of voter registration in areas where less than

50 percent of the nonwhite population had not registered to vote, and authorized the U.S. Attorney General to investigate the use of poll taxes in state and local elections. Key provisions of the act were sections 2, 4 and 5. When Congress enacted the Voting Rights Act of 1965, it determined that racial discrimination in voting had been more prevalent in certain areas of the country. Section 2, which closely followed the language of the 15th Amendment, applied a nationwide prohibition of the denial or abridgment of the right to vote on account of race. The use of poll taxes in national elections had been abolished by the 24th Amendment (1964) to the Constitution; the Voting Rights Act directed the Attorney General to challenge the use of poll taxes in state and local elections. In *Harper v. Virginia State Board of Elections*, 383 U.S. 663 (1966), the Supreme Court held Virginia's poll tax to be unconstitutional under the 14th Amendment.

Section 4 (a) focused on covered jurisdictions (a state or political subdivision) that maintained on November 1, 1964, a "test or device" restricting the opportunity to register and vote (such as the requirement of an applicant to pass a literacy test, establish that he/she had good moral character, or have another registered voter vouch for his or her qualifications). Section 4 (b) is concerned with the role of the Director of the Census who determined that less than 50 percent of persons of voting age were registered to vote on November 1, 1964, or that less than 50 percent of persons of voting age voted in the presidential election of November 1964 (The Brennan Center for Justice 2014). This resulted in the following states becoming, in their entirety, "covered jurisdictions": Alabama, Georgia, Louisiana, Mississippi, South Carolina, and Virginia and 40 of the 100 counties in North Carolina (The United States Department of Justice 2014).

Section 5 of the VRA mandated that either a three-judge federal court or the Attorney General provide advanced approval and/or "preclear" any potential alterations to voting or election procedures in a covered jurisdiction. The ultimate goal of these efforts was to ensure that proposed changes did not simultaneously deny the right to vote on the basis of race or color (The Brennan Center for Justice 2014). The preclearance requirement of Section 5 was originally enacted for five years. Most of the sixteen states wholly or partially covered by Section 5 are located in the South. To address the issue of over and under inclusivity as determined by Section 4's formula under the VRA covers a series of steps for a "covered" jurisdiction to "bailout" of coverage and for federal courts to "bail in" to coverage a non-covered jurisdiction (The Brennan Center for Justice 2014). In the absence of section 5, the progressive gains in minority voting that have been made over the last forty years would not have been possible (Ingall et al. 1997; Leib 1998). The bill sets these provisions, known collectively as "special provisions," to expire after five years.

The immediate results post the passage of VRA was a movement to ensure Black enfranchisement. These efforts witnessed immediate increases in Black registrants in Alabama, Mississippi (from 6.7 percent to 59.8 in 1967) and Louisiana. By the end of 1965, 250,000 new Black voters are registered, one third of them by federal examiners. In the seven states originally covered, Black registration increased from 29.3 percent in March 1965 to 56.6 percent in 1971-1972; narrowing the gap between Black and White registration rates from 44.1 percent to 11.2 percent (Davidson, 1992, 21). In the four years post VRA the suspension of literacy test, and in the absence of federally dispatched examiners to all the counties that warranted them, "58 of 185 counties where less than 50 percent of Blacks were enrolled received them" (Salvatore, 2009, 72). Subsequently, the commencement of a second Voter Registration Project in 1966 led to an increase in the number of Blacks registered in the South from 43 percent in 1964 to 62 percent in 1969 (Salvatore, p. 72).

Additionally, according to the Justice Department, five years post the passage of VRA, almost as many Blacks in Alabama, Mississippi, Georgia and Louisiana, North Carolina, and South Carolina had registered to vote as in the entire century before 1965 (Francis et.al 2003, 3). The 1965 VRA had a significant impact on Black voter registration rates as compared to White registrants particularly in the racially segregated Southern states in 1965 and 1988. Figure 1.2 illustrates voter registration among the seven preclearance states noting that Black registration rates increased by an average of 44 percent by 1988; (Grofman, Handley and Niemi 1992, 23-24) however, this number was still significantly less than that of White registrants.

**Figure 1.2 Voter Registration Rates (1965 vs. 1988)**

	March 1965			November 1988		
	Black	White	Gap	Black	White	Gap
Alabama	19.3	69.2	49.9	68.4	75.0	6.6
Georgia	27.4	62.6	35.2	56.8	63.9	7.1
Louisiana	31.6	80.5	48.9	77.1	75.1	-2.0
Mississippi	6.7	69.9	63.2	74.2	80.5	6.3
North Carolina	46.8	96.8	50.0	58.2	65.6	7.4
South Carolina	37.3	75.7	38.4	56.7	61.8	5.1
Virginia	38.3	61.1	22.8	63.8	68.5	4.7

Source: United States Department of Justice Civil Rights Division Voting Section, Adapted from Bernard Grofman, Lisa Handley and Richard G. Niemi. 1992. *Minority Representations and the Quest for Voting Equality*. New York: Cambridge University

The gains made by Blacks in voter registration seemingly ended the era of disenfranchisement while simultaneously birthing a new era of veiled enfranchisement that would extend to other minorities and new practices that would seek to undermine the role and participation of minorities in the electoral process. During the 1970s Congress enacted major amendments to the Act in 1970, 1975, 1982, 1992, and 2006 including extending the preclearance requirement and other special provisions in each successive year except 1992. In 1970 and 1975, Congress updated the coverage formula and addressed the continued voting discrimination suffered by Hispanic, Asian and Native Americans requiring those jurisdictions to provide both assistance and voting materials to language minorities in their respective languages. In 1982, President Reagan and Congress renewed the VRA for twenty-five years with special provisions of the Act, triggered by coverage under Section 4 that would establish clear criteria for allowing jurisdictions to discontinue or bail out from coverage under the provisions of Section 4. The amendment, which took effect on August 5, 1984, establishes an "objective" measure to determine whether the jurisdiction is entitled to "bailout." A jurisdiction seeking to "bailout" must seek a declaratory judgment from a three-

judge panel in the United States District Court for the District of Columbia (United States Department of Justice 2014).

In the wake of the new amendments to the VRA and the continued struggle to ensure minority participation in voting, a new piece of legislation in the State of Georgia would seek to undermine the gains made and usher in a new wave of voter suppression. The social environment was wrought with subtle tactics such as vote dilution, the inability of Blacks to run for office, vote fraud and sustained intimidation at the polls along with misinformation concerning the voting process that ultimately had an impact on voter turnout among Blacks. In 1997, the Georgia General Assembly amended Title 21 of the Official Code of Georgia Annotated requiring certain forms of government-issued identification upon registration or voting. There were fourteen categories of identification required: a Georgia driver's license, a government employee identification card, a passport, a student identification card from a school located in Georgia, and/or a valid hunting or fishing license (Ga. S. Bill 273, Reg. Sess., 1997 Ga. Laws 662). If the voter was unable to produce one of the aforementioned forms of identification, s/he would be able to vote after swearing under oath and threat of a punishable felony as to their identity. Opponents of the bill argued that the new law would impose an undue hardship on voters who would be required at their expense to obtain appropriate ID in order to participate in the electoral process. Regrettably, despite the drastic change in the conduct of Georgia elections, the law was not challenged in either state or federal court on constitutional grounds. Proponents of the law believe that requiring voters to verify their identity in order to vote was necessary deterrent against voter fraud. Opponents argue that the new law can only prevent impersonation fraud at the polls and that there is little evidence to support actual voter fraud.

Unlike voter fraud, there are several instances in recent history of voter suppression. In 1990, Helms mailed between 125,000 and 150,000 postcards, predominantly to African Americans that provided voters false information about their eligibility to vote by telling them they could not vote if they had not lived in the precinct for more than thirty days. As a result, thousands of African American voters were misled and provided misinformation that was ultimately designed to dissuade them from voting on Election Day. Fortunately, the Department of Justice was able to successfully prosecute the Carolina Republican Party and the Helms for Senate Committee unfortunately the penalties were minor and did little to deter others from engaging in such behavior (Ayres 1990). To address not only the suppression and intimidation but also in response to the increased participation of Blacks in the 2000 election Congress enacted the 2002 Help America Vote Act (HAVA) to establish minimum requirements for verifying registered voters. In 2000, during the Florida elections, numerous violations were highlighted by civil rights organizations that further emphasized the veiled enfranchisement movement both in Florida and other states. The Minority Staff of Government Reform Committee of the U.S. House of Representatives examined voting rights and found that "10 Congressional Districts with the highest undercount in the 2000 Presidential election were in low-income, high minority districts. Five of those Districts were in Southern states: Florida (2 districts), North Carolina, South Carolina and Georgia" (Levitas and Cox 1998). Essentially this report highlighted that despite the ensuing legislation to extend the VRA, voter suppression, and intimidation had not been totally eradicated. In response, HAVA mandated "that all states verify the identity of first-time voters (Section 203) who register by mail and do not provide verification with their registration application by 2004" (Hale and McNeal 2011, 281). HAVA also stated that those who registered through the mail "must provide an acceptable

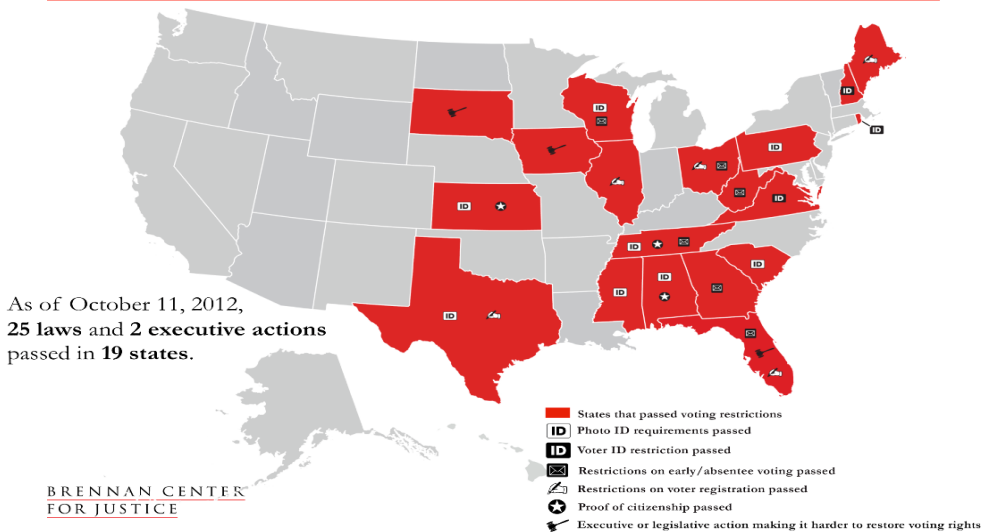


form of identification either with the registration application or at the time that they first vote in the state, whether in person or by absentee ballot” (2011, 281). As a result of the implementation of HAVA and the real/perceived voter fraud from the 2004 election, a significant number of states have adopted some form of photo ID requirements that are broader than the scope of federal requirements (Meyer 2013). Thirty-three states have a form of voter identification requirement and many of the states began testing the voter identification requirement back in 2006.

The 2006 legislation eliminated the provision for voting examiners. According to the Brennan Center (see Figure 1.3 illustrates the states with the strictest forms of voter ID laws), there were twenty-five laws and two executive actions passed since the beginning of 2011 in 19 states (Alabama, Florida, Georgia, Illinois, Iowa, Kansas, Maine, Mississippi, New Hampshire, Ohio, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Virginia, West Virginia and Wisconsin), of these at least five of the states are a part of the original seven preclearance states in the South.

Figure 1.3: States that Passed Restrictive Voting Laws

## States that passed restrictive voting laws



According to the Brennan Center, approximately 11percent of U.S. citizens are eligible to vote (roughly 21 million citizens) who are without government-issued photo identification. Moreover, it is estimated that this population is largely comprised of young people, those without college educations, Hispanics and the poor. Since 2000, the number of states passing voter identification laws for the first time more than doubled (from 14 to 31). The states with the toughest versions of voter ID laws as noted in Figure 1.3 require a valid photo ID in order to participate in the electoral process. Unfortunately, in some states (including Georgia) with photo ID laws, the state will only allow voters access to provisional ballots. However, to ensure that those ballots are counted, the voter must furnish an ID within a specified time period (determined by the state) to verify identity. Time limits

differ and can range from up to three days after the election (in the State of Georgia) to noon the Monday after the election (in the state of Indiana). Since 2010 alone, the Department of Justice has had 18 Section 5 objections to voting laws in (Texas, South Carolina, Georgia, North Carolina, Mississippi, and Louisiana). With one tenth of the population without identification, thus, the voter ID laws have and will likely continue to disenfranchise voting participation among minorities, students, seniors, and people in rural areas.

In addition to the voter suppression ushered in by voter ID laws, two key Supreme Court rulings sought to diminish the power of section 5 of VRA while disenfranchising minority participation in the electoral process. In 2003, the Supreme Court issued another decision, *Georgia v. Ashcroft*, which “marked a wholesale revision in section 5’s standard of review, causing many to question its future effectiveness (Columbia Law Review 2004). In evaluating the Georgia Senate’s redistricting plans under Section 5, “the Court fundamentally redefined the effective exercise of the electoral franchise” such that preclearance can no longer be based solely on minorities’ ability to elect candidates of their choice. Rather, reviewers must conduct a nuanced inquiry into all the relevant circumstances, which include but are not limited to, electoral success” (*Beer v. City of New Orleans* 425 US at 141). Responding to this new mandate, Justice Souter, in dissent declared section 5 “substantially diminished” and “practically unadministrable” (*Georgia v. Ashcroft* 539 US at 479). The Court’s interpretation of Section 5 will allow preclearance in certain circumstances such as if the political “influence” of minority voters is not diminished, even if their ability to elect candidates of choice is.

In 2008, there was a surge in voter participation among African Americans and other minority groups and young people. In 2008, eligible Black, Latino and Asian voters nearly erased the gap between White eligible voters. The Black voter turnout rate increased by 8 percent from 2004 to 65.3 percent, and for the first time, the turnout among African American women voters was the highest of all racial, ethnic and gender groups at 68.8 percent. Participation by young African American voters between the ages of 18 and 29 soared by 17 percent over 2004 levels. The number of eligible Latino voters rose by more than 21 percent, from 16.1 million in 2004 to 19.5 million in 2008. Two million additional African Americans reported voting in 2008 than in 2004. For Latinos, the number of new voters was the same. According to analysis from the Pew Research Center, many of the states with the highest increases in voter participation were in the Southeast with large Black populations. Mississippi’s turnout rate jumped 8 percentage points, Georgia increased by 7.5 points, North Carolina by 6.1 points, and Louisiana by 6 points. In 2011, more than 30 state legislatures introduced voter suppression legislation, with laws passing in 14 of those states and laws pending in 8.

One of the most controversial cases in the era post VRA occurred in, Shelby County, Alabama. Residents from a largely White suburb, filed suit in federal court in Washington, D.C., seeking to have Section 5 declared unconstitutional. The basis of the suit was concerned with Congressional authority to reauthorize Section 5 of the VRA in 2005. Despite the claims made by the residents, the U.S. District Court for the District of Columbia upheld the constitutionality of Section 5 by a vote of two to one, holding that Congress acted appropriately in the authorization in 2006. Unfortunately, this ruling was short lived in 2013 when the Supreme Court ruled in favor of Shelby County in *Shelby County v. Holder* that the coverage formula in Section 4(b) of the VRA used to determine the states and political subdivisions subject to Section 5 preclearance was unconstitutional.

Thus, while the Court did not invalidate the preclearance mechanism in the VRA per se, it effectively halted its use by invalidating the formula that determined which places were subject to the preclearance obligation. In the *Democratic Party of Georgia, Inc. v. Perdue*, the Georgia Supreme Court declared constitutional the Voter Identification Act of 2006 (2006 Act), insofar as it required registered Georgia voters to present valid photo identification at the polls when voting in person in any Georgia election. The 2006 Act was the most recent amendment in a series of iterations of section 21-2-417 of the Official Code of Georgia Annotated-- the provision of the Georgia code imposing certain polling requirements for in-person voting.

Today, nearly 50 years after the enactment of the Voting Rights Act; the constitutionality of one of the act's critical sections has been eliminated. Section 4 of the Voting Rights Act (VRA) was designed to create constitutional protections for disenfranchised populations by determining which states, based on past discriminatory practices, would be subject to approval by the federal government's Department of Justice in making changes to voting procedures through a preclearance process. The preclearance process is at the heart of Section 5 of the VRA and as a result of the ruling on Section 4; the feasibility of the preclearance requirement is in question and cannot be enforced unless Congress creates a new formula. Unfortunately, while Congress decides on potential new statistical measurements, states are aggressively implementing new processes that may seek to undermine the progress made in the previous 50 years to ensure access and equality to the franchise previously afforded to minorities. The Supreme Court's decision last year to strike down a central provision of the Voting Rights Act unleashed a wave of new laws with a disparate impact on Black voters, including cuts in early voting and photo-identification requirements. These laws will disenfranchise an unknown number of eligible voters, but probably not so many as to have a big effect on election results. It is also critical to note that in the last two general elections, 2008 and 2012, African Americans voted at the highest percentage ever in history. In the State of Georgia, where a voter ID law has been in place since 2007, the Black turnout rate has increased to nearly match that of Whites. Hence, in the absence of reforms of the Voter ID legislation and the social environment after the elimination of Section 4 we are likely to witness a return to pre VRA voter suppression and disenfranchisement.

### **Methods and Results**

The dependent variable, voter disenfranchisement among minorities, specifically Blacks, and the independent variable, the Voting Rights Act of 1965, specifically Sections 2, 4, and 5, are imperative to determining policy implications of racial discrimination, the use of "tests and devices," and the status of pre-clearance among Southern states, specifically Georgia. As there are expected implications and outcomes of the most recent Supreme Court's ruling to not apply Section 4 of the 1965 Voting Rights Act to future voting legislation as well as growing nation-wide implementation of photo voter identification requirements, this study uses the qualitative research method of policy analysis. Given the historical, political and social environment of Georgia, it was one of the states to apply this methodology to predict future outcomes of the Voting Rights Act as it has historically been a "red" state that is led by the Republican Party. In addition to this, most voting legislation has been created and implemented by this conservative party. Its domination of the Georgia House and Senate for decades has led to distrust among Georgia voters that can be

examined through three specific stages of policy analysis: problem definition, tools, and social constructions. This study will define the problem, identify the tools used by Georgia to influence voter participation or lack thereof, and examine social constructions that are defined as an individual's image of reality and/or the stereotypes they use to make sense of the world as they see it (Schneider and Sidney 2009, 104)

For this study, racial discrimination is examined as a two-fold definition: "Differential treatment occurs when individuals are treated unequally because of their race. Disparate impact occurs when individuals are treated equally according to a given set of rules and procedures but when the latter are constructed in ways that favor members of one group over another" (Pager and Shepherd 2008, 182). Racial discrimination in voting has taken unconventional forms and make is important to consider how these forms are assessed and measured. The major "test or device" examined was the Photo Voter Identification Requirement in Georgia that specifically relates to Section 4 of the Voting Rights Act.

### **Problem: Social Environment**

The social and political climate in Georgia is complex as "the history of voting rights in Georgia can best be categorized as promises made, promises broken; promises remade, promises broken; promises made and now only partially realized," (Francys Johnson, President, Georgia NAACP, in testimony before the Senate Judiciary Committee). Beginning as early as 1871 and in response to the political gains after Reconstruction, Georgia began to show signs of voter suppression of Blacks by becoming the first state to enact a poll tax. From 1868 through 1960, the State of Georgia was largely liberal, voting Democratic in every election. It was not until 1964 when the state made a drastic departure from liberal to conservative voting norms that were the result of their disdain over the enactment of the Civil Rights Act. The tactic employed was referred to as the "southern strategy" promulgated by Conservatives and the state has been reliably Conservative ever since (except for when a Southern Democrat was on the ticket in 1976, 1980 and 1982). Despite the gains made after the VRA in the State of Georgia, a 1981 study of election practices in Georgia also drew useful conclusions about the development of voter intimidation and suppression after the 1965 Voting Rights Act. Sherman (1981) found that: "Because the VRA [Voting Rights Act] has outlawed the most blatant measures, those who have wanted to limit Black participation in politics have had to resort to more subtle and subterranean tactics (p. 43)." Sherman's research included a survey of civic leaders in sixty Georgia counties and results revealed the specific tactics limiting African American voting at the time that included but was not limited to:

- Inadequate protection and discrimination in poll-watching. Almost half of the counties reported discrimination against African Americans in selecting poll-watchers or actual intimidation or irregularities by poll-watchers against African American voters.
- Discrimination in supervising elections. This included the refusal to appoint African American registrars and poll-watchers, excessive purging of African Americans from voting lists and refusal to open easily accessible registration sites. Also reported were allowing Whites-only private clubs to supervise elections, allowing White intimidation of African American voters and deliberately giving confusing information about election information.

- Miscellaneous intimidation. This includes accounts of “Whites entering voting booths with Blacks, Whites buying Black votes, tampering with voting lists, Blacks being removed from voting lists without notification, and Blacks living and working on large plantation-like estates being unable to leave and vote.” Over a third of the counties surveyed reported instances of “Whites telling Blacks how to vote, with five counties reporting that this happens in virtually all elections” (pp. 48-52).

Concomitantly, voter turnout in Georgia historically has been amongst the lowest in the country. In the 1996-2000 period when the national turnout increased by 2.22 points and Georgia’s identification requirement became effective, Georgia’s turnout increased 1.37 points, going from 42.43 percent to 43.8 percent (von Spakovsky 2006, 90). In comparing that increase with the increase/decrease in turnout of all other states, Georgia ranked thirty-seventh in the country, the largest increase in turnout of any state. Given Georgia’s large minority population, a significant decrease in turnout in the 2000 election would have been expected if the assumptions underlying objections to identification requirements were valid. However, Georgia’s turnout increased although not at as great a rate as the national increase as noted in Figure 1.5:

**Figure 1.5 Percentage Turnout of Voting Age Population (increase/decrease between elections)**

Year	South Carolina	Virginia	Georgia	Louisiana	National
1984	40.66%	50.69%	42.05%	54.55%	53.11%
(-/+)	(-1.75)	(-2.46)	(-2.65)	(-3.27)	(-3.0)
1988	38.91%	48.23%	39.4%	51.28%	50.11%
(-/+)	(+6.09)	(+4.61)	(+6.77)	(+8.55)	(+4.98)
1992	45%	52.84%	46.17%	59.83%	55.09%
(-/+)	(-3.44)	(-5.3)	(-3.74)	(-2.85)	(-6.01)
1996	41.56%	47.54%	42.43%	56.98%	49.08%
(-/+)	(+5.04)	(+5.46)	(+1.37)	(-2.75)	(+2.22)
2000	46.6%	53%	43.8%	54.2%	51.3%
(-/+)	(+4.6)	(+3.6)	(+7)	(+4.1)	(+9.6)
2004	51.2%	56.6%	50.8%	58.3%	60.9%

\*Source: von Spakovsky, Hans A. 2006. “Increasing the Security of Elections: The Effect of Identification Requirements on Turnout of Minority Voters.” Prepared for the Federalist Society for Law and Public Policy Studies available at <http://www.fedsoc.org/Publications/White%20Papers/Whitepapers.htm>.

Despite the aforementioned and the seeming gains in Black voter registration, absolute parity has not been achieved. Nonetheless, the 2000 and 2004 election cycles demonstrate that the number of Black voters has drawn close to the number of White voters. In 2000, the gap between Blacks and Whites in registration and voting in the Southern region was 3.7 percent and 4.0 percent respectively, and the gap in 2004 was 1.4 percent and 1.7 percent (Levitas and Cox 2008). Despite the increases in the number of voter registration in the State of Georgia, it is important to note that these numbers fall slightly behind the national average. In the State of Georgia, the journey to equality and parity in

voting among Black and White voters was still beyond reach. In the 2012 General Election, Blacks and Whites in Hancock County, a county where Blacks make up 72.6% of the population, voted at 73 percent respectively. On the other hand, in Fannin County where Whites constitute 97.2 percent of the population, Blacks voted at 31.25 percent and Whites at 70.17 percent (United States Census Bureau, 2013; Georgia Secretary of State, 2014). In Fannin County, only 16 Blacks were registered to vote and only 5 voted in the 2012 General Election compared to 14,095 Whites registered voters and 9,891 voters (Georgia Secretary of State, 2014). This trend continued in Dougherty County, 68 percent African American and 31.4 percent White, whereas Union County is 97 percent White and 0.8 percent Black (United States Census Bureau, 2013). Dougherty County had a 69.3 percent voter participation rate from Blacks compared to a rate of 71.9 percent from Whites (Georgia Secretary of State, 2014). Blacks in Union County voted at a rate of 53.3 percent with 8 of the 15 registered voters participating in the franchise compared to 85.75 percent of Whites voting (Georgia Secretary of State, 2014). This clearly depicts how the racial makeup of counties influences voter participation among all races, specifically Blacks and Whites in Georgia. Because of race, voting percentages are not reflective of the voting population.

Historically and currently, the Republican Party heavily represents Georgia. Both senators are Republican White males who have served in this capacity for decades. There are 14 Congressmen. Of these 14, four are Black males who represent the Democratic Party while the remaining 10 are Republican White males. It is important to note that political partisanship plays a significant role in voter participation especially in a racially-divided state like Georgia. As minority groups struggle to gain equal protections under voting legislation like the VRA, the social environment in Georgia continues to promulgate a new era of Jim Crow that seeks to thwart the gains made under the Act by disenfranchising minorities and other vulnerable populations in the state. “Political majorities maintain political influence by undermining the impact of minorities, securing social control and legitimacy through formal and informal institutions” such as political parties and social and civic organizations (Ochs 2006, 82). Furthermore, states like Georgia have “played an integral role in constructing pervasive differences in interest based on race and enduring hierarchies through various public policies” (Ochs 2006, 82). For example, 95.3 percent of Republicans voting on one of ten identification bills introduced by their party’s state legislators between 2005 and 2007 supported the measure, compared to only 2.1 percent of their Democratic counterparts (Erikson and Minnite 2009). The significance of control over the “legislative mechanisms in the face of such polarization is epitomized by the fact that Republican unified control of state government substantially increased the likelihood of adopting a stricter voter identification law over the two year period of 2001 to 2002” (Bali and Silver, 2006, p. 35). This further perpetuates the reality that Republican-control within this formal institution increases the probability of statutes that disenfranchise minority voters will continue to be enacted. Chief among these efforts are the controversial voter photo identification requirement that was implemented in 2007.

### **Tools: Voter Photo Identification Requirement**

Today, nearly 150 years after the implementation of the poll taxes, the State of Georgia continues in its efforts to disenfranchise the Black by “re-introducing a modern day poll tax” in the form of voter identification laws. Georgia, one of the original preclearance states with a history of discrimination would introduce and enact one of the strictest voter ID laws in the nation. In 1997, the Georgia General Assembly amended Title 21 of the Official Code

of Georgia Annotated requiring certain forms of government-issued identification upon registration or voting. There were fourteen categories of identification required: a Georgia driver's license, a government employee identification card, a passport, a student identification card from a school located in Georgia, and/or a valid hunting or fishing license (Ga. S. Bill 273, Reg. Sess., 1997 Ga. Laws 662). If the voter was unable to produce one of the aforementioned forms of identification, s/he would be able to vote after swearing under oath and threat of a punishable felony as to person's identity. Opponents of the bill argued that the new law would impose an undue hardship on voters who would be required at their expense to obtain appropriate identification in order to participate in the electoral process. Regrettably, despite the drastic change in the conduct of Georgia elections, the law was not challenged in either state or federal court on constitutional grounds. Proponents of the law believe that requiring voters to verify their identity in order to vote was necessary deterrent against voter fraud. Opponents argue that the new law can only prevent impersonation fraud at the polls and that there is little evidence to support actual voter fraud.

In 2005, a new provision was enacted that required a photo identification that was adopted by the first Republican legislature in 130 years, prompting claims by Democrats that the new requirement had partisan overtones (Hood and Bullock, 2008). The new requirements for voter photo identification included but were not limited to a driver's license, a state issued identification card for non-drivers, a military identification card, a government employee identification card, a tribal identification card, or any other valid picture identification issued by state or federal government, including an identification card from any state supported institution of higher education. Voters who did not possess one of the aforementioned acceptable identifications would be eligible to purchase one from the state at a cost of \$20 for a card valid for five years or \$30 for a card valid for ten years. Voters who were unable to afford the fees to acquire a valid identification could have the fees waived if they provided an affidavit of indigence. Additionally, prospective voters who lacked proper identification would be allowed to cast a provisional ballot, which would be counted only if the voter provided proper photo identification within 48 hours (Hood and Bullock 2008).

The fact that most groups that are less likely to possess identification than the general public include African Americans, Latinos, and lower income groups, vote disproportionately for the Democratic Party presents an opportunity for the adoption of an election reform that potentially benefits Republicans at the polls (Barreto et al. 2007, 2009; Hood and Bullock 2008). Previously the State of Georgia only required minimum forms of identification for voting in person, however, the new legislation significantly narrowed the types of identification that could be used. The legislation was precleared by the United States Department of Justice on August 26, 2005. Voting law opponents contend these laws disproportionately affect elderly, minority and low-income groups that tend to vote Democratic. It thus appears reasonable to suspect that Republicans favor (and Democrats oppose) identification laws at least in part because they are expected to suppress the Democratic vote (Hasen 2012). Obtaining photo identification can be costly and burdensome, with even free state identification requiring documents like a birth certificate that can cost up to \$25 in some places leading many to conclude that photo identification requirements represent a "test or device" that was at the heart of Southern Jim Crow era (The Brennan Center 2014). In 2007, the University of Georgia conducted a study analyzing the driver's license and voter registration records in Georgia concluded that "registered

voters are significantly less likely to possess a driver's license if they are from minority groups, especially Blacks and Hispanics" (Hood and Bullock, 2007 p. 19). The researcher further notes that there was a sizable turnout differential between Georgia registrants with and without driver's license even after controlling for a number of factors. Hence, the study concluded that those registrants who lack driver's licenses are generally less engaged politically and may be even less apt to participate if more restrictive identification restrictions are put in place" (Bullock and Hood 2007).

Republican Georgia House Representative Sue Burmeister of Augusta sponsored House Bill 244 and a proponent of Voter ID laws contended that "when Black voters in her Black precincts are not paid to vote they do not go to the polls" (Levitas and Cox 2008, 14). Such rationale reinforces the notion that race is "a significant factor in the adoption and persistence of disenfranchisement policies" (Ochs 2006, 83). Such claims of voter fraud by conservatives such as Burmeister, provides a glimpse of voter disenfranchisement that pervades the social environment of the state, which "originates with strategies of racial containment and persist because of...subtle, race-neutral measures" (Ochs 2006, 83). The residual effects of the aforementioned can lead to severe alienation of Blacks and minorities from the voting polls and disguise itself as minority suffrage (Ochs 2006, 83). Moreover, the political strength of Black voters is significantly compromised and the political opportunities of Black voters' are constrained as their ability to affect their circumstances as the polls as well as in political representation (Ochs 2006, 83). Ochs (2006) asserts that "the disenfranchisement rate for Blacks is seven times the national average" (p. 81). More specifically, disenfranchisement in the United States "has given advantage to Republican candidates in every presidential and senatorial election from 1972-2000" whose constituents are primarily White and conservative (Ochs 2006, 82).

According to the National Conference of State Legislatures, of the thirty-four states that considered photo voter ID legislation in 2011, Georgia, a traditionally "red" or conservative state, not only considered photo voter ID but enacted one of the harshest forms of voter ID law that subsequently impacted voter participation among traditionally disenfranchised populations. Georgia passed voter photo ID laws as a result of the Supreme Court's *Bush v. Gore* decision and provisions within the Help America Vote Act implementing one of the most contentious and extraordinary pieces of legislation affecting the right to vote in Georgia. Policymakers, largely Republicans, were proponents of the new photo ID requirements, felt that they were necessary to eliminate voter fraud. Opponents of the bill believed that the implementation of new photo ID requirements would negatively impact voter participation among minority populations. The head of the Georgia Association of Black Elected Officials, who also serves as a state representative, remarked on her dissent of the new photo laws noting that "It's an erosion of voting rights and the beginning of turning back the clock on voter enfranchisement" (Jacobs 2005 C1, C5). Opponents of the photo ID were largely comprised of Democrats who believed that the new requirement was unnecessary, since no obvious evidence shows that voter fraud was an issue. Then Secretary of State Cathy Cox (D) was responsible for supervising elections substantiated the claims of her Democratic colleagues, that the bill was unnecessary as her office had not received any complaints of voter fraud (Jacobs and Tharpe 2005). Since Georgia is subject to Section 5 of the Voting Rights Act, the photo ID provision had to be pre-cleared by the federal government. Civil Rights groups in protest of the photo ID requirements in the State of Georgia contended that African Americans would be



disproportionately impacted by the legislation as they are less likely to have drivers' licenses and, the Department of Justice approved this requirement (Eggen 2005).

Voter identification requirements in the State of Georgia will do more to "prevent people from voting or not having their votes counted" than to ensure access and equity in voting among minority populations (Tokaji 2006, 691). The South's historic and strategic record of discrimination and disenfranchisement is undeniable. Hence, removing measures set forth by Section 4 of the Voting Rights Act tampers with pre-clearance requirements of Section 5 of the VRA of 1965. These sections worked to ensure a holistic stance against voter disenfranchisement, particularly for the Black race. Preliminary aggregate data on the impact of voter identification and voter turnout reveal no significant effect; however, individual level data usually reveals that minority voters are less likely to have government issued identification (Alvarez, Bailey and Katz 2008). A study by the Brennan Center for Justice found that approximately one in ten persons do not have a proper government issued identification required to vote. The populations that will be most impacted by Voter identification laws include but are not limited to: minorities, students, low income persons and the elderly. Similarly, Vercelotti and Anderson (2006) in an analysis of Current Population Survey and 2004 Election Day data revealed that voter identification led to decreased voter turnout and participation among Black and Hispanics. Moreover, during the 2004 Presidential Election, African American voters were more likely to vote in states with a non-photo identification requirement or with a name match requirement than in states with more stringent requirements.

Hood and Bullock (2008) conducted a multivariate analysis of Georgia's voter identification laws by cross referencing Georgia's Department of Motor Vehicle list of licensed drivers with a list of Georgia's registered voters. Findings highlight that prior to the implementation of the voter identification laws in 2007, Blacks and Hispanics were less likely to have a driver's license as compared to other registrants. Additionally, Blacks and Hispanics were also less likely to vote in 2004 and 2006 in Georgia's General Election than other registrants. Hood and Bullock's (2008) work also notes that 30 percent of African Americans in Georgia do not possess photo identification and are thereby ineligible to participate in the electoral process. If other states begin to implement voter identification requirements, there is the possibility of a greater number of Americans being ineligible to vote (Coleman 2014, 8). Furthermore, it is estimated that, "the more politically involved [citizens] are [the] more likely [they are] to learn about voter-ID rules and [are] also more likely to vote" (Hershey 2008, 88). Hence, one's social environment and social setting can have a positive impact on their political participation. As those who actively participate in the electoral process are more likely to acquire the required forms to obtain appropriate photo identification prior to heading to the polls than those who are traditionally disenfranchised from the voting process. This is exemplified in an investigation of Georgia's citizenship-verification program.

In 2009, the Justice Department issued a conclusion regarding Georgia's citizenship-verification program. In effect, the Justice Department objected to the Attorney General citing preclearance for the program and Georgia's failure to sustain "its burden of showing that the proposed change 'neither has the purpose nor will have the effect' of denying or abridging the right to vote on account of race, color or membership in a language minority group" (The United States Department of Justice 2014). The Justice Department highlighted that the additional requirements would pose considerable obstacles to flagged individuals but also that the system was inaccurate and over-inclusive, having wrongly

flagged thousands of Georgia citizens who were, in fact, eligible to vote. More significantly, of those wrongly flagged, 45.7 percent were naturalized citizens and Hispanic and Asian voters were “more than twice as likely to appear on the list” than White voters (Toledano 2011, 400). Of these numbers, 60 percent more Black voters were flagged than White voters, despite comparable registration numbers (Toledano 2011, 400). After reconsideration and a second denial by the Justice Department in February 2010, Georgia filed suit in the U.S. District Court for the District of Columbia to challenge the decision. The case was settled in August 2010 when the Justice Department pre-cleared the citizenship verification program and requested that the district court dismiss the case (The United States Department of Justice 2014.).

In a comparison of voter registration rates by race in February 2003, it is important to note that White voters comprised 70.4 percent of the state’s 4.78 million registered voters, while Blacks accounted for 26.6 percent of registered voters. The remaining 2.9 percent of registered voters classified themselves as Asian, Hispanic or other (Crawford 2013). In all, less than 30 percent of the state’s registered voters were non-White. Ten years later, White voters made up just 58.7 percent of Georgia’s 6.12 million registered voters, while Blacks comprised 29.9 percent of the voters. Voters classifying themselves as Asian, Hispanic or other now account for 11.2 percent of the state’s registered voters and highlight the growing minority population in the State. The combined non-White voters have seen their share of the registration total increase to 41.2 percent (Crawford 2013). Findings from this analysis highlight that each year the percentage of White registered voters in Georgia drops by about one point, while the percentage of non-white voters increases by about one point (see Figure 1.5 below).

**Figure 1.5 Georgia Registrant comparisons 2003 v. 2013**

State	2003				2013			
	Black	White	Gap	Other	Black	White	Gap	Other
Georgia	26.6	70.4	43.8	2.9	29.9	58.7	28.8	11.2

Source: Tom Crawford (2013) “What the Demographic Trends Indicate” *Associated Press and The Georgia Report*. <http://gareport.com>

However, the increases or gains in Black registrants does not necessarily mean that parity has been achieved as the state like most southern states experienced significant increases in both Black registrants and voters in the 2008 and 2012. Crawford (2013) notes that census data conclude that Blacks voted at a much higher rate than all other minority groups in 2012 and exceeded voting rates of Whites for the first time as a result of the historic election of President Barack Obama while many Whites decided not to participate in the election.

**Social Constructs**

Social constructs are essential to policy analysis because they seek to gain a better understanding of the social world order, humans’ interpretations of the world that create social reality, and shared understandings of rules, norms, identities, concepts and institutions (Schneider and Sidney 2009, 106; Mack 2012). Furthermore, social constructs aims to better understand how the public interprets the “real world” (Schneider and Sidney 2009, 106; Mack 2012). Within this context, political culture is a dominant force in how the

electoral process is run within a given state. Each state has the constitutional right to organize, establish and run its elections. Therefore, with this amount of power, it is necessary to better understand the political culture of a state and the influence it has on the electoral process. Daniel Elazar defines political culture as “the particular pattern of orientation to political action in which each political system is embedded” (Smith et al. 2008, 1; Mack 2012). It also encompasses shared political beliefs, ideals, and ways of life. Moreover, a state’s political culture is a direct reflection of how people vote that is determined by their social environment. This social environment encompasses one’s social setting, political views, religious beliefs, individual norms and values, and civic and social affiliations.

The South, especially Georgia is known for its ultra-conservative religious beliefs, social order, and civic organizations. As a result, it is very clear to see segregation within a community’s makeup and social setting. There are at least 29 counties where the population is less than 10 percent African American. These counties are Franklin, Pierce, Glascock, Madison, Hall, Jackson, Cherokee, Oconee, Echols, Haralson, Walker, Gordon, Whitfield, Habersham, Brantley, Forsyth, Banks, Catoosa, White, Lumpkin, Rabun, Pickens, Dade, Murray, Dawson, Towns, Gilmer, Union, and Fannin (United States Census Bureau 2014). The majority of these counties are populated by less than 3 percent of Blacks. These counties mainly consist of low-income and high-schooled educated persons. This is a direct reflection of the effects of segregation, discrimination, and racism.

Additionally, political culture is a reflection of how persons in a state believe it should be run. Smith, Greenblatt and Mariani (2008) identify three types of political cultures – moralistic, individualistic, and traditionalistic. Moralistic political cultures “view politics and government as the means to achieve the collective good” (Mack 2012, 12). The State of Georgia, for the context of this article, reflects the moralistic and individualistic political cultures. Moralistic political culture aims to create the “best possible society” (Smith et al. 2008, 12; Mack 2012). Within the context of social environment, religious views, individual norms and values, and civic and social affiliations are very imperative to the moralistic culture of Southern states, especially Georgia. The State of Georgia has long documented and used such entities to legally sanction disenfranchisement of African Americans. Historically, churches, civic and social groups and how one values another’s lifestyle all determined who would be selected as political candidates. Most politicians campaigned at churches and social clubs. Most of these units were occupied by Whites and allowed potential candidates to be supported both financially and at the polls. Blacks, on the other hand, still do not have a substantial representation in the Georgia House of Representatives as mentioned before.

Measures of disenfranchisement to ensure that Blacks are prevented from accessing positions of power or to be elevated to a state of political authority and power ubiquitous in the individualistic political culture that views “government as an extension of the marketplace, something in which people participate for individual reasons and to achieve individual goals” (Smith et al. 2008, 12; Mack 2012). Votes in most states are seen as a means to achieve individual goals and power within the political spectrum. More specifically, political views and individual norms and values have given the political advantage to the Republican Party and Southern White Conservatives for more than 20 years (Georgia Secretary of State 2014).

Social settings within this context are embedded in both the moralistic and individualistic political cultures in Southern states like Georgia, Louisiana, Alabama,

Mississippi, North Carolina and South Carolina. As a result, policy implications for voter discrimination in such states continue to prove strong. These states are “red” conservative and/or Republican states that have historic patterns of racism and discrimination. This discrimination has played out at the voting booths, and as a result of disenfranchisement through photo voter identification laws, that have sought to disenfranchise and limit the political opportunities of Blacks particularly in the State of Georgia. And despite the increase in Black voter participation in the state the ability to increase representation within the state is at best limited. Hence, we argue that it is important to reconsider voting rights and examine the impact of minority participation in the State of Georgia Post-VRA.

### **Forecast and Recommendations**

In the face of the anniversary of Rev. Dr. Martin Luther King Jr.’s “I Have a Dream” speech and the forthcoming anniversary of Blood Sunday (Selma, Alabama) in 2015, it is imperative to be concerned with the right to vote particularly amongst African Americans and other minorities. Georgia amid other Southern states has a long and sustained history of racial discrimination and voting disenfranchisement as it pertains to persons of color. This history still plays a major part in its social environment and political opportunities. This social environment historically has promulgated a system of segregation and disenfranchisement of the Black vote while embracing the social and political norms of the majority, a conservative civic and social ethos. Georgia’s voting history along with its recent implementation of the Photo Voter Identification Requirement creates another layer of voter suppression and barrier for Blacks and the growing minority population in the state.

As aforementioned, the segregated populations and demographics of Georgia counties where 97 percent or more of residents identify by one race are contributory to its discrimination in voting, it is vitally important that the state pursue policies that eliminate barriers and access to the electoral process. If the state fails to do so, statistics steer in the direction that it will, dilute the vote of Blacks (and other minorities) and underrepresentation will continue to take place. In addition, tools or devices like requiring voters to show various forms of identification and proof of their citizenship will serve as deterrence among people of color from voting. Historic racial discrimination and voter disenfranchisement create stigmas of distrust and frustration within the voting process for those who have been racially victimized. Overall, it creates an underrepresentation of the voting-age population particularly of minority voters.

Social constructs will play a role in the lower voter turnout in racially-concentrated counties throughout the South and specifically Georgia by minorities. In the future, efforts to balance and rectify such levels of voter participation should be addressed. This can be addressed by offering more training on the voting process, particularly on the voter photo ID requirements, to those non-traditional, historically-disenfranchised and underrepresented voters. Moreover, the state should engage in evaluation techniques and mechanisms to monitor the participation rates of Blacks and minorities while identifying methods to eliminate barriers. Offering a free voter photo ID card will not rectify or justify the low-voter registered and turnout rates amongst Blacks in the Georgia and other Southern states.

Given the social constructs, social and political environment, and the political culture of Georgia, this study forecasts that the ruling to eliminate section 4 of the VRA will continue to propagate negative voting patterns among minorities in the South and Georgia. Section 4 of the Voting Rights Act (VRA) was designed to create constitutional protections for disenfranchised populations by determining which states, based on past discriminatory

practices, would be subject to approval by the federal government’s Department of Justice in making changes to voting procedures through a preclearance process. The preclearance process is at the heart of Section 5 of the VRA and as a result of the ruling on Section 4; the feasibility of the preclearance requirement is in question and cannot be enforced unless Congress creates a new formula. Unfortunately, while Congress decides on potential new statistical measurements, states are aggressively implementing new processes that may seek to undermine the progress made in the previous 50 years to ensure access and equality to the franchise previously afforded to minorities as noted in Figure 1.6 below.

**Figure 1.6 What have preclearance states done since the recent Supreme Court Ruling?**

State	Reaction to the Supreme Court Ruling
North Carolina	Strict new photo ID requirements; an elimination of same-day voter registration; a shortening of the early voting period by seven days, and specifies that ballots cast at the wrong polling station will be thrown out.
Virginia	Proposed legislation includes: Voters can no longer show utility bills, bank statements, government checks or paychecks before they vote, but they can get an ID for free if they don’t already have one. The new laws also require the Virginia State Board of Elections to remove ineligible voters by comparing state voter rolls with the SAVE database and other states.
Mississippi	Enactment of a strict photo ID law; will provide free transportation to government offices where voters will be able to obtain free photo IDs.
Alabama	Stricter photo ID laws and the state will provide free voter IDs for those who don’t have them.

Southern states are continuing to adopt electoral practices such as the Photo Voter Identification Requirement as a tactic to ensure that conservative leadership remains dominant. These states continue to lack “reasonable” political representation by minorities. Given the socio-economic status and education of residents in Georgia counties like Dougherty and Union, residents will be unable to afford the costs of any form of valid identification needed to receive the state-issued photo voter identification card. This will not only negatively impact Blacks but poor Whites as well. Moreover, these outcomes will limit the political voices and representation of those impacted by these forms of “tests or devices” within the franchise. However, sentiments of Georgia representatives such as those made by Sue Burmeister contribute to the imbalance of political power in the state for non-Whites while articulating the social values and norms of the state. Social constructions of Blacks, who have sacrificed their lives and livelihood to participate in the franchise, have played a key role in the continuation of social environments that are not conducive to increasing the minority vote in Georgia. Furthermore, Burmeister, like other Georgia conservatives, is not afraid of voter fraud; they are afraid of the Black votes, which usually benefit Democratic

Party candidates. Hence as the face of American citizens and citizenship continues to change, the VRA will continue to lose its impact, making administration of the act an arduous task. VRA was purposefully designed to address both direct and indirect obstacles to minority voting, however minority group's access to elected office has been daunting at best. Such outcomes will contribute to a lack of minority political representation and diversity as it relates to policy and legislation.

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**Kristie Roberts-Lewis, Ph.D.**, is a native of Atlanta, Georgia and received a Bachelor of Arts degree in Criminal Justice from Fort Valley State University, a Masters of Public Administration degree from Albany State University with a dual concentration in General and Human Resources Management, and earned a Ph.D. from Jackson State University in Public Policy and Administration and is currently pursuing a Masters of Divinity from the

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# Antidiscrimination versus Nondiscrimination: Competing Perspectives on the Voting Rights Act

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*The Voting Rights Act is perhaps the most successful civil rights law ever. Yet while one set of scholars regards the legislation's success as evidence that it remains necessary and appropriate, another set of scholars regards that success as a sign that the VRA is obsolete and inappropriate. In this article, I argue that disagreement about the VRA stems from two fundamentally different analytical approaches. The antidiscrimination paradigm focuses on how key indicators of political empowerment have progressed since 1965. The nondiscrimination paradigm focuses on how far those indicators are from what would be observed in the absence of racial discrimination. By identifying these two perspectives, this analysis illuminates sources of scholarly disagreement about the Voting Rights Act and clears a path both to resolving related debates within Congress and the courts, and to investigating the empirical impact of each interpretation on the sustainability of the VRA.*

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Considered the crown jewel of the Civil Rights Movement, the Voting Rights Act (hereinafter VRA) has yielded dramatic increases in voter registration, turnout, and representation among African Americans and other racial minorities since 1965 (Bai 1991; Bositis 2006; Bullock and Gaddie 2009; Davidson and Grofman 1994; Fraga 1992; Grofman and Handley 1991; Lublin 2009; Meier and Rutherford 2014; Thernstrom 2009). Yet, while some observers regard these outcomes as evidence that the law remains necessary and appropriate, another set of scholars regards them as proof that the law is obsolete and inappropriate.

How do we explain the discrepancy in interpretations? In this article, I argue that disagreement about the continued necessity and propriety of the VRA stems from two fundamentally different interpretative approaches. Those who believe the VRA is no longer necessary have adopted what I term an antidiscrimination perspective, while those who believe the VRA remains necessary have adopted a nondiscrimination perspective. The antidiscrimination perspective is grounded in a comparison of current voting rights outcomes with the historical reality of racial discrimination in American elections. For those