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Redistributing Power in Mississippi: The Reversal of Section 4 of the Voting Rights Act

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Recently, the U.S. Supreme Court declared Section 4 of the Voting Rights Act of 1965 unconstitutional, essentially defanging preclearance requirements of Section 5 and leaving racial and other previously disenfranchised minorities unprotected. Using social contract theory as the theoretical framework, empirical field study research was used to examine whether the Voting Rights Act has achieved the results in Mississippi that the Supreme Court's decision to revoke Section 4 has assumed. Data were collected on race-specific voter registration and voting data, measures of vote discrimination, litigations and Mississippi legislative activity regarding voting rights. Findings indicate that the gap between minority and non-minority voter registration and voting has improved. However, other measures of vote discrimination show that Mississippi has a higher noncompliance rate than any of the other 1965 covered jurisdictions. These findings suggest that the decision in Shelby v. Holder may be premature, particularly as it relates to Mississippi. A Congressional remedy is needed to ensure that Black Mississippians have unfettered opportunities to exercise their Constitutional right to vote and sustain the gains in political power resulting from the protection afforded under Section 4 of the Voting Rights Act.

The Voting Rights Act of 1965 was enacted as a redistributive policy designed to redress historical disenfranchisement, inequality, and the imbalance of power between Black and Whites resulting from institutionally entrenched discriminatory voting rights policies and practices. The substance of a redistributive policy is “not the use of property but property itself, not equal treatment, but equal possession, not behavior but being” (Anderson, 2006, 14). Temporary provisions in the Act require Congressional reauthorization and as such, Congress has consistently reauthorized the Voting Rights Act as an intentional governmental intervention to ensure that the allocation power through voting is achieved

and sustained. In 2006, the Voting Rights Act was reauthorized by Congress for an additional 25 years and upheld by the Supreme Court on the basis that remedial and protective provisions of the Act were still warranted. In an unprecedented move, the U.S. Supreme Court in 2013 struck down Section 4 of the Voting Rights Act which required covered jurisdictions to receive pre-clearance or approval before altering their voting laws. While many are surprised and outraged at what appears to be a fundamental shift in the U.S. Supreme Court's position regarding the need for Department of Justice supervision of voting laws, the U.S. Supreme Court's 2009 decision in *Northwest Austin Municipal Utility District v. Holder* gave us a preview into a possible positional shift in the Court's views regarding the constitutionality of Sections 4 and 5 of the Voting Rights Act. Nonetheless, this landmark court decision has significant implications for voting rights given the flurry of voter identification laws being introduced in these covered jurisdictions. As a result, the Supreme Court ruling in *Shelby County v. Holder* could open the flood gate for other discriminatory voting practices such as vote dilution to weaken Black voting power (e.g. redistricting, use of at-large elections), decreasing access to voting (e.g. reducing time for early voting, eliminating election day voter registration, or moving voting precincts farther away) and election management strategies (e.g., changes in types of voting machines, absentee ballots, voter eligibility and registration).

Mississippi's historical involvement in discriminatory election policies and practices is widely known; specifically its blatant disregard for the civil rights of African Americans and other persons of color is well-documented (United States Commission on Civil Rights, 1965; McDuff, 2008). Therefore, Mississippi serves as a perfect case study to examine the impact of the Supreme Court's decision in *Shelby County v. Holder* and the rationale for Chief Justice Roberts' opinion. The central question that this paper will answer is "What is the extent to which the Supreme Court's rationale for declaring Section 4 of the Voting Rights Act unconstitutional true for Mississippi?"

Redistribution of Power

The distribution of power in a society is contingent upon the laws, institutions and policies enacted in its political system and the opportunity and ability of various groups to voice their preferences to political decision makers. When institutions and systems concentrate political power within a narrow segment of the population, policies resulting from this imbalance of power typically benefit the politically powerful at the expense of the rest of society (Acemoglu et al. 2013). Policy outcomes and inequality depend not only on *de jure* power, but also *de facto* distribution of power. We agree with Acemoglu and Robinson (2008) who contend that when *de jure* power is lost, those in power will employ other mechanisms of *de facto* power (e.g., changes in constitutions, control of local law enforcement, judiciaries and conservative political parties) in an effort to remain in power.

A recent study by Cascio and Washington (2014) on the redistribution of voting rights and the economic impact on Blacks concluded that Black enfranchisement following the Voting Rights Act of 1965 led to political gains in Black communities in the South in terms of increased voter registration, voter turnout and in the share of state resources received. This is particularly true for Mississippi which saw the greatest increase in Black elected officials. Conversely, we contend that the reversal of voting rights could result in redistribution of power that will negatively impact Blacks and other minorities (Acemoglu et al. 2013).

Voting Rights Act 1965

During the 1950s and 1960s civil rights movement, Southern states utilized a number of strategies such as violence, literacy tests, poll taxes, and deception to prevent Blacks from exercising their constitutional right to vote. The Voting Rights Act of 1965 was enacted with to: (1) to guarantee racial or ethnic minorities unobstructed access to voting by banning the use of tests and devices and other covert mechanism of disenfranchisement; and (2) to prevent dilution of minority voting power through the use of electoral devices that prevent them from electing candidates of their choice (National Commission on the Voting Rights Act, 2006).

The Voting Rights Act contains both permanent and temporary provisions. The temporary provisions are found in Sections 4 through 9, Section 13, and Section 203. Section 4 provides the formula to identify jurisdictions that must seek preclearance of voting laws under Section 5 preclearance provisions; Sections 6-9 and 13 lay out provisions for examiner and observer coverage; and Section 203 requires jurisdictions to provide language assistance to a single minority language group comprising 5 percent of the population (National Commission on Voting Rights Act, 2006). These temporary provisions were last reauthorized in 2006 for a period 25 years.

Section 4 Coverage

Central to the enforcement of the Voting Rights Act was Section 4 which provided a formula for determining which jurisdictions would be required to seek Department of Justice pre-clearance of their voting and election laws before implementation. The U.S. Census is responsible for collecting the data used to determine compliance under Section 4. In 1965, six states were completely covered under the Section 4 Coverage: Louisiana, Mississippi, Alabama, Georgia, South Carolina, and Virginia. The coverage formula was expanded to more jurisdictions in 1970 and 1975 based on voting registration and voting patterns of less than 50 percent in the 1968 and 1972 presidential elections (National Commission on the Voting Rights Act, 2006). The 1975 reauthorization expanded Section 4 coverage to Texas, Arizona, and Alaska who had 5 percent population comprising a single language minority group but provided all voting information in English. Section 4 coverage also extended to particular jurisdictions in the states of North Carolina (40 Counties), California (four counties), Florida (five Counties), New York (three counties), South Dakota (two counties), Michigan (two townships) and New Hampshire (10 townships). Table 1 provides a brief synopsis of coverage formulas and covered jurisdictions.

Table 1: Voting Rights Act Coverage Formulas and Jurisdictions

Year	Provisions	Coverage Area	Time
1965	Less than 50 voting age registered or voted in 1964 Presidential election	AL, GA, LA, MS, SC, VA, NC (40 counties), AZ (1 county)	5 years
1970	Extended coverage based on 1968 presidential election, extended ban on tests and devices nationwide	Several Counties in CA, NH and NY	5 years
1975	Formula coverage 1972 Pres. Election Language Minorities Permanent ban on tests and devices nationwide	AK, AZ and TX, Several Counties in CA, FL, MI, NY, NC	7 years
1982	Bailout Procedures		25 years
2006	Forbids voting changes with any discriminatory purpose and changes that impact minority voting choice		25 years

Source: The National Commission on the Voting Rights Act. (2006). *Protecting Minority Voters: The Voting Rights Act at Work 1982-2005*. Lawyers’ Committee for Civil Rights under Law: Washington, D.C.

Bailing Out From Section 4 Coverage

The 1982 reauthorization of the Voting Rights Act provided procedures for states and jurisdictions to bail out from pre-clearance requirements of Section 4. To be successful under bail-out provisions, the applicant state or jurisdiction must prove that during the 10 years prior to the request they have met the following criteria: (1) no test or device has been used within the state or political subdivision; (2) all changes affecting voting have been reviewed under Section 5 prior to their implementation; (3) no change affecting voting has been the subject of an objection by the Attorney General or the denial of a Section 5 declaratory judgment from the District of Columbia district court; (4) there have been no adverse judgments in lawsuits alleging voting discrimination; (5) there have been no consent decrees or agreements that resulted in the abandonment of a discriminatory voting practice; (6) there are no pending lawsuits that allege voting discrimination; and (7) federal examiners have not been assigned to the state or jurisdiction (National Commission on the Voting Rights Act, 2006, 28-29). Additionally, the applicant jurisdiction must provide evidence of minority participation in elections and opportunities to be elected, elimination of discriminatory voting procedures and methods, and reasonable efforts to eliminate intimidation and harassment of persons seeking to register to vote or vote. According to bailout provisions, the burden of proof for compliance applied to all governmental units within the jurisdiction seeking bailout (National Commission on the Voting Rights Act, 2006). Noncompliance would be predicated on the seriousness of the violation, how quickly

corrective action was taken and whether a pattern of offense was evident (National Commission on the Voting Rights Act, 2006).

Shelby County v. Holder

Shelby County, AL, instead of seeking bailout under provisions of Voting Rights Act, sued the U.S. Attorney General in Federal District Court in Washington, D.C. in 2010 seeking a declaratory judgment that Sections 4(b) and 5 of the Voting Rights Act were unconstitutional as well as a permanent injunction against their enforcement. In 2012, the Federal District Court ruled against the county and upheld Sections 4 and 5 of the Voting Rights Act. Shelby County appealed the decision to the U.S. Supreme Court who ruled 5-4 in favor of Shelby County striking down the constitutionality of Section 4(b). The ruling was based on the following reasons: (1) Section 4 creates disparate treatment of states and violates principles that all states enjoy equal sovereignty; (2) Section 4 violates basic principles of federalism by requiring states to seek approval of laws that they would otherwise have the right to enact and execute on their own; (3) conditions that originally justified Section 4 provisions no longer characterized voting in covered jurisdictions; (4) voter turnout and registration rates now approach parity; and (5) Blacks now hold a large number of elected positions (*Shelby v. Holder*, 570 U. S. ___ 2013)

The Supreme Court did not rule on Section 5 of the Voting Rights Act, which requires covered jurisdictions to seek preclearance of voting law changes by the Department of Justice or a federal court in Washington, D.C. before they are implemented. However striking down Section 4 of the Voting Rights Act as unconstitutional could conceivably have a negative impact on the enforcement of Section 5 if a parity argument is used.

Writing the dissenting view for the Supreme Court, Judge Ruth Ginsburg justified the continued need for the Voting Rights Act's preclearance provisions. In her bench statement, Ginsburg disputed the *Shelby County v. Holder* ruling citing Congressional evidence presented in 2006 which demonstrated that 40 years was not enough time to eradicate 100 years of blatant disregard for the 15th Amendment (*Shelby v. Holder*, 570 U.S. ___ 2013). Justice Ginsburg further supported her dissenting opinion in her written statement regarding the continued need for Section 4 where she stated that "the record for the 2006 reauthorization makes it abundantly clear [that] second-generation barriers to minority voting rights have emerged in the covered jurisdictions as attempted substitutes for the first-generation barriers that originally triggered preclearance in those jurisdictions" (Justice Ginsburg Opinion, *Shelby v. Holder*, p. 35).

Theoretical Framework

Public policy answers the question: what ought government to do, or not do? We answer the question based on social contract theory- the written and unwritten agreement that we continually rewrite, stating what we want to do for each other collectively and what we want other members of society to do for us as individuals.

O'Conner, Sabato and Yanus (2011) in *American Government: Roots and Reform* provides the basis for the discussion of social contract theory. John Locke's *Second Treatise on Civil Government* served as a logical starting point for the discussion of classical liberalism and its role in shaping public policy. Locke argued that individuals have natural rights. Three important natural rights are: the right to life, liberty, and personal property. Since we all possess natural rights in an equal quantity to other individuals under the social contract, Locke concluded that all individuals should have an equal opportunity to

participate in limited government and civil society. Specifically, Locke believed that every individual should have the right to unobstructed voting in the elections of leaders. Section 4 of the Voting Rights Act endowed minorities with that natural right.

In order for the social contract to be effective, citizens must be able to rely on government to honor and protect their rights under the contract. Voting rights is a part of the social contract the United States government made with minorities when it passed the Voting Rights Act of 1965 and its subsequent amendments. Adam Smith and John Stuart Mills also, like Locke, identified good public policy. Smith stated that “Government is ... established to protect the individual and ... to replace the state of nature in which members of the social contract no longer find a workable existence.” Mills believed that government should promote social justice and some degree of *equity* in society. Mills argued that inequality limits the freedom of the individual and potentially limits opportunities for that individual—clearly a violation of the social contract. Does the Supreme Court’s decision in *Shelby County v. Holder* represent good public policy or abdication of its responsibility to protect the rights of minorities from arbitrary discrimination? Using Mississippi as a case study, we will examine the rationale for the Supreme Court’s decision through the lens of social contract theory.

Methodology

We utilized several key indicators cited by Chief Justice Roberts in rendering the Supreme Court decision in *Shelby County v. Holder* to determine whether racial discrimination in voting is still evident in Mississippi such as: (1) parity in Black and White voter registration and voter turnout; (2) increase in numbers of Black elected officials in these jurisdictions; (3) the number of Department of Justice objections to proposed changes to voting laws; (4) the number of withdrawals of proposed changes to voting laws to avoid formal Department of Justice objections, (5) federal observer coverage to ensure compliance with the Voting Rights Act; and (6) the amount of litigation involving allegations of voting discrimination. The measures of voter discrimination were operationalized using indicators set forth by the National Commission on the Voting Rights Act.

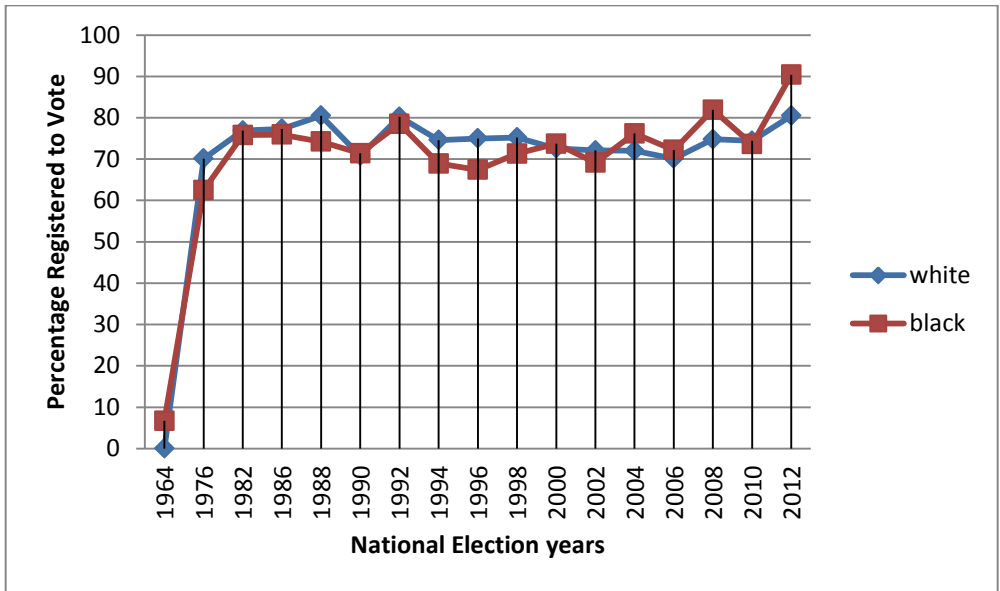
Race-specific data on voter registration and voting patterns between Blacks and Whites were collected from the U.S. Census Bureau from 1976-2010. State-level data on voter registration and voting data were not reported by the U.S. Census until 1982. With the exception of a 1976 historical document, data prior to 1982 was either provided for the U.S. as a whole or by regions of the country (e.g., northeast, Midwest and southern). Chief Justice Roberts also opined that the pervasive racial conditions that characterized these covered jurisdictions no longer existed. To investigate this point, we examined three measures of voter discrimination (DOJ Objections, Submission Withdrawals and Federal Observer Coverage) as identified by the National Commission on the Voting Rights Act. Data on indicators of vote discrimination were collected for the years 1966 to 2012 from two sources: Lawyers Committee for Civil Rights under the Law and the National Commission on the Voting Rights Act. To gain some insight on the potential impact of *Shelby County v. Holder* on Mississippi, we conducted an interview with an African American Mississippi State Senator, a long-time civil and voting rights advocate. Data from the interview suggested that increased activity on voting rights in the Mississippi Legislature portend the potential impact. As a result, we conducted a key word search of the Mississippi Legislative Bill Status System from 2006-2014 (time frame since last reauthorization of the Voting Rights Act) using words linked to voting discrimination that were identified during

our review of the extant literature. Finally, data were collected on voting rights litigation using the Layers Committee for Civil Rights under the Law searchable database to determine if Mississippi would qualify to bailout from preclearance requirements as outlined in the bailout provision in 1982 reauthorization of Section 4 of the Voting Rights Act.

Mississippi Voter Registration and Voting

In the *Shelby County v. Holder* decision, Chief Justice Roberts indicated that the pervasiveness of racial discrimination in voting that existed in 1965 warranted an exercise of “uncommon congressional power” to address the issue. Chief Justice Roberts opined that the voting discriminatory practices that existed nearly 50 years ago are no longer reality in the covered jurisdictions (*Shelby v. Holder*, 570 U. S. ____2013). Chief Justice Roberts also contended that voter registration rates and voter turnout rates between Black and Whites have now approached parity. To examine these claims as it relates to Mississippi, race-specific voter registration and voting rates were collected from the U.S. Census Bureau from 1976 to 2012. As revealed in Figure 1, voter registration among White Mississippians is higher than Black voter registration in all years except 2008 and 2012. This is not surprising as both years were Presidential election years, where in 2008, President Barak Obama was elected as the first African American president and was also re-elected in 2012 for a second term. In 2008, 74.8 percent of Whites who were of voting age were registered to vote as compared to 81.9 percent of Blacks. In 2008, 68.3 percent of Whites voted as compared to 73.1 percent Blacks. In 2012, 80.5 percent of Whites Mississippians were registered to vote as compared to 90.4 percent of Blacks, representing a 10 percentage point difference in voter registration. A little over 70 percent of Whites in Mississippi voted in the 2012 presidential election as compared to 82.3 percent of Blacks (U.S Census Bureau, Table 4b).

Figure 1: Mississippi Voter Registration by Race 1964-2012 National Election Years



Source: Table 4b. Reported Voting and Registration, by Sex, Race and Hispanic Origin, for States: November 1982-2012

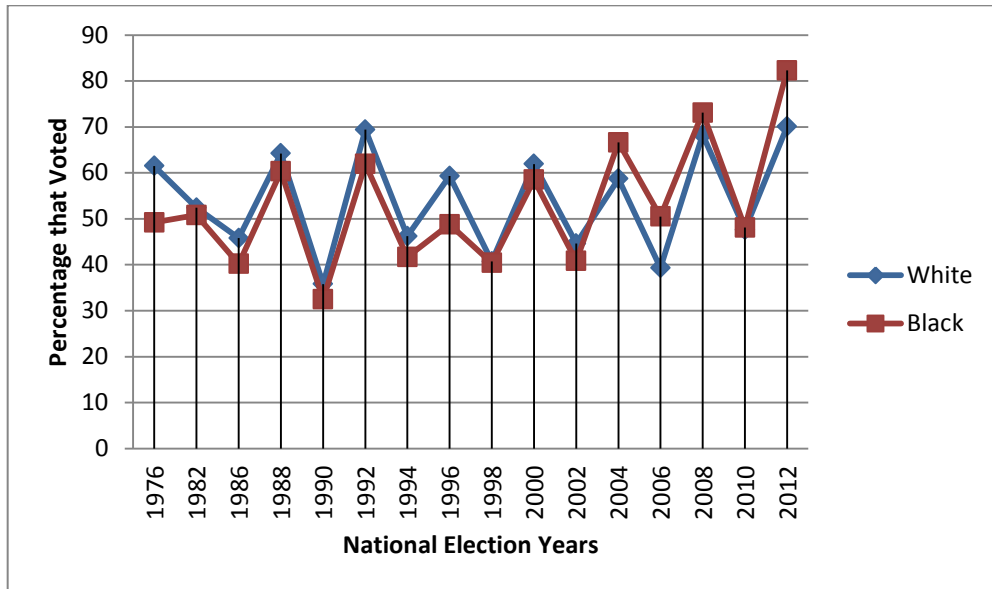
<http://www.census.gov/hhes/www/socdemo/voting/publications/p20/>

Source: Reported Voting and Registration Historical Voting Data

<http://www.census.gov/hhes/www/socdemo/voting/publications/other/p23/p23-74/tab01.pdf>.

As depicted in Figure 1, a comparison of voter registration between Black and White Mississippians from 1964 to 2012 reveals that a higher percentage of White Mississippians were registered to vote during this time frame. However, the gap between Black and White voter registrants has decreased. The Section 4 Coverage formula is based on 50 percent of voting age Black being registered to vote or who voted in the previous presidential election. The percentage of Blacks registered to vote between 1976 and 2012 exceed the 50 percent threshold. Figure 2 compares voter turnout between Black and White Mississippians from 1976 to 2012 which indicates that the percentage of Blacks who voted in 8 of the 16 elections between 1976 and 2012 fell short of the 50 percent threshold.

Figure 2: Mississippi Voting by Race 1976-2012 National Election Years



Source: Table 4b. Reported Voting and Registration, by Sex, Race and Hispanic Origin, for States: November 1982-2012

<http://www.census.gov/hhes/www/socdemo/voting/publications/p20/>

Source: Reported Voting and Registration Historical Voting Data

<http://www.census.gov/hhes/www/socdemo/voting/publications/other/p23/p23-74/tab01.pdf>.

However, voting data for Mississippi in the 2004-2012 elections show strong Black voter turnout exceeding Whites in all years except 2010 when the voting percentages were almost equal. Based on current voting data for Mississippi, there appears to be parity in voting between Blacks and Whites which support Chief Justice Roberts’ claim.

Scurrying to remedy weaknesses in the original 1965 Voting Rights Act, Congressional representatives introduced the Voting Rights Amendment Act 2014 which will create a new coverage formula and a new list of states requiring DOJ supervision under Section 5 (Lopez, 2014). The new formula deemphasizes geographic locations and fixed time frames to focus more on discriminatory activity based on current conditions and data. According to the proposed formula, any state with five violations of federal voting laws during the past 15 years will be covered under DOJ preclearance requirements before implementing new election laws. What is significant about the proposed legislation is that due to voting violations during the last 15 years, three of the 1965 covered jurisdictions Georgia, Louisiana, Mississippi and Texas would still need DOJ preclearance approval. The Voting Rights Amendment Act of 2014 is strongly supported by voting rights advocates and the U.S. Attorney General because of the new coverage formula’s potential to extend coverage to other states that violate voting right laws and its ability to address current

conditions as required by Chief Justice Roberts should the law reach the Supreme Court (Berman, 2014; Reilly, 2014).

Measures of Voting Discrimination

In the *Shelby County v. Holder* Supreme Court decision, Chief Justice Roberts cited the growing number of African Americans in elected positions in these covered jurisdictions as evidence that voting conditions in these states have changed. The cornerstone of this argument centered on the fact that United States has elected its first African American President. The 2006 reauthorization of the Voting Rights Act forbids voting changes with any discriminatory purpose that negatively impacts minority voting choice. According to the most recent data available, Mississippi has seen dramatic changes in the composition of its elected officials as it has the highest number of Black elected officials in the country (U.S. Census Bureau, 2011). Mississippi has a total of 950 elected officials with 46 in U.S. and state legislature combined, 646 in city and county offices, 121 in law enforcement and 137 in local school districts (U.S. Census Bureau, 2011). This is significant considering Mississippi's widely known reputation for voter intimidation, suppression and violence to prohibit Blacks from voting. Although the state has had two Black democratic nominees for Treasurer and Governor, Mississippi has not elected a Black to statewide office since reconstruction. This fact suggests that increases in elected officials may not be an appropriate indicator of changing conditions in Mississippi. Additionally, there have been only modest gains for Black elected officials in the Mississippi Legislature between 2002 and 2014 with 45 in 2002 (U.S. Census Bureau, Table 413) and 48 in 2014 (Mississippi Legislature and Senate Clerks, Telephone Interview, April 1, 2014).

GOP led states appear to have waged a war on voting rights since the 2010 election aimed at reducing the turnout of those who were most likely to support President Obama and other democrats. Lieberman (2012) contends that "we are witnessing the greatest assault on voting in over a century" (p.5). She further posits that the "spate of new legislation, executive orders, ballot initiatives, and administrative practices effectuate a trifecta of voter suppression making it harder to register to vote, to cast a ballot and to have a voted counted" (p.5).

In order to fully analyze the nature of discrimination in Mississippi and other 1965 jurisdictions it is important to not only look at voting registration and voter turnout data, but also at other soft measures of discriminations. The National Commission on the Voting Rights Act identified three measures of voter discrimination: (1) the number of Section 5 Objections rendered by the Department of Justice in response to a jurisdictions requests for approval of elections laws, (2) submission withdrawals; and (3) federal observer coverage (National Commission of the Voting Rights Act, 2006). Justice Ruth Ginsburg in the Dissenting Opinion of the Supreme Court in *Shelby County v. Holder* also uses these measures of voter discrimination data to support her dissenting opinion.

The following sections describe the three measures of voter discrimination: DOJ objections, submission withdrawals, and federal observer coverage. Table 2 provides data on the measures of voter discrimination for Mississippi and the other 1965 covered jurisdictions which will provide a holistic view of discriminatory practices by looking at less blatant forms of voter discrimination.

Table 2: Measures of Vote Discrimination of 1965 Covered Jurisdictions

STATE	MEASURES											
	DOJ Objections				Submission Withdrawals				Observer Coverage			
	Years				Years				Years			
	No.	*1966-1981	**1982-2004	2005-2012	No	*1966-1981	*1982-2004	**2005-2012	No	1966-1981	1982-2004	**2005-2012
MS	189	65	120	4	34	5	29	0	606	298	250	58
GA	186	97	83	6	15	4	10	1	94	55	32	7
LA	161	56	102	3	26	4	22	0	74	15	52	7
SC	128	52	73	3	23	3	20	0	40	23	14	3
AL	107	59	46	2	20	4	15	1	188	107	67	14
NC	72	54	15	3	15	4	10	1	6	6	0	0
VA**	51	15	18	0	6	2	4	0	0	0	0	0

*Source: National Commission on the Voting Rights Act (2006). *Protecting the Rights of Minority Voters: The Voting Rights Act at Work: 1982-2005*. Washington, DC: Lawyers Committee for Civil Rights Under the Law.

http://www.lawyerscommittee.org/admin/voting_rights/documents/files/0023.pdf.

**Source: Lawyers committee for civil rights under the law, Objection letters and Observer coverage searchable database

http://www.lawyerscommittee.org/projects/section_5/

Objection Letters

Under Section 5 of the Voting Rights Act, covered jurisdictions must seek Department of Justice approval before implementing changes to voting laws. Covered jurisdictions must prove that proposed changes will not burden or have a disparate impact on the right to vote based on race or color or being a member of a language minority group as any such changes would be a violation of the Voting Rights Act. If the Voting Section of the Department of Justice determines that the burden of proof has not been met, an Objection Letter is sent on behalf of the U.S. Attorney General objecting to the jurisdiction’s proposed change to its voting laws.

As indicated in Table 2, the Voting Rights Section of the Department of Justice issued 189 objections to proposed voting changes submitted by Mississippi. A majority of the objections, 120 or 63.5 percent occurred between the years 1982 and 2004. There were 27 statewide objections between 1966 and 2004. So far, there have been no objections between the years 2005 and 2012. The majority of objections to Mississippi’s voting law changes were in redistricting/ reapportionment (108), methods of election (24), polling place/absentee and early voting locations (8), special election and regular election dates (7). Twenty-six of the objections occurred in counties where the population was 60.1 percent to 100 percent minority mostly in the Mississippi Delta; 38 were in counties with a 40 to 40 percent minority population and 38 were in locations with 20.1 percent to 40 percent

minority populations, the remainder were in counties with less than 20 percent minority population (National Commission on the Voting Rights Act, 2006; Lawyers Committee for Civil Rights Under the Law Website).

Redistricting laws were the primary objections with 104 of the 169 objections focused on redistricting. Of the 112 objections after the reauthorization in 1982, 79.5 percent were related to redistricting. The remaining objections were based on requests for changes involving at-large elections, annexations of territory, numbered post requirements, majority vote requirements, candidate qualification requirements, changes from election to appointment of certain public officials, redrawing of precinct lines, polling place relocations, open primary laws, repeal of assistance to illiterate and disabled voters and a variety of other measures (McDuff, 2008).

One of the arguments that Chief Justice Roberts presented was that things had changed in the covered jurisdictions. To appreciate the significance of voter discrimination measures for Mississippi, a comparative analysis of these same measures is provided for the other 1965 jurisdictions.

In comparing the DOJ objections for the 1965 jurisdictions, Table 2 shows that Mississippi has the highest number of objections at 189, followed by Georgia with 186 DOJ objections and Louisiana with 161 objections. Due to the blatant disregard for civil rights of Blacks in these covered jurisdictions, one would expect that the highest number of objections for the covered jurisdictions would occur between the years 1966 and 1981. However, some jurisdictions saw an increase in the number of DOJ objections issued during 1982-2004. For example, between 1982 and 2004, there was an 85 percent increase in the number of objection in Mississippi, an 82.1 percent increase in Louisiana and a 40.4 percent increase in South Carolina. During this same period, the number of DOJ objections decreased by 22 percent for Alabama, 14.4 percent for Georgia, by 75 percent for North Carolina (National Commission Voting Rights Act, 2006; Lawyers Committee for Civil Rights Under the Law). These findings show that while the states have made great strides in improving voter registration and voter turnout, Blacks in these states, particularly Mississippi, Georgia and Louisiana, are still experiencing significant barriers in exercising their right to vote. The findings also support Justice Ruth Ginsberg opinion that other measures of voting discrimination should be considered and that these jurisdictions still need monitoring to ensure that Blacks have adequate access to the ballot.

Submission Withdrawals

A submission withdrawal by a covered jurisdiction for a proposed voting law change is another measure of vote discrimination (National Commission on the Voting Rights Act, 2006). A covered jurisdiction can withdraw a request for proposed changes which generally occurs when the jurisdiction believes that the request will not be approved because the burden of proof requirement cannot be met. As indicated in Table 2, between the years 1966 and 2012, Mississippi had 34 submission withdrawals with over 85 percent occurring between years 1982 and 2004. When comparing Mississippi to the other 1965 covered jurisdiction, Georgia had 48 submission withdrawals between 1966 and 2012, which is the highest number followed by Mississippi, then Louisiana with 26 and South Carolina with 23. Specific data on the nature of the submission withdrawals were not systematically collected. However, a cursory review of the proposed voting changes matched those identified in the literature as having a discriminatory effect (e.g., redistricting, majority vote, at-large elections, etc.).

Observer Coverage

A third measure of voter discrimination is based on the number of times federal observers are sent to polling places to observing voting activity. Federal observers are deployed when the Department of Justice has reason to believe that there will be electoral discrimination based on race or color or language issues. As revealed in Table 2, federal observers have been sent to Mississippi 606 times between 1966 and 2012: 298 times between 1966 and 1981, 250 times between 1982 and 2004 and 58 times in the eight years between 2005 and 2012 (National Commission on the Voting Rights Act, 2006; Lawyers Committee on Civil Rights under the Law; McDuff, 2008).

Mississippi Voting Rights Litigations

Each time Blacks acquired political power through the right to vote, Mississippi has done everything in its power to minimize the impact of such power. Changes in the state’s constitution, implementation of Jim Crow Laws and refusal to seek pre-clearance are all examples of Mississippi’s resistance to enfranchisement of Blacks in Mississippi. The landmark decision in the 1969 case *Allen v. State Board of Elections*, forced Mississippi to seek pre-clearance of voting laws under Section 5 (McDuff, 2008). In *Shelby County v. Holder*, Chief Justice Roberts indicated that Section 4 preclearance requirements unfairly penalize the covered jurisdictions for past behavior and do not reflect current environments in these states. If Chief Justice Roberts’ assertion is true, then Mississippi should be eligible to bailout from preclearance requirements under the 1982 reauthorization of the Voting Rights Act. Bailout procedures allow states and jurisdictions to be removed from the preclearance requirements of Section 4, if they can prove that they had no voting right violations in the 10 years prior to the request, including litigation. Table 3 lists voting right cases brought against Mississippi since the 1982 reauthorization.

Table 3: Voting Rights Cases in Mississippi

VOTING RIGHTS LAW	CASE	YEAR
The Uniformed and Overseas Citizens Absentee Voting Act	U.S. v. State of Mississippi, (S.D. Miss)	1989
The National Voter Registration Act	U.S. v. State of Mississippi, (S.D. Miss)	1995
The Uniformed and Overseas Citizens Absentee Voting Act	U.S. V. State of Mississippi, (S.D. Miss)	1996
Section 11(b) of the Voting Rights Act	U.S. v. Ike Brown and Noxubee County, MS, (S.D. Miss)	2005
Help American Vote Act	U.S. v Bolivar County, Mississippi (N.D. Miss)	2008
Settlement of The Uniformed and Overseas Citizens Absentee Voting Act	U.S. and the State of Mississippi, October 15, 2010	2010

Source: Voting Section Litigation, U. S. Department of Justice, <http://www.justice.gov/crt/about/vot/litigation/caselist.php>.

As shown in Table 3, Mississippi has had three cases of alleged discrimination or voting rights violations within the past 10 years. If Mississippi did not have any other voting violations, the state still would not be eligible for bailout under preclearance provisions until 2020. These data suggest that Mississippi's voter discrimination activity should still be monitored.

Mississippi Voting Rights Legislative Activity Since 2006

Mississippi, like many of the jurisdictions covered under Section 4 of the Voting Rights Act, have traded in the blatant and overt tactics of minority voter disenfranchisement for more subtle forms. Literature on the Voting Rights Act relative to Mississippi has provided historical descriptions of various strategies utilized to relegate the goals of the Voting Rights Act to have no effect (McDuff, 2008).

Vote dilution is a major strategy used by states to impact the outcomes of elections. The goal of vote dilution is to implement voting procedures or arrangements to make it difficult for racial, ethnic, or political groups to participate in elections or make their votes less effective. These processes include such strategies as changes in polling locations, registration procedures, changing positions from elected to appointed, redistricting, use of at-large elections (Abrams, 1988; Pitts, 2005; The National Commission on the Voting Rights Act, 2006). Section 4 of the Voting Rights Act prohibited any voting laws or arrangements that would prevent minorities from electing a candidate of their choice. One of the major strategies for vote dilution is that of redistricting. After the *Shelby County v. Holder* decision, the 113th Congress introduced seven bills to close loopholes and to establish additional requirements and more stringent standards for congressional redistricting (Whitaker, 2014).

In an interview with a Black Mississippi State Senator, we asked the question, "What do you think the impact of the U.S. Supreme Court's decision to strike down Section 4 of the Voting Rights Act will be on Mississippi." His response was "We already see it in the legislation that is being introduced" (Personal Interview, February 24, 2014). Based upon the Senator's suggestion, we reviewed legislative activity of the Mississippi Legislature. We conducted a literature review on voting rights and voting discrimination to identify subtle forms of voting discrimination and used these key words to search voting rights legislation introduced in Mississippi from 2006 to 2014, the period since the last reauthorization of the Voting Rights Act, using the Mississippi Legislative Bill Status System.

As indicated in Table 4, key word searches yielded a number of documents for terms such as voting rights, elections, and ballots across the nine-year time span. When we focused on the 2014 legislative session, which is the most recent session after the *Shelby County v. Holder* decision, significant activity for terms like elections and ballots is evident. We acknowledge that focusing on the number of documents instead of the number of bills may artificially inflate the numbers. However, the goal was to review legislative activity in this area.

Table 4: Mississippi Legislative Documents Regarding Voting Rights Using Key Word Searches Legislative Sessions 2006-2014

KEY WORDS	LEGISLATIVE SESSION								
	2006	2007	2008	2009	2010	2011	2012	2013	2014
Voting Rights	313	370	391	312	355	342	356	288	39
Redistricting	18	14	27	36	31	53	32	9	21
Annexation	19	32	30	28	24	26	24	22	26
Elections	306	311	291	297	264	221	324	212	229
Ballots	5	202	175	157	174	172	194	143	137
Voter Registration	39	47	48	48	64	38	38	33	35
Voter ID	3	5	13	13	9	6	13	5	5
Polling Place	48	48	5	7	5	8	6	10	10
Early voting	7	14	15	15	14	9	6	5	3
Absentee Ballots	32	40	25	34	39	24	59	17	16
Voter Assistance	21	18	25	19	23	11	24	4	3

Source: Mississippi Legislative Bill Status System.
<http://billstatus.ls.state.ms.us/sessions.htm>.

Additionally, we did not review the content of the legislation so we cannot speak to discriminatory impact of the legislation. However, our goal was to draw attention to the level of activity around these topic areas as suggested in the interview with the senator. Further, Section 2 of the Voting Rights Act does not require minorities to prove discriminatory intent but that the laws have discriminatory results (Pitts, 2005).

Findings

We framed our research around the U.S. Supreme Court’s decision in *Shelby County v. Holder* in which Section 4 of the Voting Rights Act was declared unconstitutional. We examined the arguments presented by Chief Justice Roberts and the validity of those arguments relative to the State of Mississippi.

Chief Justice argued that the voter registration and voting in the covered jurisdictions now approach parity. A race specific examination of voter registration and voting data for Mississippi revealed parity between Black and White voter registration and voter turnout and in some years Blacks actually registered and voted in greater numbers than Whites.

We concur with Justice Ruth Ginsburg argument in Section IV of the dissenting opinion of the Court, that voter registration does not tell the whole story. Other measures of discriminatory voting practices examined for Mississippi tells another story. Mississippi had the highest number of DOJ objections and federal observer coverages than any other state. What is significant about this finding is that the majority of the violations did not occur during the early years immediately following the passage of the Voting Rights Act of 1965 as one would hypothesize, but between 1982 and 2012. For example, 65.6 percent of DOJ objections, 85.3 percent of submission withdrawals and 51 percent of the federal observer coverage occurred between 1982 and 2012. Recent lawsuits brought against Mississippi for

alleged voting violations are an indication that discriminatory voting practices are still being used. Bailout provisions under Section 4 would allow covered jurisdictions to come from under preclearance oversight if they met certain criteria. Data on discriminatory practices such a litigation, federal observer coverage and Department of Justice objections to proposed changes to voting laws within the past 10 years would make the state ineligible for bailout. While current conditions in the State may not mirror those of 1965, these data suggest that significant remnants of discriminatory voting practices still exist.

Conclusion

Mississippi is a perfect example of why Section 4 preclearance requirements are still needed. Our findings suggest that Mississippi was not being penalized for past behavior in the Section 4 preclearance requirements, but current conditions relative to voting rights violations. Except for voter registration and voter turnout, Mississippi has the worst compliance record of all of the 1965 covered jurisdictions in terms of Department of Justice objections, federal observer coverages and litigation. Mississippi's voting rights violations within the past 10 years, would make the state ineligible to apply for bailout from preclearance requirements until 2020.

The increased voting related legislative activity in Mississippi between 2006 and 2012 indicates that without the preclearance requirements, victims of voting rights discrimination will need to be prepared to seek the only viable option for redress which is through the courts. Legal remedies are very time consuming, costly and few minorities will have the resources to seek this type of redress. As a result, we may see a redistribution of power similar to what occurred in Mississippi immediately following Reconstruction through the use of legislative strategies.

Mississippi has always been a strong supporter of states' rights and vehemently opposed to redistributive policies that benefit minorities and the poor. It has been federal redistributive policies such as the Voting Rights Act of 1965 that have forced southern states like Mississippi to do the right thing. Social contract theory requires not only that the social contract be honored but that it should be undergirded by truth. Failure to honor the contract is not only harmful to the people directly impacted, but the society as a whole. The social contract requires government to protect the life, property and rights of all citizens. The Voting Rights Act of 1965 and its subsequent reauthorizations was the promise that the U.S. government made to minorities to ensure that they would have an unfettered opportunity to enjoy all the rights and privileges afforded any other group through the right to vote. The U.S. Supreme Court's decision in *Shelby County v. Holder* is based on incomplete data and is premature as suggested by the findings in Mississippi. We recommend that congressional remedies be enacted immediately to ensure that the gains in Black political power in Mississippi and other southern states are not eroded under the weight of the GOP's war on voting rights and the complicity of the courts.

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