

XENOPHOBIC CONSPIRACY THEORIES AND THE LONG ROOTS OF JANUARY SIXTH

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I

INTRODUCTION

On January 6, 2021, insurrectionists stormed the U.S. Capitol.¹ The insurrectionists supported President Donald Trump’s false claims that the 2020 presidential election was stolen through election fraud.² One of the central claims underlying what white nationalists called the “Stop the Steal” campaign was that foreign voting companies manipulated the vote tallies to help Joe Biden win the election.³

Trump and his supporters turned to courts to advance this conspiracy theory. Rudy Giuliani and Sidney Powell, two of Trump’s lawyers, spread variants of the claim.⁴ In one lawsuit filed in the Northern District of Georgia, Trump alleged that Dominion Voting Systems, an election technology supplier, made “old-fashioned ‘ballot stuffing’” invisible through their computer software.⁵ The

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1. NPR Staff, *The Capitol Siege: The Cases Behind the Biggest Criminal Investigation in U.S. History*, NPR (Apr. 1, 2022), <https://www.npr.org/2021/02/09/965472049/the-capitol-siege-the-arrested-and-their-stories> [<https://perma.cc/6ZGA-NAKA>].

2. *Id.* Steve Inskeep, *Timeline: What Trump Told Supporters for Months Before They Attacked*, NPR (Feb. 8, 2021), <https://www.npr.org/2021/02/08/965342252/timeline-what-trump-told-supporters-for-months-before-they-attacked> [<https://perma.cc/JR3W-YUXM>].

3. Barton Gellman, *America’s Second-Worst Scenario*, ATLANTIC (Jan. 17, 2021), <https://www.theatlantic.com/politics/archive/2021/01/how-close-did-us-come-successful-coup/617709> [<https://perma.cc/W75B-96UB>].

4. *Id.* Glenn Kessler, *Giuliani’s Fantasy Parade of False Voter-Fraud Claims*, WASH. POST (Nov. 16, 2020), <https://www.washingtonpost.com/politics/2020/11/16/giulianis-fantasy-parade-false-voter-fraud-claims> [<https://perma.cc/3E8M-DPL5>].

5. Mary Anastasia O’Grady, *Venezuela’s Guide to Election Theft*, WALL ST. J. (Nov. 29, 2020), <https://www.wsj.com/articles/venezuelas-guide-to-election-theft-11606684680> [<https://perma.cc/AQ2U-V8T5>].

complaint maintained that Dominion was developed by Hugo Chávez, the former President of Venezuela and a man now deceased, to steal elections in Venezuela.⁶ Giuliani and Powell also advanced their false claims on television. Giuliani, for example, rambled on Fox and Friends that the election fraud was:

beyond what people think, including a very, very dangerous foreign company that did the votes in twenty-seven states, a company that's not American, a company that's foreign, a company that has close, close ties with Venezuela and, therefore, China and uses a Venezuelan company software that's been used to steal elections in other countries.⁷

On Newsmax, Powell attacked Dominion Voting Systems as well as Smartmatic, another election technology supplier used in 2020.⁸ Powell spread lies that Dominion was “a descendant” of Smartmatic’s technology, that Venezuela’s vote counting scheme was “exported” to the U.S., and that these voting companies were used to commit election fraud.⁹

Still, the 2020 Presidential election was certified after the insurrection.¹⁰ The federal Election Infrastructure Government Coordinating Council Executive Committee debunked the conspiracy theory that foreigners interfered with the election to aid Biden.¹¹ In fact, the Committee proclaimed that “[t]he November 3rd election was the most secure in American history.”¹² Nonetheless, many Americans still believe that foreigners helped rig the Presidential election in Biden’s favor.¹³

These bogus claims of foreign subversion of U.S. voting machines were part of a larger web of conspiracy theories which falsely depicted Biden as an agent for foreign actors. As Democrats attempted to unite to defeat Trump, for example, Mark Levin, a *Breitbart News* contributor, declared that the Biden-Sanders Unity Task Force Recommendations “amount[ed] to a ‘communist manifesto’ that would destroy America.”¹⁴ Some turned squarely to U.S. foreign

6. *Id.*

7. *Id.*

8. Linda Qui, *How Sidney Powell Inaccurately Cited Venezuela’s Elections as Evidence of U.S. Fraud*, N.Y. TIMES (Nov. 19, 2020), <https://www.nytimes.com/2020/11/19/technology/sidney-powell-venezuela.html> [<https://perma.cc/DYT5-HFQX>].

9. *Id.*

10. Juana Summers, *Congress Certifies Biden Victory; Trump Pledges ‘Orderly Transition’ on Jan. 20*, NPR (Jan. 7, 2021), <https://www.npr.org/2021/01/07/954234902/congress-certifies-biden-victory-after-pro-trump-rioters-storm-the-capitol> [<https://perma.cc/6BJ2-JUM8>].

11. Joint Statement from Elections Infrastructure Government Coordinating Council & the Election Infrastructure Sector Coordinating Executive Committees, CYBERSECURITY & INFRASTRUCTURE SEC. AGENCY (Nov. 12, 2020), <https://www.cisa.gov/news/2020/11/12/joint-statement-elections-infrastructure-government-coordinating-council-election> [<https://perma.cc/65Z8-GWRB>].

12. *Id.*

13. See, e.g., Dominick Mastrangelo, *Two-Thirds of Republicans Think Biden’s Victory was Not Legitimate: Poll*, THE HILL (May 26, 2021), <https://thehill.com/homenews/administration/555584-two-thirds-or-republicans-think-bidens-victory-was-not-legitimate> [<https://perma.cc/MH4U-R5TS>] (detailing a Quinnipiac poll that found 66 percent of Republican-identifying voters think Biden’s victory was illegitimate).

14. Robert Kraychik, *Mark Levin: Joe Biden’s ‘Communist Manifesto’ Will Destroy Every Aspect of*

policy to scaremonger. In an interview with Hugh Hewitt,¹⁵ radio show host and constitutional law professor, President Trump warned, “If I don’t win the election, China will own the United States. You’re going to have to learn to speak Chinese, you want to know the truth.”¹⁶ Christian nationalists relied on religion to propagate conspiracy theories about Biden during the campaign.¹⁷ One theory smeared Biden for allegedly being the puppet of Democrat George Soros.¹⁸ Soros is Jewish, grew up in Hungary, and is now a U.S. billionaire philanthropist and investor.¹⁹ This conspiracy theory invoked the anti-Semitic and nativist trope that wealthy Jews are part of a cabal that controls global affairs.²⁰ Others attacked Biden, who is Catholic, for being too much like Pope Francis.²¹ Francis, like Biden, offered progressive readings of scripture, including a stinging theological rebuke of Trump’s immigration policies.²² Here, multiple conspiracy theories intersected and promoted the notion that under Biden “[d]eep-state China and deep-state America will converge with their Vatican enablers to do the devil’s work on Earth.”²³

Vice President Kamala Harris was also the victim of false conspiracy theories on the 2020 campaign trail. One of the most prominent theories was that Harris was ineligible for the vice presidency because of her parents’ national origins.²⁴ President Trump explained, “I heard it today that [Harris] doesn’t meet the requirements. And, by the way, the lawyer that wrote that piece is a very highly qualified, very talented lawyer.”²⁵ Trump was referring to John Eastman, a

Our Culture and Society, BREITBART NEWS (Oct. 16, 2020), <https://www.breitbart.com/radio/2020/10/16/mark-levin-joe-bidens-communist-manifesto-will-destroy-every-aspect-of-our-culture-and-society> [<https://perma.cc/93JV-7ZVZ>].

15. See *About Hugh Hewitt*, HUGH HEWITT, <https://hughhewitt.com/about-hugh-hewitt> [<https://perma.cc/VK8Q-9EJE>] (describing Hewitt’s extensive broadcasting credentials).

16. Kevin Liptak, *Trump Says Americans Will Have to Learn Chinese if Biden Wins but Offers Little Condemnation of Beijing*, CNN (Aug. 11, 2020), <https://www.cnn.com/2020/08/11/politics/trump-china-biden-learn-chinese/index.html> [<https://perma.cc/H5X7-2VL7>].

17. See Tish Durkin, *The Catholics who Hate Joe Biden—and Pope Francis*, ATLANTIC (Oct. 21, 2020), <https://www.theatlantic.com/politics/archive/2020/10/catholics-joe-biden-pope-francis-devil/616732> [<https://perma.cc/5QX7-K9GM>] (describing a letter by former Archbishop Carlo Maria Viganò stating that Joe Biden embodies the goals of the deep state).

18. Dan Friedman, *Rudy Giuliani Interrupted His Effort to Smear Joe Biden with an Anti-Semitic Conspiracy Theory about George Soros*, MOTHER JONES (Oct. 14, 2020), <https://www.motherjones.com/politics/2020/10/rudy-giuliani-george-soros-joe-biden> [<https://perma.cc/H7YY-7RBN>].

19. *Id.*

20. *Id.*

21. See *supra* note 17.

22. *Id.*

23. *Id.*

24. Franco Ordoñez, *Trump and his Campaign Amplify Untrue ‘Birther’ Conspiracy Against Kamala Harris*, NPR (Aug. 13, 2020), <https://www.npr.org/2020/08/13/902362014/trump-and-his-campaign-amplify-birther-conspiracy-against-kamala-harris> [<https://perma.cc/BLC6-4ZCD>].

25. Daniel Dale, Holmes Lybrand & Tara Subramaniam, *Fact Check: Trump Promotes Another Birther Lie, This Time About Kamala Harris*, CNN (Aug. 14, 2020), <https://www.cnn.com/2020/08/13/politics/trump-news-conference-birtherism-kamala-harris-biden->

retired law professor and former clerk to U.S. Supreme Court Justice Clarence Thomas.²⁶ Eastman asserted that Harris might not be a native-born U.S. citizen.²⁷ He argued that because neither of her parents were naturalized citizens at the time of Harris' birth, Harris was ineligible to become President or Vice President.²⁸ Trump and Eastman revived birtherism,²⁹ a conspiracy theory that Trump had peddled years earlier against President Barack Obama.³⁰ Although Obama was born in Hawaii, the birthers alleged that Obama was born in Kenya and thus ineligible to become U.S. President.³¹

What ties all of these false beliefs together—that Biden stole votes using Venezuelan voting technology, co-authored a “communist manifesto,” would facilitate foreign subversion if elected, and chose a foreigner as his vice presidential candidate? Each of these false beliefs is a xenophobic conspiracy theory.

This *Law & Contemporary Problems* Issue explores how the theme of “two Americas” re-emerged in fresh ways after the January 6 insurrection. This article, in turn, examines the current polarization in U.S. politics by considering how white nationalists have historically used xenophobic conspiracy theories to render some Americans as un-American, suppress votes, and undermine efforts to make the polity more inclusive. Xenophobia is a form of prejudice based on the perception of the other as being foreign or holding foreign values.³² It renders the other as other and as being outside of a community or nation.³³ Conspiracy theories are unsubstantiated beliefs that a covert but influential group has caused

attacks-fact-check/index.html [https://perma.cc/LV69-MKY6].

26. Dr. John C. Eastman, FEDERALIST SOC'Y, <https://fedsoc.org/contributors/john-eastman> [https://perma.cc/4M46-VY9G]. Dominick Mastrangelo, *Trump Eyes Lawyer Who Spoke at Rally to Help in Impeachment Trial: Report*, THE HILL (Jan. 14, 2021), <https://thehill.com/homenews/administration/534187-trump-mulling-lawyer-who-spoke-at-rally-to-help-in-impeachment-trial> [https://perma.cc/959A-J2ED].

27. Joe Walsh, *Trump's New Layer Has Promoted Birther Conspiracy Theories About Kamala Harris' Citizenship*, FORBES (Dec. 9, 2020), <https://www.forbes.com/sites/joewalsh/2020/12/09/trumps-new-lawyer-has-promoted-birther-conspiracy-theories-about-kamala-harris-citizenship/?sh=665fbefd4f14> [https://perma.cc/BRD7-CBVN].

28. John C. Eastman, *Some Questions for Kamala Harris About Eligibility*, NEWSWEEK (Aug. 12, 2020), <https://www.newsweek.com/some-questions-kamala-harris-about-eligibility-opinion-1524483> [https://perma.cc/NWH5-V3GR].

29. Franco Ordoñez, *Trump and His Campaign Amplify Untrue 'Birther' Conspiracy Against Kamala Harris*, NPR (Aug. 13, 2020), <https://www.npr.org/2020/08/13/902362014/trump-and-his-campaign-amplify-birther-conspiracy-against-kamala-harris> [https://perma.cc/ASQ9-9K4Q].

30. The conspiracy theory found so much traction that Obama ended up releasing his birth certificate to the public. Lymari Morales, *Obama's Birth Certificate Convinces Some, but Not All, Skeptics*, GALLUP (May 13, 2011), <https://news.gallup.com/poll/147530/obama-birth-certificate-convinces-not-skeptics.aspx> [https://perma.cc/69EJ-Z3BD].

31. According to birthers, an un-naturalized Kenyan defrauded his way into the White House. Philip Klinkner, *The Causes and Consequences of "Birtherism"*, HAMILTON C., 2–3 (2014), <http://www.wpsanet.org/papers/docs/Birthers.pdf> [https://perma.cc/7SL8-B86F].

32. UNITED NATIONS HIGH COMM'R FOR REFUGEES, GUIDANCE ON RACISM AND XENOPHOBIA 15 (2020), <https://www.unhcr.org/5f7c860f4.pdf> [https://perma.cc/62VJ-RRBY].

33. *Id.*

an event or circumstance to happen.³⁴ Anyone, regardless of background, can believe or propagate a conspiracy theory, and conspiracy theories divide societies.³⁵ This article explores a specific type of conspiracy theory: a white nationalist one that spreads misinformation (or worse) and results in U.S. voting rights advocates and diverse campaigns and voters being cast as foreigners in their own country.³⁶

The xenophobic conspiracy theories at the heart of the “Stop the Steal” campaign did not emerge from a vacuum. White nationalists have long spread false, xenophobic conspiracy theories, and this practice hit a fever pitch after the U.S. Supreme Court’s groundbreaking decision in *Brown v. Board of Education*.³⁷ During the Cold War, segregationists weaponized fears that Soviet communists had infiltrated the civil rights movement and were using movement leaders—like Martin Luther King, Jr. who coined the phrase “two Americas”—to subvert U.S. democracy.³⁸ United States civil rights activists were overwhelmingly anti-communist but this often was of little avail.³⁹ White nationalists readily deployed xenophobic conspiracy theories against civil rights activists, and they were able to do so because blacks have historically been rendered as noncitizens, un-American, and others. White nationalists more than a half century later were able to sell the false, xenophobic conspiracy theories around Dominion and Smartmatic so easily, because these theories are a very familiar voter suppression tool. The “Stop the Steal” campaign flows from a distinct political genealogy. And so, while many Americans were astonished that millions of their fellow citizens believed that foreigners had subverted the 2020 Presidential election, they should have been far less surprised. United States history demonstrates that xenophobic conspiracy theories are nothing new.

34. See David S. Han, *Conspiracy Theories and the Marketplace of Facts*, 16 FIRST AMEND. L. REV. 178, 190 (2017) (arguing that conspiracy theories are not just patently false statements, but also contain the premise “that the public is being manipulated by nefarious powers-that-be”).

35. See *id.* at 180–81 (describing the variety of conspiracy theories and examples of their ability to cause social harm).

36. Misinformation is false or inaccurate information, and is often shared widely with others, regardless of one’s intent to mislead. Disinformation is misinformation created to be deliberately deceptive. Meira Gebel, *Misinformation vs. Disinformation: What to Know About Each Form of False Information, and How to Spot Them Online*, BUS. INSIDER (Jan. 15, 2021), <https://www.businessinsider.com/misinformation-vs-disinformation> [<https://perma.cc/FNV6-VQQ5>].

37. 347 U.S. 483 (1954) (declaring that racially segregated public schools were “inherently unequal” and violated the equal protection clause of the Fourteenth Amendment).

38. See, e.g., ROBERT PRATT, *SELMA’S BLOODY SUNDAY: PROTEST, VOTING RIGHTS, AND THE STRUGGLE FOR RACIAL EQUALITY* 85–86 (2017) (noting that Governor George Wallace claimed that the Selma to Montgomery March “would bring to Alabama ‘every left-wing pro-Communist . . . in the country’”).

39. See CAROL ANDERSON, *EYES OFF THE PRIZE: THE UNITED NATIONS AND THE AFRICAN AMERICAN STRUGGLE FOR HUMAN RIGHTS, 1944-1955* 166–67 (2003) (documenting how white supremacists sought to discredit civil rights activists through redbaiting). Roy Wilkins, NAACP Executive Secretary, explained why the NAACP passed resolutions against communist participation in the organization starting in 1950. “We were having enough trouble getting Congress to consider even the most elementary civil rights legislation; the last thing we needed was to give ammunition to redbaiting Southern congressmen and senators, who would have loved nothing better than to paint us pink.”

One might ask how Trump's accusations of election interference differ from Hillary Clinton's actions in 2016 or Joe Biden's actions in 2020. They differ greatly. Trump actually welcomed Russian influence in the 2016 Presidential election.⁴⁰ Clinton, on the other hand, condemned Russian influence in the election.⁴¹ The "Stop the Steal" campaign attempted to invalidate votes in the 2020 Presidential election. Biden fought to end voter suppression.⁴² Trump resurrected birtherism to discredit Harris and her diverse ticket. Trump's ticket was not diverse, and Biden did not peddle a false, xenophobic conspiracy theory to discredit Trump's ticket. The differences are stark. Trump's efforts come from a well-worn, white nationalist playbook. Neither Clinton nor Biden are white nationalists, nor do they use white nationalist tactics to undermine U.S. elections.

This article, in turn, merges two significant bodies of literature in a unique way. The first body of literature examines concerns over foreign influence in U.S. politics conventionally understood.⁴³ This scholarly area has blossomed since the 2016 elections.⁴⁴ The second body of literature is very well established and documents the history of voter suppression in the United States.⁴⁵ It is a literature that unfortunately has new relevance and is in conversation with voting rights

40. Philip Bump, *Donald Trump's Falsehood-Laden Press Conference, Annotated*, WASH. POST (July 27, 2016), <https://www.washingtonpost.com/news/the-fix/wp/2016/07/27/donald-trumps-falsehood-laden-press-conference-annotated> [<https://perma.cc/C2ZJ-RRPR>]. During the campaign, allegations emerged that Clinton had deleted 30,000 emails from a private email account she used when she served as Secretary of State. Trump stated, "Russia, if you're listening, I hope you're able to find the 30,000 e-mails that are missing. I think you will probably be rewarded mightily by our press." *Id.* Evidence has emerged demonstrating that the Russian government interfered with the 2016 Presidential election to benefit Trump, and though Trump stated that he hoped the Russians would engage in unlawful election interference, Department of Justice Special Counsel Robert Mueller did not establish that the Trump campaign coordinated with the Russian government to interfere with the election. U.S. DEP'T OF JUST., REPORT ON THE INVESTIGATION INTO RUSSIAN INTERFERENCE IN THE 2016 PRESIDENTIAL ELECTION 1–2 (2019), <https://www.justice.gov/storage/report.pdf> [<https://perma.cc/Q6MS-5BGE>].

41. Eliza Collins, *Yes, 17 Intelligence Agencies Really Did Say Russia was Behind Hacking*, USA TODAY (Dec. 16, 2016), <https://www.usatoday.com/story/news/politics/onpolitics/2016/10/21/17-intelligence-agencies-russia-behind-hacking/92514592> [<https://perma.cc/8F7X-3BJZ>].

42. See Jack Brewster, *Biden Secures Electoral College Victory After Unprecedented Attempt by Trump to Invalidate Vote*, FORBES (Dec. 15, 2021), <https://www.forbes.com/sites/jackbrewster/2020/12/14/biden-secures-electoral-college-victory-after-unprecedented-attempt-by-trump-to-invalidate-vote/?sh=1162ea296f14> [<https://perma.cc/D5UD-UYCC>] (detailing then President-elect Joe Biden's remarks before the Electoral College confirmed his victory: "We, the people, voted. Faith in our institutions held. Now it's time to turn the page.").

43. The Framers, for example, were particularly anxious about potential British and French influences in U.S. political life. In turn, they authored the Foreign Emoluments Clause to prevent foreign corruption and influence of U.S. officeholders. See Bianca Spinosa, Comment, *Interpreting Emoluments Today: The Framers' Intent and the "Present" Problem*, 78 MD. L. REV. 998, 1004–08, (2019) (reviewing the historical context leading to the Foreign Emoluments Clause). While this article explores concerns over foreign interference in U.S. politics, it differs from the Framers' efforts to control potential foreign meddling. The Framers did not create the Foreign Emoluments Clause to suppress votes or inflame white nationalist politics.

44. See, e.g., Caprice L. Roberts, *Disgorging Emoluments*, 103 MARQ. L. REV. 1 (2019) (exploring the theory of unjust enrichment as a cause of action and its relationship with unlawful emoluments).

45. See, e.g., CAROL ANDERSON, ONE PERSON, NO VOTE: HOW VOTER SUPPRESSION IS DESTROYING OUR DEMOCRACY (2018).

activists' claims that Trumpism has unleashed "Jim Crow 2.0."⁴⁶ Joining the two bodies of literature demonstrates how white nationalists have historically relied on xenophobic conspiracy theories to disenfranchise subordinated communities. Moreover, it will offer today's voting rights advocates more nuanced ways to place the current assault on voting rights in historical context.⁴⁷

Part II of the article chronicles the racial hopes *Brown* produced and the unexpected racist backlash that emerged due to the Court's decision. White supremacists seized Cold War fears of foreign subversion and the era's deep racism and propagated conspiracy theories that the civil rights movement was un-American. Part III examines how these xenophobic conspiracy theories that flourished after *Brown* shaped landmark voting rights lawsuits, federal voting rights legislation, and a Presidential campaign. Part IV examines lessons we might learn today from this civil rights history, as racist backlash has again followed racial progress.

II

RACIAL POLARIZATION IN THE WAKE OF *BROWN V. BOARD OF EDUCATION*

In 1954, many commentators believed that *Brown* spelled the end of racism in America. It did not. This Part explains the increased polarization in U.S. racial politics after *Brown*. It also details how and why some segregationists shifted to more covert and nuanced forms of racism in *Brown*'s wake.

A. White Counter-Mobilization During The Cold War

Bold headlines blanketed U.S. newspapers after *Brown*. Leading Southern newspapers like the *Atlanta Constitution* announced, "Court Kills Segregation in Schools."⁴⁸ In the North, the *Chicago Tribune* declared, "Segregation Outlawed."⁴⁹ The nation's most circulated newspapers were replete with snapshots of smiling NAACP lawyers, stock photos of Chief Justice Warren, and

46. Nicholas Reimann, *Stacey Abrams-Founded Group Sues Georgia Over "Voter Suppression Bill,"* FORBES (Mar. 26, 2021), <https://www.forbes.com/sites/nicholasreimann/2021/03/26/stacey-abrams-founded-group-sues-georgia-over-voter-suppression-bill/?sh=51abdf0a3d0a> [<https://perma.cc/T6KH-TG93>].

47. Many popular and academic conversations on the current voting rights struggle have failed to recognize, for example, how racism and anti-communism have historically intersected to disenfranchise voters of color. More broadly, even in thoughtful articulations of the ties between voter suppression past and present, xenophobia's historic role in voter suppression remains under-theorized. See, e.g., Jason Morgan Ward, *Georgia's Voter Law Is Called "Jim Crow 2.0" for a Reason*, N.Y. TIMES (Mar. 31, 2021), <https://www.nytimes.com/2021/03/31/opinion/georgia-voting-law.html> [<https://perma.cc/79WY-NL9H>]. Moreover, it is beyond the scope of this article to determine whether the current attack on voting rights is actually "Jim Crow 2.0." This article, however, find parallels between white nationalists today and during the civil rights movement, one part of the Jim Crow era. It also identifies important historical discontinuities in white nationalism over time, many of which should alarm current voting rights advocates.

48. *Court Kills Segregation in Schools*, ATLANTA CONST., May 18, 1954, at 1.

49. *Segregation Outlawed*, CHI. TRIB., May 18, 1954, at 14.

endearing images of the *Brown* plaintiffs.⁵⁰ For many Americans in the wake of *Brown*, the Court's landmark ruling signaled that there were brighter days ahead in U.S. race relations.⁵¹

The positive response to *Brown* was most pronounced in black communities. In Harlem, black news writers rejoiced, "May 17th! Great Day for NAACP" and "Supreme Court Outlaws School Bias,"⁵² and in Los Angeles, black publishers exclaimed, "School Bias Outlawed!"⁵³ In Montgomery, Alabama, a city which would soon become a movement center, black journalists printed stirring articles entitled, "Supreme Court Could not Turn Back Clock to 1896 Decision"⁵⁴ and "The Decision of a Century."⁵⁵ Four days after *Brown*, civil rights lawyer and activist Pauli Murray published an op-ed in the *New York Times* that underscored the cultural and historical significance of this moment of jubilee.⁵⁶ "I think I can now understand for the first time how my great-grandfather felt when he, a former slave, read the Emancipation Proclamation," Murray exulted.⁵⁷ She added that the Court's unanimous decision had not only done "much to heal a deep wound" but it had also raised America's human rights profile globally in the process.⁵⁸ "On May 17," Murray proudly proclaimed, "the United States stood taller and with greater dignity in the eyes of the world than at any other time in the twentieth century."⁵⁹

Some even put *Brown*'s significance in messianic terms. Dr. Horace Mann Bond—a historian who helped the NAACP develop the legislative history of the Fourteenth Amendment during the *Brown* litigation and who was the president of Lincoln University, Thurgood Marshall's alma mater⁶⁰—cried out in response to the *Brown* ruling, "Mine eyes have seen the glory of the coming of the Lord!"⁶¹ For blacks throughout the country, *Brown* was the most significant Court victory of all time, and America was at last living up to its promise.⁶²

50. *Pupil Segregation Banned*, CHI. TRIB., May 18, 1954, at 1; *High Court Bans School Segregation*, N.Y. TIMES, May 18, 1954, at 1; Bess Furman, *Schools in Capital Prepared for Segregation Ban*, N.Y. TIMES, May 18, 1954, at 23; *Opinion on D.C. Schools*, WASH. POST, May 18, 1954, at 1; Jean White & Back Bilyeu, *3 Plaintiffs Get News of Ruling in School*, WASH. POST, May 18, 1954, at 3.

51. *Nat'l Leaders Laud Ban on School Segregation*, PITT. COURIER, May 29, 1954, at 31.

52. *Supreme Court Outlaws School Bias*, N.Y. AMSTERDAM NEWS, May 22, 1954, at 1; *May 17th! Great Day for NAACP*, N.Y. AMSTERDAM NEWS, May 22, 1954, at 1.

53. *School Bias Outlawed*, L.A. SENTINEL, May 20, 1954, at 1.

54. *Supreme Court Could Not Turn Clock Back to 1896*, ALA. TRIB., May 21, 1954, at 1.

55. *The Decision of a Century*, ALA. TRIB., May 21, 1954, at 1.

56. Pauli Murray, *School Decision Discussed*, N.Y. TIMES, May 21, 1954, at 26.

57. *Id.*

58. *Id.*

59. *Id.*

60. MARK V. TUSHNET, *MAKING CIVIL RIGHTS LAW: THURGOOD MARSHALL AND THE SUPREME COURT, 1936–1961*, 9, 196–97 (1994).

61. *Educators Comment on Schools Decision*, CHI. DEF., May 22, 1954, at 5.

62. See, e.g., *College Presidents: Hail High Court School Decision*, PITT. COURIER, May 29, 1954, at 30 (cataloguing the reactions of several college presidents most impacted by the *Brown* decision).

To be sure, the Warren Court was clear that *Brown*'s desegregation mandate only applied to segregation in public schools.⁶³ Nonetheless, many Americans read *Brown* as a much broader commentary on the future of U.S. race relations.⁶⁴ There was reason to believe this narrative. Washington, D.C., the centerpiece of American democracy and the city which had been an integral part of the school desegregation litigation,⁶⁵ decided not only to desegregate the city's public schools after *Brown* but also the city's public recreation facilities.⁶⁶ Prominent black editorialists declared that *Brown* now "opens other avenues of inquiry, the chief of which is, if school segregation is inherently unequal, is not separate seating in public transportation and disenfranchisement in tax-supported institutions also inherently unequal?"⁶⁷ They maintained, "The South must learn that the clock of progress will never swing backward, and that any attempt to create a 'Disunited States of America' to perpetuate segregation will be resisted by all means."⁶⁸ Even Thurgood Marshall, the nation's leading civil rights litigator, forecast that there would be minimal resistance to *Brown* and that *Brown*'s logic would be exported to areas outside of public schools.⁶⁹ As civil rights lawyers and activists packed the NAACP's national headquarters to celebrate the Court's ruling, Marshall announced to journalists that "by the time of the 100th anniversary of the Emancipation Proclamation . . . in 1963, segregation in all its forms [will] have been eliminated from the nation."⁷⁰

The prospect of racial progress, however, was quickly dashed. U.S. racial politics became more polarized after *Brown*.⁷¹ Many whites denounced the Court and its watershed decision in the vilest terms. The Former Grand Dragon of the Ku Klux Klan "advocated the shipping of most Negroes 'up North' as a means of getting around the recent U.S. Supreme Court decision. . . ."⁷² James Eastland, U.S. Senator from Mississippi, shot "that the South 'will not abide by nor obey this legislative decision by a political court.'"⁷³ He stressed that states still retained police powers and said that "an attempt to integrate schools in the South

63. *Brown v. Board of Educ.*, 347 U.S. 483, 495 (1954) ("We conclude that in the field of public education the doctrine of 'separate but equal' has no place.").

64. On the day after the Court's ruling, the *Washington Post*, for example, boldly editorialized that *Brown* "will prove, we are sure . . . a profoundly healthy and healing one. It will serve—and speedily—to close an ancient wound too long allowed to fester. It will bring to an end a painful disparity between American principles and American practices." *Emancipation*, WASH. POST, May 18, 1954, at 14.

65. See generally *Bolling v. Sharpe*, 347 U.S. 497 (1954) (declaring racial segregation in Washington, D.C. public schools unconstitutional).

66. *Momentum*, WASH. POST, May 20, 1954, at 14.

67. *Equality in Our Time*, L.A. SENTINEL, May 20, 1954, at A1.

68. *Id.* at A8.

69. *N.A.A.C.P. Sets Advanced Goals*, N.Y. TIMES, May 18, 1954, at 16.

70. *Id.*

71. See CAROL ANDERSON, *WHITE RAGE: THE UNSPOKEN TRUTH OF OUR RACIAL DIVIDE* 74–75 (2016); MICHAEL KLARMAN, *THE SUPREME COURT AND THE STRUGGLE FOR RACIAL EQUALITY* 385 (2004) (documenting defiant political reaction in the Deep South in response to *Brown*).

72. *Ex-Kluxer Wants Negroes Moved North*, N.Y. AMSTERDAM NEWS, June 12, 1954, at 32.

73. *Mississippi Representative Hopes For Calm, but Eastland Sees Strife*, N.Y. TIMES, May 18, 1954, at 19.

‘would cause great strife and turmoil.’”⁷⁴ White supremacists viewed *Brown* as a declaration of war on the South.

But others, just as determined to oppose *Brown* but perhaps savvier than their peers, used less inflammatory language in public to convey their resistance. They reached for more nuanced framing to communicate their bigotry at a time when the legal and social terrain around race was rapidly changing. Georgia Governor Herman Talmadge, for instance, said that while he disagreed with the Court’s ruling, he did not oppose school desegregation because he was a white supremacist.⁷⁵ According to Talmadge, he simply believed in racial separatism, and he went on record emphasizing to reporters, “I have never used that term ‘white supremacy’ in my life.”⁷⁶ It was far from true. Just several years earlier, Talmadge had campaigned under the banner of white supremacy, and there was no shortage of documented examples of Talmadge appealing to “white supremacy.”⁷⁷ But at a juncture when the Court was seeking to end state-sanctioned racial animus, Talmadge eschewed the language of white supremacy. Talmadge maintained that he “wouldn’t say any one race is specifically inferior,” because there were superior beings in every race.⁷⁸ He added that “if the ‘good Lord’ had wanted one race and one color, he would have ‘put them in one place,’ rather than putting ‘white in Europe, black in Africa, red in the Americas and yellow in Asia.’”⁷⁹ Talmadge offered no explanation of how whites from Europe or blacks from Africa arrived in the United States or how indigenous lands miraculously became white-controlled—that reading of scripture was not

74. *Id.*

75. *Calm Talmadge Calls School Rule “Judicial Brainwashing,”* BALT. SUN, June 7, 1954, at 7. Here, it is also important to note that while *Brown* polarized Southern politics, as Klarman rightfully argues, many of the ways in which white supremacy changed during this period has been under-theorized. Talmadge’s move to reject the white supremacist label and adopt a racial separatist label exemplifies the evolution of the white supremacist lexicon. *See also infra* note 427. Some white supremacists during the twenty-first century have similarly rejected being identified as white supremacists and instead refer to themselves as white nationalists. *Id.* This article uses the terms “white supremacist” and “white nationalist” interchangeably, because white nationalism is an attempt to rebrand and mainstream white supremacism.

76. BALT. SUN, *supra* note 75, at 7.

77. *See Talmadge Opens Bid at Lyons Next Saturday,* ATLANTA CONST., May 12, 1946, at 12A (reporting that Talmadge “continued to wave the banner of white supremacy” during a radio broadcast during the gubernatorial race); *Talmadge’s Temporary Victory Celebrated,* NEW J. & GUIDE, Feb. 1, 1947, at A3 (stating that during Talmadge’s contested gubernatorial race, Klan leaders in Georgia led a political tour of the state “in the name of ‘klan, white supremacy and Talmadge’”); *Race Segregation Rule Seen for Georgia Polls,* ATLANTA CONST., Sept. 13, 1947, at 1 (stating that Talmadge “says white supremacy will be the big issue” during his 1948 gubernatorial race); *White Supremacy in Peace or by Force—Talmadge,* CHI. DEF., Aug. 14, 1948 (noting that during a political rally Talmadge declared that “[w]e’re going to have white supremacy in Georgia by peaceful means if possible, by force if necessary.”); *Talmadge Leads in Georgia,* CHI. TRIB., Sept. 9, 1948, at 1 (“Herman Talmadge, one of Georgia’s foremost champions of white supremacy . . .”).

78. BALT. SUN, *supra* note 75, at 7.

79. *Id.*

present. For Talmadge, the Court's exercise in judicial "tyranny" in *Brown* had simply "washed away the customs of centuries."⁸⁰

At the same time, segregationists turned to redbaiting as a way to oppose *Brown*.⁸¹ Americans during the Cold War were fixated on the threat of communist, or colloquially "red," subversion of the United States.⁸² Redbaiting became a powerful tool to discredit a person or a cause and render an opponent un-American.⁸³ Fear of foreigners had always been a lynchpin of white supremacy, and the redbaiting gave new, "colorblind" language to segregationists seeking to render civil rights "un-American."⁸⁴

Redbaiting was especially harsh in the South. White Southerners had long held that blacks were content with their lot during slavery until northern interlopers, like federal officials, carpetbaggers, communists, socialists, and abolitionists, exposed slaves to foreign ideologies.⁸⁵ Segregationists recycled this refrain to discredit desegregation efforts, claiming that like earlier "outside forces," blacks and their white northern allies again wanted to undermine the "Southern way of life."⁸⁶ Cold War politics, in other words, posed severe problems for desegregationists in the South, because the fear of foreign ideologies that became so central to U.S. Cold War policy dovetailed with a long history of Southern racism.⁸⁷

Segregationists also mobilized the Constitution to redbait throughout this period.⁸⁸ Some opposed *Brown* by linking ideas about foreignness to the Tenth Amendment, and this argument gained the most traction in the South.⁸⁹ During the Civil War and Reconstruction, many white Southerners believed that "federal interference" was "foreign interference." They conceived of themselves as being part of a nation within a nation and that the Civil War had been a war of Northern aggression, or even a war between the states.⁹⁰ For segregationists, states' rights were the primary legal defense that protected the South against the federal government's racial overreach.⁹¹ During the civil rights movement, expansive readings of the Tenth Amendment served a similar function for segregationists. States' rights advocates argued that in *Brown* the federal government had intruded upon states' authority to regulate public education.⁹²

80. *Id.*

81. JEFF WOODS, *BLACK STRUGGLE, RED SCARE: SEGREGATION AND ANTI-COMMUNISM IN THE SOUTH, 1948-1968* 49 (2004).

82. *Id.* at 27.

83. *Id.* at 4-5.

84. *Id.* at 2.

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.* at 1-3.

89. *Id.*

90. *Id.* at 3.

91. *Id.*

92. *Id.* at 48-53.

Others made even more outlandish constitutional claims around foreign subversion and began to decry the Court's decisions regarding the rights of communists.⁹³ They contended the Court's blatant disregard for states' rights and the separation of powers in *Brown* was part of a broader judicial trend towards totalitarianism.⁹⁴

The turn of events over a relatively brief historical moment left many Americans perplexed.⁹⁵ Racist backlash followed a racially progressive Court decision. The optimism which caused many to predict the end of American racism died as segregationists closed public schools, led and condoned racist mob violence, and retooled their cultural and legal arguments to thwart racial justice. America was more polarized after *Brown* than before the Court's anti-racist proclamation.⁹⁶ Though this result was counter-intuitive for some, allegations of foreign interference were central to this development.

B. Xenophobic Conspiracy Theories And The Remaking of The U.S. Electorate

Civil rights advocates and segregationists agreed and were right about one thing: *Brown* proved to affect more than public schools. The case also sparked clashes in politics. Segregationists soon surged forward. Southern legislatures formed "state sovereignty commissions," fashioned after the House Un-American Activities Committee (HUAC), and tasked them with investigating potential communist subversion in the state.⁹⁷ Most states that constituted these commissions initially used them to evade school desegregation, but their missions swiftly spread to other areas.⁹⁸ State sovereignty commissions, for example, led both vast purges of black voters and extreme appeals to whites to dominate the electorate.⁹⁹ They declared that communists had illegally registered black voters

93. See, e.g., *Ex-Justice Says Court Needs Curb*, CITIZENS' COUNCIL, June 1956, at 3. In the article published by the White Citizens' Council, a white supremacist organization, segregationist, and former U.S. Supreme Court Justice James Byrnes argued that *Brown* brought "joy to Communists and their fellow travelers who want to see all power centered in the Federal Government." *Id.* at 3. He added that *Brown* was part of a "frightening" trend of recent Court decisions "giving aid and comfort to Communists by weakening security measures of the states." *Id.*

94. *Id.* at 1, 3. See also D.J. MULLOY, *THE WORLD OF THE JOHN BIRCH SOCIETY: CONSPIRACY, CONSERVATISM, AND THE COLD WAR* 110–11 (2014) (describing how racism and anti-communism shaped the judicial philosophy of the John Birch Society, a massive white supremacist organization, and the organization's efforts to impeach Chief Justice Earl Warren for his liberal decisions).

95. See, e.g., John Pennington, *Dixie Integration Opinions Simple and Final: 'Never,'* ATLANTA CONST., Dec. 1, 1957, at 1C (underscoring how the era's desegregation battles "ha[d] built between the races a rift that grows wider and wider" and how this turn of events led to "suspicion, bewilderment, distrust between the races—and some admitted hatred").

96. KLARMAN, *supra* note 71, at 385.

97. WOODS, *supra* note 81, at 85–86.

98. *Id.* at 97.

99. Evan Faulkenbury, "*Monroe is Hell*": Voter Purges, Registration Drives, and the Civil Rights Movement in Ouachita Parish, Louisiana, 59 J. LA. HIST. ASSOC. 40, 48 (2018).

and maintained that their efforts prevented “voter fraud” and ensured that all “qualified” citizens were voting citizens.¹⁰⁰

State sovereignty commissions innovated redbaiting by launching new media offensives to advance xenophobic conspiracy theories. They argued that there was a “paper curtain” at the Mason-Dixon Line.¹⁰¹ The Iron Curtain was an imagined ideological barrier which divided the West from communist Eastern Europe during the Cold War.¹⁰² State sovereignty commissions and their supporters borrowed from this Cold War metaphor. They contended that, like Eastern European communists, Northern media outlets were subversive, denied freedom of press, and misinformed readers about U.S. race relations.¹⁰³ According to white supremacists’ conspiracy theory, “practically all of the Northern press” had a liberal media bias and misrepresented Southerners as “ignorant, prejudiced, backward and bitter people.”¹⁰⁴ State sovereignty commissions, in turn, developed inventive media strategies to tell Southern segregationists’ side of the race story, expose the allegedly “subversive influences” behind desegregation, and reshape public opinion on issues of civil rights and civil liberties.¹⁰⁵ In 1958, for instance, the Mississippi State Legislature appropriated \$250,000 to fund its state’s sovereignty commission.¹⁰⁶ The commission hired a public relations director to help rebrand the state’s image and enlisted lobbyists in Washington to defeat ““dictatorial”” civil rights legislation.¹⁰⁷

New groups of segregationists also emerged during this period. Perhaps most infamously, the Citizens’ Councils of America (Citizens’ Council) formed on July 11, 1954 in Indianola, Mississippi—less than two months after *Brown*—as part of backlash to the Court’s decision.¹⁰⁸ The organization is now notorious for white supremacy, and it should go without saying that the Citizens’ Council was an abhorrent organization. However, what’s important to note here is that the Citizens’ Council emphasized that the organization was not a white supremacist organization.¹⁰⁹ They instead stressed that they simply believed in states’ rights

100. *Id.*

101. *See, e.g., 1150 Attend Dinner Honoring Rainach*, SHREVEPORT J., Nov. 25, 1959, at 3 (reporting on a gubernatorial candidate arguing that southern states needed “to use advertising to pierce the paper curtain”).

102. *See generally* FRASER J. HARBUTT, *THE IRON CURTAIN: CHURCHILL, AMERICA, AND THE ORIGINS OF THE COLD WAR* (1988) (defining the Iron Curtain).

103. David Wallace, *Piercing the Paper Curtain: The Southern Editorial Response to National Civil Rights Coverage*, 33 AM. JOURNALISM 401, 421 (2016).

104. Ed Cony, *Selling Segregation*, WALL ST. J., Dec. 4, 1957, at 1.

105. *Id.*

106. *Mississippi Spending \$250,000 Tax Money in Campaign to Justify Dixie Race Policy*, NORFOLK J. AND GUIDE, Mar. 1, 1958, at 10.

107. YASUHIRO KATAGIRI, *THE MISSISSIPPI STATE SOVEREIGNTY COMMISSION: CIVIL RIGHTS AND STATES’ RIGHTS* 30–31, 108–110 (2009).

108. *Council Movement Spreads as Nation Reacts to Danger*, CITIZENS’ COUNCIL, Aug. 1956, at 1 (explaining that “the May 17 decision of the United States Supreme Court against segregation” left white Southerners “stunned at the prospect of a complete overthrow of their customs and traditions. . .”).

109. *See* Thomas R. Waring, *South’s Views Presented at Williams*, CHARLESTON NEWS AND COURIER, Mar. 10, 1957, at 5C (emphasizing that the organization is not one for white supremacists).

and sought “to guard both whites and Negroes” against the forces of racial strife.¹¹⁰ According to Citizens’ Council, the organization aimed to protect society from racial agitators like federal officials and the NAACP and “to protect the rank and file of Negroes from the wrath of ruffian white people who may resort to violence” during desegregation efforts.¹¹¹ In fact, Citizens’ Councilors refuted any notion that they had ever “created an atmosphere that incite[d] murder and lynching.”¹¹² The organization’s founders, middle and upper class whites who sought to distance themselves from poor whites, maintained that they were “in no sense architects of an American Fascist movement” but rather “firm supporters of the Republic and Jeffersonian democracy.”¹¹³ The Citizens’ Council was, for some critics of the organization, the “uptown Klan.”¹¹⁴ In other words, the Citizens’ Council attempted to express their bigotry in more refined and stealth ways than segregationists did in the past.

The Citizens’ Council harnessed anti-communism and soon developed a powerful arsenal to redbait those seeking to make the political process more inclusive. The organization recruited and won the memberships of leading segregationist politicians in an attempt to add legitimacy to the organization.¹¹⁵ The Citizens’ Council often convinced state sovereignty commissions to adopt the Citizens’ Council literature, and this development too lent greater legitimacy and steam to redbaiting in Southern legislatures.¹¹⁶ The Citizens’ Council, like state sovereignty commissions, attempted to confront the so-called paper curtain. It established the *Citizens’ Council*, the organization’s newspaper,¹¹⁷ and the “Citizens’ Council Forum,” a public affairs show broadcasted on both television

Waring, a well-known news editor and intellectual leader in the Citizens’ Council, stressed that the Citizens’ Council’s founders intentionally named the group to avoid any white supremacist connotations. Waring stated, “[T]he name of this movement is not WHITE Citizens Councils. The word ‘white’ was stuck in front of the name by some newspaper writer to designate the group as white people.” For Waring, journalists’ decision to refer to the Citizens’ Council as the White Citizens’ Council was a misguided effort to “emphasize the racial character” of the organization and part of “the overall smear campaign” against the Citizens’ Council. Waring believed that this journalistic technique was just another example of the “Paper Curtains” dividing Americans. *Id.*

110. Thomas R. Waring, *Mississippi Citizens’ Councils are Protecting Both Races*, CITIZENS’ COUNCIL, Oct. 1955, at 1 (emphasizing this point in a front-page article in the first volume of the Citizens’ Council newspaper).

111. *Id.*

112. *Id.*

113. Thomas R. Waring, *Private Citizens Formed Citizens Councils*, CITIZENS’ COUNCIL, Nov. 1955, at 1.

114. *The Urban League Under Fire*, L.A. SENTINEL, Oct. 25, 1956, at A6.

115. See, e.g., *Senator Olin D. Johnston Backs Citizens’ Councils*, CITIZENS’ COUNCIL, Oct. 1955, at 1 (noting a letter from Senator Johnston’s office which expressed the senator’s “absolute agreement with the principles of the various Citizens’ Councils that are being organized throughout South Carolina”).

116. See, e.g., *Louisiana Fights Mixing Propaganda*, CITIZENS’ COUNCIL, Feb. 1961, at 1 (displaying a message from the state sovereignty commission urging citizens to fight against integration).

117. *To All Citizens’ Council Members*, CITIZENS’ COUNCIL, Oct. 1955, at 1 (introducing the newspaper).

and radio.¹¹⁸ These broadcasts reached national audiences,¹¹⁹ and they boasted that their shows featured prominent national politicians interested in protecting states' rights, fighting "the menace of global Communism," and speaking "frankly" about race.¹²⁰

Bigots established new groups in areas outside of the South too. In 1958, Robert Welch, the candy magnate, founded the John Birch Society in Indianapolis.¹²¹ Welch was a rabid anti-communist and conspiracy theorist. And while he, like far too many whites in Cold War America, believed that the civil rights movement was subversive, Welch's disinformation went well beyond.¹²² Welch believed that some men at the highest levels of government were either communists or communist-influenced.¹²³ Welch blasted Chief Justice Earl Warren, former Secretary of State John Foster Dulles, and Presidents Dwight Eisenhower, Harry Truman, and Franklin Roosevelt for allegedly being entangled in a large communist conspiracy.¹²⁴ It is difficult to overemphasize how extreme Welch and the John Birchers were, but one Republican U.S. Senator aptly described Welch's redbaiting style as something "far beyond anything the late Senator Joe McCarthy [of Wisconsin] even thought of."¹²⁵

Again, here it is critical to note that although the John Birch Society actively opposed civil rights reforms, the organization maintained that it was not a white supremacist organization. Welch announced to the press that his organization "[did] not allow bigots."¹²⁶ Commentators explained Welch's so-called colorblind approach to advancing "anti-Negro" politics. One black journalist wrote that while a "frontal attack on the Negro and his righteous aspirations would be

118. See *Councils Take Lead in TV-Radio*, CITIZENS' COUNCIL, June 1958, at 1 (describing how the "Citizens Council Forum" was the outgrowth of eighteen months of the Citizens' Council's initial television and radio programming).

119. *Id.* See also *'Citizens' Council Forum' TV-Radio Series Adds Another 75 Stations*, CITIZENS' COUNCIL, Apr.-May 1961, at 4 (discussing the program's expansion).

120. *Citizens' Council Forum*, CITIZENS' COUNCIL, Apr. 1959, at 2.

121. *Salesman of the Right*, N.Y. TIMES, Apr. 1, 1961, at 5.

122. See *id.* (describing how Welch identified numerous high-ranking Eisenhower administration officials as communists, including President Eisenhower, Dr. Milton Eisenhower, Secretary of State John Foster Dulles, and head of the Central Intelligence Agency, Allen Dulles). The John Birch Society embraced many outlandish conspiracy theories. See Walter Trohan, *Story Behind Anti-Red John Birch Society*, CHI. TRIB., Mar. 30, 1961, at 5 (criticizing the United Nations for promoting the surrender of U.S. sovereignty and alleging that U.S. foreign aid was a tool that would allow communists to penetrate the United States and spend the country into destruction); see also *What Fluoridation Fuss is All About*, MICH. CHRON., Feb. 2, 1963, at 4 (noting that the John Birch Society was part of a right wing campaign that opposed fluoridation in water because they believed that fluoridation would lead to mottling of teeth, cancer, heart disease, kidney disorders, failing hair, uterine bleeding, and hearing defects, among other ailments).

123. DAVID FARBER, *THE RISE AND FALL OF MODERN AMERICAN CONSERVATISM: A SHORT HISTORY* 71 (2012). John Birch was a U.S. missionary and intelligence officer killed by Chinese Communists and Welch remained steadfast that the U.S. government had to destroy anything potentially communist. *Id.*

124. Gene Blake, *The John Birch Society*, L.A. TIMES, Mar. 5, 1961, at B1.

125. *Senator Scores Group Calling Eisenhower a Red*, N.Y. TIMES, Mar. 9, 1961, at 12.

126. *Welch Supports Eastland on Supreme Court Attack*, BALT. SUN, May 5, 1962, at 13.

condemned” by many including those in “the New South . . . the Negro’s opponents have definitely chosen a flank attack which is being evidenced by such organizations as the John Birch Society.”¹²⁷ The writer underscored that because “hating the Communists is one of the most popular causes of the hour . . . [these] flank attackers would paint every white liberal as Communist and every Negro fighter for fuller freedom as having been tampered with by the Communists.”¹²⁸ Under this approach, redbaiting became “just as deadly as if it were frontal,” he stated, “and in many cases more so; because it is subtle and deceptive.”¹²⁹ Welch’s campaign against communism provided him with a strategy to provide him cover against charges that he was racist while also allowing him to paint himself as a patriot.

Welch was steadfast in his position that he was not racist. He pointed to other evidence, which, at least for him and his followers, proved that his organization could not be racist. What was Welch’s evidence? The organization, according to Welch, had black members.¹³⁰

The John Birch Society became wildly popular as Welch’s gripping conspiracy theories and hyper-nationalism won over many rural and suburban dwellers.¹³¹ Some have estimated that by the early 1960s, there were between 60,000 to 100,000 John Birchers nationally.¹³² The group also boasted very prominent members. Its founders included Clarence Manion, former Notre Dame Law School dean and constitutional law professor, and Frederick Koch, the industrialist whose oil refinery firm later became Koch Industries.¹³³ Welch’s recruitment of high-status leaders not only added to the organization’s prestige, but it became one way to make what were regarded as fringe views more mainstream.¹³⁴

Segregationists remade themselves during the mid-twentieth century. As active participants in a social movement, segregationists adopted tactical innovations to defy the Court’s ruling in *Brown* and *Brown*’s potential implications for all of America. They bent Cold War logic to their own ends and reached for new tools and less overtly racist language to chill civil rights activism. Crude forms of demagoguery certainly loomed large during the civil rights movement, but segregationists, were, at times, more sophisticated than depicted in popular and scholarly debates.¹³⁵ Conventional, simplistic representations of

127. Dr. Hancock, *Flank Attack Threatens the Battle for Freedom*, NEW J. & GUIDE, Dec. 2, 1961, at 8.

128. *Id.* at 8–9.

129. *Id.*

130. *Birch Head Reveals Two ‘Negro’ Units*, PITT. COURIER, Apr. 29, 1961, at 9.

131. George Barrett, *Close-Up of the Birchers’ Founder*, N.Y. TIMES, May 14, 1961, at SM13, 91.

132. THE READER’S COMPANION TO AMERICAN HISTORY 597 (Eric Foner & John A. Garraty eds., 2014).

133. NICOLE HEMMER, MESSAGERS OF THE RIGHT: CONSERVATIVE MEDIA AND THE TRANSFORMATION OF AMERICAN POLITICS 93 (2016).

134. *Pamphlet Listing Birch Society Council is Released*, N.Y. TIMES, Apr. 1, 1961, at 5.

135. See Katie R. Eyer, *The New Jim Crow Is the Old Jim Crow*, 128 YALE L.J. 1002, 1006 (2019)

life in Cold War America do violence to the formidable and more nuanced legal and political challenges civil rights leaders encountered during this turbulent period.

III

XENOPHOBIC CONSPIRACY THEORIES DURING THE CIVIL RIGHTS MOVEMENT

The modern voting rights regime emerged from an era dominated by xenophobic conspiracy theories used against minority populations. While some voting rights opponents in the decade following *Brown* still used explicitly racist terms to discredit efforts to expand the political process, many more voting rights opponents opted for more racially coded Cold War terminology to achieve those ends. This Part explores the place of xenophobic conspiracy theories in landmark voting rights cases, voting rights legislation, and a Presidential campaign.

A. Voting Rights Litigation

1. Voting Registrars

Voting registrars were the chief barrier to black enfranchisement in the decade that followed *Brown*. The voting rights struggle in Louisiana offers one example. In the mid-1950s, William Rainach was president of Louisiana's Citizens' Council, a state senator, and the chairman of the state's Joint Legislative Committee on Segregation.¹³⁶ William Shaw served as the Committee's counsel and a leading Citizens' Council member.¹³⁷ In 1956, Rainach and Shaw co-authored a pamphlet entitled, *Voter Qualification Laws in Louisiana—The Key to Victory in the Segregation Struggle*.¹³⁸ The pamphlet opened:

The Communists and the NAACP plan to register and vote every colored person of age in the South. . . . They are not concerned with whether or not the colored bloc is registered in accordance with law. They are interested only in seeing that all persons in this bloc are registered and in using their votes to set up a federal dictatorship in the United States.¹³⁹

Rainach and Shaw traveled the state in their dual roles as state actors and Citizens' Councilors, and they led an effort to disenfranchise black voters through discriminatory enforcement of the state's interpretation test.¹⁴⁰ The interpretation test required that an applicant for voter registration “‘understand and give a reasonable interpretation of any section’ of the Constitutions of

(describing the growing body of civil rights scholarship challenging past, overly simplistic accounts of Southern racism).

136. U.S. COMM'N ON CIV. RTS., REPORT OF THE UNITED STATES COMMISSION ON CIVIL RIGHTS 101 (1959) [hereinafter COMMISSION ON CIVIL RIGHTS REPORT].

137. *United States v. Louisiana*, 225 F. Supp. 353, 378 (E.D. La. 1963).

138. *Id.*

139. COMMISSION ON CIVIL RIGHTS REPORT, *supra* note 136, at 102.

140. *Louisiana*, 225 F. Supp. at 378–79; *see also* ADAM FAIRCLOUGH, RACE & DEMOCRACY: THE CIVIL RIGHTS STRUGGLE IN LOUISIANA, 1915-1972, at 307–08 (2008).

Louisiana or of the United States.”¹⁴¹ The registrar had the sole discretion to determine whether an applicant passed the test, and Rainach and Shaw urged registrars to use their discretion to disenfranchise black voters.¹⁴² Unfortunately, these white supremacists were wildly successful.¹⁴³ Registrars purged thousands of black voters in the name of protecting the vote from communist subversion.¹⁴⁴ A xenophobic conspiracy theory led to massive black voter disenfranchisement.

Seven years after Rainach and Shaw began their crusade a federal district court finally intervened on behalf of the victims of voter disenfranchisement. In *United States v. Louisiana*, Judge John Minor Wisdom, writing for the two-judge majority, invalidated the state’s interpretation test.¹⁴⁵ Wisdom underscored the political context in which the voter purges emerged: “Immediately following the School Segregation Cases, two strong organizations dedicated to maintaining segregation in Louisiana were established, one by the legislature and one by private persons with official blessing.”¹⁴⁶ He was referring to the Louisiana legislature’s Joint Legislative Committee established in 1954 and the state’s Citizens Council established shortly thereafter, respectively.¹⁴⁷ Wisdom added that the collaboration between these two bodies devastated “Negro participation in the electoral process.”¹⁴⁸ In fact, he proclaimed that in recent years “the interpretation test has been the highest, best-guarded, most effective barrier to Negro voting in Louisiana.”¹⁴⁹ For Wisdom, preventing election fraud was pretext for white political domination.

The court’s recognition of the violence done to black voters was a profound reckoning with the changing political environment after *Brown*. Nevertheless, despite the judicial assault on the Citizens Council, black Louisianans had already experienced a series of harms that the court could never fully repair. Blacks, whose voter registration numbers were already low, were violently stripped of one of the few ways they could access the political process, and the state’s leading civil rights organization came under heavy fire.¹⁵⁰ When Louisiana purged blacks from the electorate, the state’s political climate became far more conservative, the state’s elected officials became more demagogic, and blacks’ material conditions suffered.¹⁵¹ For years, a xenophobic conspiracy theory provided

141. *Louisiana*, 225 F. Supp. at 356.

142. COMMISSION ON CIVIL RIGHTS REPORT, *supra* note 136, at 101.

143. *Louisiana*, 225 F. Supp. at 379.

144. See COMMISSION ON CIVIL RIGHTS REPORT, *supra* note 136, at 105–06 (detailing how the number of black voters in Louisiana parishes decreased from March 1956 through November 1958).

145. *Louisiana*, 225 F. Supp. at 356.

146. *Id.* at 378.

147. *Id.*

148. *Id.*

149. *Id.* at 355.

150. See COMMISSION ON CIVIL RIGHTS REPORT, *supra* note 136, at 105–06 (showing the sharp decline in black voting registration).

151. FAIRCLOUGH, *supra* note 140, at 232–33. Fairclough notes that by 1960, Louisiana’s black voter registration had plummeted, and the state’s extremist segregationist vote exceeded the black vote. Segregationists had been so successful at disenfranchising black voters and racism was so politically

segregationists legal and political cover to install another form of black second-class citizenship. In an era that seemed to have so much potential for racial progress, racist regress set in.

Louisiana was not the only state to amend its voting registration requirements during this period. In 1954, the Mississippi legislature proposed an amendment to its 1890 Constitution, which required that already registered voters re-register and as part of that process, pass a new, more elaborate literacy test.¹⁵² The increasingly polarized political atmosphere during the school desegregation battle drove the renewed effort to disenfranchise black voters. However, what was particularly striking here was that segregationists did not only pass a literacy test amendment during the 1954 elections, they also passed a state constitutional amendment that authorized state officials to resist the Court's ruling in *Brown*.¹⁵³ Voter disenfranchisement in Mississippi was intimately tied to *Brown*'s backlash, and so much so that the governor of Mississippi called a special legislative session to adopt new laws pursuant to the state constitutional amendments.¹⁵⁴

Voting rights activists in Mississippi challenged the constitutionality of the state's literacy test amendment, but in *Darby v. Daniel*, a three-judge federal district court unanimously upheld the amendment.¹⁵⁵ Judge Benjamin Franklin Cameron, a Mississippi native born during the rise of Jim Crow, wrote for the court.¹⁵⁶ He held that states possessed the authority to set reasonable voting standards and that there was no evidence the literacy test violated the Fourteenth or Fifteenth Amendments.¹⁵⁷

Cameron relied on a xenophobic conspiracy theory to craft the court's opinion. "At a time when alien ideologies are making a steady and insidious assault upon constitutional government everywhere," Cameron wrote, "it is nothing but reasonable that the States should be tightening their belts and seeking to assure that those carrying the responsibility of suffrage understand and appreciate the form and genius of the government of this country and of the States."¹⁵⁸ Cameron cited to a recent issue of *U. S. News & World Report* to advance his point. The paper's headline read, "Today's War: How the Reds Are Operating in 72 Countries."¹⁵⁹

profitable that candidates during this period attempted to show white voters that they were more committed to segregation than their opponents to win elections. The state legislature also passed a series of facially neutral laws that had racist intents, including legislation that attacked welfare recipients and disenfranchised those "defined as 'not of good character.'"

152. *Darby v. Daniel*, 168 F. Supp. 170, 173 (S.D. Miss. 1958).

153. See *Governor Calls Special Session of Legislature*, CLARK CNTY. TRIB., Dec. 31, 1954, at 1 (detailing three amendments that featured proposals to abolish public schools to maintain segregation).

154. *Id.*

155. *Darby*, 168 F. Supp. at 187.

156. *Id.* at 172; *Cameron, Benjamin Franklin*, FED. JUD. CTR., <https://www.fjc.gov/history/judges/cameron-benjamin-franklin> [<https://perma.cc/2ALA-LMLX>].

157. *Darby*, 168 F. Supp. at 187.

158. *Id.* at 183.

159. *Id.*

Journalists for the *Citizens' Council* celebrated *Darby* and only fueled segregationists' insistence that U.S. elections were being subverted. The *Citizens' Council* quoted large portions of *Darby*, placing the xenophobic conspiracy theory in bold letters.¹⁶⁰ The *Citizens' Council's* editorialists also emphasized the decision's significance but complained that "the Northern press," national television, and national radio networks had not covered the ruling.¹⁶¹ The "Citizens' Council Radio Forum" stepped in the debate, seeking to breach the alleged paper curtain. Representative John Bell Williams of Mississippi appeared on the show, praised Cameron's opinion, and read Cameron's paragraph on foreign interference.¹⁶² Williams concluded that white Southerners were "a minority group" being scapegoated like "the Nazi regime used the Jewish people as a scapegoat."¹⁶³ This lie recast a group made up of oppressors into society's true victims and mainstream media outlets into extensions of Hitler and his stooges. Accordingly, xenophobic conspiracy theories allowed segregationists to depict themselves as true Americans, whereas journalists who sought to produce more accurate accounts of race relations became existential threats to U.S. democracy.

As the *Darby* ordeal demonstrated, judges were instrumental to midcentury culture wars. The case provided new legal legitimacy to disenfranchisement and redbaiting. When black activists launched new voting rights campaigns to topple the state's registration barriers, segregationists consistently launched anti-communist counterattacks. Segregationists revived the same conspiratorial logic that blossomed after *Brown* and called these voting rights activists "outside agitators."¹⁶⁴ Throughout this period, the architects of voter disenfranchisement often sought facially neutral approaches to achieve racist results. Courts were unable to fully resolve this voting rights crisis, and a patchwork approach to regulating literacy tests stood until the enactment of the Voting Rights Act. The language of election security, always important and particularly so during the Cold War, became a more palatable means to suppress black votes and stoke white rage at the ballot box.

2. Reapportionment

As battles over interpretation and literacy tests raged in lower courts, the U.S. Supreme Court began to intervene in the reapportionment cases. Reapportionment, on its face, was not about race or communism. Nevertheless,

160. *Court Upholds Voting Laws*, CITIZENS' COUNCIL, Nov. 1958, at 1.

161. *One-Way Liberals*, CITIZENS' COUNCIL, Nov. 1958, at 2.

162. *Voter Discrimination Case*, CITIZENS' COUNCIL RADIO FORUMS COLLECTION, SPECIAL COLLECTIONS DEP'T, MISS. STATE UNIV. LIBRS, at 04:50 (1959), <https://scholarsjunction.msstate.edu/mss-citizens-council-forum/169/> [<https://perma.cc/C9L2-AFCY>].

163. *Id.* at 11:49.

164. See, e.g., Laura Visser-Maessen, ROBERT PARRIS MOSES: A LIFE IN CIVIL RIGHTS AND LEADERSHIP AT THE GRASSROOTS 309 (2016). Many of Mississippi's leading voting rights activists, like Bob Moses of the Student Nonviolent Coordinating Committee, were not from Mississippi. Their leadership again invited charges that outside agitators were directing the civil rights movement.

white supremacists viewed reapportionment as an attack on their political power. In turn, they decried the Court's growing role in electoral politics and blasted the decisions as part of a plot pushing America closer to totalitarianism. White supremacists resisted reapportionment by tapping into broader, Cold War anxieties.

The Warren Court's reapportionment cases remade U.S. legislatures in a way unrivaled past or present. In *Baker v. Carr*, the Court held that "political questions" were justiciable in federal courts, and the decision opened the way to establish the "one person, one vote" principle now central to U.S. democracy.¹⁶⁵ The Court relied on *Baker* to render a series of watershed decisions reapportioning state and federal legislatures, most notably *Gray v. Sanders*,¹⁶⁶ *Wesberry v. Sanders*,¹⁶⁷ and *Reynolds v. Sims*.¹⁶⁸ While many people believed that *Brown v. Board of Education* was the Warren Court's most important case, Warren felt the accolade actually belonged to *Baker*.¹⁶⁹ For Warren, if the political process were open, other progressive reforms could soon follow.¹⁷⁰

White supremacists understood the racial stakes of reapportionment. During the Great Migration, which began in the early twentieth century, millions of blacks fled the Jim Crow South to live in cities in the North, Midwest, and West.¹⁷¹ In response, many whites began moving out of urban centers and into the suburbs.¹⁷² These corresponding migrations dramatically changed population levels, racial demographics, and political representation across America.¹⁷³ In an era that pre-dated the "one person, one vote principle," blacks were moving to cities, often underrepresented in legislatures, while former urban whites found outsized representation in suburban areas through white flight.¹⁷⁴ In the Southern enclaves during this period, where blacks remained a substantial percentage of the population, blacks typically lacked the power to elect candidates of their own choice.¹⁷⁵ Reapportionment, in other words, strengthened black voting power in most areas of the country and reduced political representation in areas that diluted black voting strength.

165. *Baker v. Carr*, 369 U.S. 186, 204 (1962).

166. *Gray v. Sanders*, 372 U.S. 368, 380–81 (1963) (invalidating Georgia's system of counting votes in primary elections and establishing the "one person, one vote" principle).

167. *Wesberry v. Sanders*, 376 U.S. 1, 17–18 (1964) (holding that population disparity of congressional representatives amongst the Georgia congressional districts was unconstitutional).

168. *Reynolds v. Sims*, 377 U.S. 533, 542 (1964) (declaring that Alabama must apportion its state legislative districts on a population basis to ensure equal representation).

169. EARL WARREN, *THE MEMOIRS OF EARL WARREN* 306 (1977).

170. *See id.* at 306–07 (stating that without fair apportionment, "orderly development" could not occur).

171. Guy-Uriel E. Charles & Luis Fuentes-Rohwer, *Reynolds Reconsidered*, 67 ALA. L. REV. 485, 489–90 (2015).

172. *Id.* at 490.

173. *Id.*

174. *Id.* at 486, 490–91.

175. *Id.* at 491–92.

The reapportionment cases fed white supremacists' complaints about burgeoning federal power and judicial disrespect for the separation of powers.¹⁷⁶ Some opponents of reapportionment also turned to redbaiting.¹⁷⁷ They sought to frame reapportionment as an assault on rural whites' voting power and a communist scheme.¹⁷⁸ Georgia became a critical battleground in the reapportionment fight. Two of the Court's most significant reapportionment cases—*Gray* and *Wesberry*—were Georgia cases, and the ties between racism, anti-communism, and reapportionment were painfully obvious. William Hartsfield, mayor of Atlanta, declared that reapportionment's opponents "scream about minorities in Atlanta in order to hide the fact that for years Georgia has been ruled by a tight county unit minority and a rural bloc vote."¹⁷⁹ Hartsfield continued, "As usual, they will flail the Negro and intimate that we are all Communists and agents of the NAACP."¹⁸⁰

Morris Abram, an attorney for Martin Luther King, Jr., counsel in *Gray*, and the lawyer often credited with introducing the phrase "one man, one vote" into election law jurisprudence, reflected on how white nationalists smeared him and other civil rights lawyers using a xenophobic conspiracy theory.¹⁸¹ During Abram's quest to end malapportionment, Georgia's segregationist governor attacked Abram "by pamphlet, newspaper, radio, and television" for working with black lawyers and participating in a movement "created and . . . dominated by Reds and fellow travelers."¹⁸² Despite this widespread redbaiting, Abram and his colleagues were steadfast in their fight to end voter suppression in Georgia. Abram remembered that blacks were 29 percent of the state's voting-age population in 1960, but because most blacks lived in urban areas, malapportionment left them underrepresented.¹⁸³ In rural counties with significant black populations, blacks were unrepresented.¹⁸⁴ Abram remembered, "[T]hese blacks were largely unregistered and even if registered frequently did not dare to vote" due to their fears of violent reprisals.¹⁸⁵

Opposition to reapportionment also came from some scholarly voices. Redbaiting did too. Clarence Manion led the charge on both fronts. The former Notre Dame Law School dean was a pioneer in political talk radio and later

176. See, e.g., Anthony Lewis, *Decision to Reapportion the State Legislatures Stirs Opposition*, N.Y. TIMES, Aug. 16, 1964, at E3 (detailing political opposition to the Court's reapportionment decisions, including stripping jurisdiction away from the Court on these issues).

177. See, e.g., William B. Hartsfield, *Mayor Hartsfield Says Demagogues Use Corrupt Unit System to Stay in Power*, ATLANTA CONST., Mar. 13, 1958, at 4 ("They will . . . intimate that we are all communists . . .").

178. *Id.*

179. *Id.*

180. *Id.*

181. See Elaine Woo, *Morris B. Abram; Attorney, Jewish Leader, Rights Advocate*, L.A. TIMES, Mar 17, 2000, at A15A; MORRIS B. ABRAM, *THE DAY IS SHORT: AN AUTOBIOGRAPHY* 84 (1982).

182. ABRAM, *supra* note 181, at 84.

183. *Id.* at 79.

184. *Id.*

185. *Id.*

television.¹⁸⁶ On the heels of *Gray*, Manion told his show's listeners: "In the current climate of conflict over Communism, legislative reapportionment and civil rights," the Supreme Court was operating "in complete and utter disregard for" the Tenth Amendment.¹⁸⁷ Manion then turned to Woodrow Wilson, interestingly, to provide listeners with a lesson on despotism. Manion asserted that Wilson had warned Americans that "a concentration of governmental power is what always precedes the death of human freedom."¹⁸⁸ Although "Wilson wasn't thinking of Communism when he said this in 1912," Manion added, "whoever repeats the statement today must think of the Communist menace."¹⁸⁹

Manion launched into a full conspiracy theory about foreign interference in the reapportionment cases. Manion alerted his audience that the "big Red hand" was destroying freedom, and he cringed at "the advance of the Communist conquest throughout the world [which] . . . almost exactly paralleled the official progressive dismemberment of States' rights within this country."¹⁹⁰ Manion left listeners with a legal prescription to end the Supreme Court's "assault" on states' rights in the reapportionment cases, calling for Congress to strip the Court of its appellate jurisdiction.¹⁹¹

Manion's proposal found sponsorship in Congress. William Tuck, a Democratic Representative from Virginia and a regular on "The Manion Forum," proposed a bill to strip the Court of its jurisdiction in cases involving reapportionment of state legislatures.¹⁹² Everett Dirksen, a Republican Senator from Illinois and Senate Minority Leader, attempted to be less extreme on malapportionment, yet his ideas were far from moderate. Dirksen's bill would have temporarily suspended federal courts from hearing any reapportionment cases.¹⁹³ Neither bill became law, but they escalated the attacks on the Court.

Reapportionment also became a major issue in the 1964 Presidential election.¹⁹⁴ Barry Goldwater, the U.S. Senator from Arizona and Republican Presidential nominee, ripped the Court's reapportionment decisions while on the campaign trail.¹⁹⁵ Many Republicans embraced this position, but the John

186. Nicole Hemmer, *How Conservative Media Learned to Play Politics*, POLITICO (Aug. 30, 2016), <https://www.politico.com/magazine/story/2016/08/conservative-media-history-steve-bannon-clarence-manion-214199> [<https://perma.cc/KM3R-9BWB>].

187. Dean Clarence Manion, *Congress Should Strip the Supreme Court of Its Appellate Jurisdiction* (July 14, 1963), in *The Clarence Manion Papers*, UNIV. OF NOTRE DAME ARCHIVES, PMNN 1/10 #459.

188. *Id.*

189. *Id.*

190. *Id.*

191. *Id.*

192. Rodney Crowther, *House O.K.'s Bill to Bar Court Apportionment Action*, BALT. SUN, Aug. 20, 1964, at 1.

193. Lewis, *supra* note 176, at E3.

194. See, e.g., Edward Folliard, *Gov. Wallace Quits Race for Presidency*, WASH. POST, July 20, 1964, at A1 ("Apparently referring to Supreme Court decisions on state legislative apportionment, Wallace said Federal courts are not supposed to run other branches of government . . .").

195. Reg Murphy, *Goldwater Greeted by Big Crowds, Rips Supreme Court and 'Scandals'*, ATLANTA CONST., Sept. 16, 1964, at 1.

Birchers' persistent redbaiting and extreme conspiracy theories around the Court disquieted some Republicans.¹⁹⁶ When these party members urged Goldwater to reject all support from the John Birchers, he refused. Goldwater said he welcomed the support in the fight against communism.¹⁹⁷ Goldwater added that while he was willing to criticize Robert Welch for Welch's extremism, not everyone in the organization was an extremist.¹⁹⁸ According to Goldwater, there were "many fine people" in the John Birch Society.¹⁹⁹

B. Voting Rights Legislation

Voting rights dominated the first four civil rights acts of the twentieth century.²⁰⁰ These federal acts eventually opened the polls to millions of voters of color. This was no easy fight. Although Congress possesses express power to make Section I of the Fifteenth Amendment ring true,²⁰¹ segregationists led vicious congressional opposition to voting rights legislation, and they often invoked the specter of foreign interference in U.S. politics to advance their cause. This section chronicles that history.

1. The Civil Rights Acts, 1957–1964

The Civil Rights Act of 1957 was "the first modern civil rights act."²⁰² Voter protections were integral to the 1957 Act. The Act empowered the Attorney General to file lawsuits to protect the right to vote, instituted new criminal penalties for interfering with voting, and created the Civil Rights Division of the Department of Justice and the U.S. Commission on Civil Rights.²⁰³

Allegations of foreign interference shrouded the bill's congressional debates. Southern congressmen were at the forefront. Senator William Fulbright, the namesake of America's premier international exchange program, reminded his colleagues that the Founding Fathers did not support universal suffrage.²⁰⁴ He said, "[The notion that] vast masses of voters possess a wisdom and sanctity superior to that of a more restricted electorate gained its greatest momentum under Hitler and Mussolini."²⁰⁵ Representative John Ashmore said that federal

196. Julius Duscha, *Birchers and Allies Out to Win the West*, WASH. POST, May 19, 1963, at E1.

197. *Scranton Vows Fight on Rights*, ATLANTA CONST., July 7, 1964, at 1; *G.O.P. Nominee's Views, in His Own Words, on Major Issues of Campaign*, N.Y. TIMES, July 18, 1964, at 6.

198. *Id.*

199. *Id.* (noting that when the Governor of Pennsylvania urged Republicans to condemn the John Birch Society by name, Goldwater "said there are many fine people in the society and that there's no point in denouncing them").

200. Civil Rights Act of 1957, Pub. L. No. 85-315 (1957); Civil Rights Act of 1960, Pub. L. No. 86-449 (1960); Civil Rights Act of 1964, Pub. L. No. 88-352 (1964); Voting Rights Act of 1965, Pub. L. No. 89-110 (1965).

201. U.S. CONST. amend. XV, § 2.

202. Civil Rights Act of 1957, Pub. L. No. 85-315 (1957); see also Brian K. Landsberg, *Sumter County, Alabama and the Origins of the Voting Rights Act*, 54 ALA. L. REV. 877, 881 (2003).

203. Landsberg, *supra* note 202, at 895.

204. 103 CONG. REC. S11,080 (daily ed. July 9, 1957) (statement of Sen. Fulbright).

205. *Id.*

regulation of elections would not only usurp states' rights but would also push America closer to autocracy.²⁰⁶ Others redbaited specific provisions of the bill, claiming that the bill would instate the Attorney General as the “czar of civil rights,”²⁰⁷ turn the staff of the Civil Rights Division of the DOJ into “instrumentalities of fascism,”²⁰⁸ and establish the Commission on Civil Rights as the “greatest gestapo system the world has ever known.”²⁰⁹

However, the most notable opposition to the bill came from Senator Strom Thurmond. Thurmond filibustered the bill for more than twenty-four hours.²¹⁰ During his record setting, one-man filibuster, Thurmond claimed that the “so-called civil rights bill”²¹¹ would permit a strong central government to “invade fields which are reserved to the States” and “infiltrate . . . election systems” like communists had done in Poland, Czechoslovakia, and China.²¹² Thurmond used variants of the word “communist” more than 30 times during his filibuster, and when he was not caricaturing the bill as communist, he used terms like “fascism” and “absolute monarchy” to describe the bill “foisted on the American people under the alias of ‘civil rights.’”²¹³ Thurmond carped that the bill “opens the door wide for such organizations as the NAACP . . . to make complaints to the Commission with little or no basis for doing so.”²¹⁴ And he railed against one proposed attempt to forge a compromise on the bill, saying that “[i]f this so-called compromise amendment were to go a little bit further, it would sound more like a Communist amendment.”²¹⁵

Many Americans, including some segregationists, regretted Thurmond’s daylong mockery of the democratic process.²¹⁶ Yet, the junior senator from South Carolina used the high-profile moment in voting rights history to help cultivate his public persona. While Thurmond was ostensibly addressing his colleagues in Washington, his primary audience was much farther away. This was an unabashed appeal to his base in South Carolina. One newspaper editor noted that although Thurmond “was criticized outside of South Carolina for his one-man filibuster against the civil rights bill . . . the newspapers in South Carolina for the most part praised his action.”²¹⁷ Newspapers in Charleston, Greenville, and

206. 103 CONG. REC. H16,110 (daily ed. Aug. 27, 1957) (statement of Rep. Ashmore).

207. 103 CONG. REC. H16,097 (daily ed. Aug. 27, 1957) (statement of Rep. Dorn).

208. *Id.*

209. “*Gestapo*” *System Seen with Civil Rights Bill*, WASH. POST, June 1, 1957, at B3 (quoting Rep. George Andrews).

210. *Thurmond Cites ‘Duty’ for Rights Bill Filibuster*, WASH. POST, Sept. 13, 1957, at A15; *Last-Ditch Southerner: James Strom Thurmond*, N.Y. TIMES, Aug. 30, 1957.

211. 103 CONG. REC. S16263 (daily ed. Aug. 29, 1957) (statement of Sen. Thurmond).

212. *Id.* at 16436.

213. *Id.* at 16399.

214. *Id.* at 16432.

215. *Id.* at 16440.

216. *See, e.g.*, Thomas Ross, *Thurmond ‘Goofed’ with Civil Rights Filibuster*, NORFOLK J. & GUIDE, Sept. 7, 1957 at 11 (describing Democratic senators’ discontent with the filibuster).

217. *Thurmond Praised, Criticized for Filibuster*, INDEX-JOURNAL 4 (1957) (describing the responses to Thurmond throughout the state).

Columbia “all heaped lavish praise on Thurmond.”²¹⁸ Writers “applaud[ed] Thurmond’s courage and his faith in the cause for which he was fighting.”²¹⁹ Thurmond sought to depict segregationists as the oppressed and voting rights advocates as the oppressors, and some Southern editorialists lionized Thurmond for “speaking up for his people.”²²⁰ Thurmond’s filibuster was also part of a larger media strategy to use mainstream press, which he scorned, to boost his national profile. Media outlets from coast to coast, including those that had been critical of Thurmond’s obstructionism, highlighted his physical feat, unmatched in Congress’ 168-year history. Some even wondered how Thurmond was able to hold his bladder. One theory emerged that Thurmond had dehydrated himself in the Senate’s steam room so that his body could sponge up anything he drank.²²¹ This only added to his mystique. Thurmond wanted the nation to believe that he personified white Southern manhood and was the most fearsome defender of the “Southern way of life.”²²²

Opposition to the voting rights provisions in the 1960 and 1964 Acts mirrored opposition to the 1957 Act. On the Senate floor, Thurmond proclaimed that the “system of segregation in the South” was superior to that of the North due to the absence of “outside agitation,”²²³ and he bemoaned the “NAACP and other leftwing, radical groups who [were] merely serving the cause of the Communists by pitting race against race.”²²⁴ In the House, Florida Representative Robert “He-Coon” Sikes linked the “communist inspired” bill with America’s new sit-in movement.²²⁵ In early 1960, waves of black high school and college students began demanding that merchants desegregate public accommodations. Sikes called it “sad commentary” that Congress was “legislating under duress” caused by these demonstrations.²²⁶ Sikes, typically referred to by a nickname with clear white supremacist origins,²²⁷ claimed that the sit-in movement was “a tribute only to behind the scenes Communist organizing, and which frequently are coupled with violence, shame our land.”²²⁸ He urged Congress to suspend all debate on

218. *Id.*

219. *Id.*

220. *Id.*

221. JOSEPH CRESPIANO, STROM THURMOND’S AMERICA 117 (2012). *See also* Edward Folliard, *Thurmond Sets Filibuster Record of 24 Hours in Opposing Rights Bill*, WASH. POST, Aug. 30, 1957, at A1 (noting the steam bath and Thurmond’s minimal diet during the filibuster).

222. Folliard, *supra* note 221, at A1. *See also* CRESPIANO, *supra* note 221, at 117 (describing how Thurmond played into gendered and racialized notions of manhood).

223. 106 CONG. REC. S7723 (daily ed. Apr. 8, 1960) (statement of Sen. Thurmond).

224. *Id.* Senator Olin Johnston of South Carolina also warned that the bill would “give to the Attorney General almost dictatorial powers.” 106 CONG. REC. S5085 (daily ed. Mar. 10, 1960) (statement of Sen. Johnston).

225. 106 CONG. REC. H6376 (daily ed. Mar. 23, 1960) (statement of Rep. Sikes).

226. *Id.*

227. *See* Pam Mee, *Crowd of About 10,000 Says Si to Old Spanish Trail Festival*, NW FLA. DAILY NEWS, May 7, 1989, at A1 (demonstrating how even decades after the bill’s debates, Sikes proudly embraced his white nationalist nickname); 142 CONG. REC. 21536 (statement of Rep. Bennett) (referring to Sikes’ nickname).

228. 106 CONG. REC. H6376 (daily ed. Mar. 23, 1960) (statement of Rep. Sikes).

the bill “until these demonstrations end.” The legislative debates, for Sikes, were “immoral” and a foreign policy faux pas; it signaled that communists could and did influence congressional debates on voting rights.²²⁹ “It should never be reported to the world that the forces of democracy work in this manner,” Sikes concluded.²³⁰

But the massive demonstrations of the early 1960s had a major legislative impact as they helped to create the political context for passing the Civil Rights Act of 1964.²³¹ Most notably, in the spring of 1963, the Southern Christian Leadership Conference (SCLC) launched “Project C” (Confrontation) in Birmingham, a series of marches on city hall, lunch counter sit-ins, and boycotts of segregated downtown merchants.²³² Peaceful protesters were met with incredible violence. In May 1963, Eugene “Bull” Connor, Birmingham’s Commissioner of Public Safety, unleashed high-pressured fire hoses and snarling police dogs on thousands of peaceful protestors.²³³ These horrific images of brutality in Birmingham not only circulated in the United States—they became an international embarrassment.²³⁴

President Kennedy had been relatively uninterested in passing new civil rights legislation until he appreciated how racism undermined America’s position in the Cold War.²³⁵ People around the world again wondered how America could talk about spreading democracy abroad when it practiced racism at home.²³⁶ Segregation was fodder for Soviet propaganda machines and raised serious doubts in the Third World about the United States’ commitment to its creed.²³⁷ As protests in Birmingham continued to stain America’s global reputation, President Kennedy finally moved into action. He proposed new civil rights legislation on national television.²³⁸ The President decried the “repressive police action” in cities like Birmingham, but he maintained that the brutality in Birmingham was not an isolated incident.²³⁹ “[I]n too many communities, in too many parts of the country, wrongs are inflicted on Negro citizens and there are

229. *Id.*

230. *Id.*

231. See generally TOMIKO BROWN-NAGIN, *COURAGE TO DISSENT: ATLANTA AND THE LONG HISTORY OF THE CIVIL RIGHTS MOVEMENT* (2011) (describing the relationships between the demonstrations and the Act’s legislative history).

232. MARTIN LUTHER KING, JR., *WHY WE CAN’T WAIT* 40–42 (1964).

233. Mary L. Dudziak, *Birmingham, Addis Ababa, and the Image of America: International Influence on U.S. Civil Rights Politics in the Kennedy Administration*, in *WINDOW ON FREEDOM: RACE, CIVIL RIGHTS, AND FOREIGN AFFAIRS, 1945-1988* 181–182 (Brenda Gayle Plummer ed., 2003).

234. *Id.*

235. *Id.* at 183–85, 191–92.

236. *Id.* at 182–83.

237. *Id.* at 188, 192.

238. President John F. Kennedy, *Televised Address to the Nation on Civil Rights* (June 11, 1963), <https://www.jfklibrary.org/learn/about-jfk/historic-speeches/televised-address-to-the-nation-on-civil-rights> [<https://perma.cc/2BFE-WWA6>].

239. *Id.*

no remedies at law,” Kennedy pressed.²⁴⁰ “Unless the Congress acts, their only remedy is in the street.”²⁴¹ Although the most dramatic protests in America were battles over public accommodations laws, Kennedy announced that he was proposing a more expansive civil rights bill, including provisions in the bill to protect the right to vote.²⁴² Kennedy told the evening’s watchers, “It ought to be possible for American citizens of any color to register to vote in a free election without interference or fear of reprisal.”²⁴³

Title I was the heart of the bill’s voter protections.²⁴⁴ Title I authorized the Attorney General to file lawsuits to end the unequal application of existing voting procedures,²⁴⁵ but for leading black activists, like John Lewis—then chairman of the Student Nonviolent Coordinating Committee (SNCC)—the bill was too tepid.²⁴⁶ Title I, most significantly, did not ban notorious practices like literacy tests. Rather, the provision merely required that states use the same standards for judging literacy irrespective of race.²⁴⁷ The bill’s other provisions related to voting did even less to protect the franchise.²⁴⁸

Despite the voting rights provisions’ deep weaknesses, segregationists still attempted to sink the bill using xenophobic conspiracy theories. A predictable group of redbaiting Congressmen condemned the bill as a communist “guise,”²⁴⁹ “a monster of communism,”²⁵⁰ “despotism,”²⁵¹ “a communist invasion,”²⁵²

240. *Id.*

241. *Id.*

242. *Id.*

243. *Id.*

244. Civil Rights Act of 1961, Pub. L. No. 88 352, tit. I (1964) (codified as amended at 42 U.S.C. § 1971).

245. *Id.*

246. JOHN LEWIS, *WALKING WITH THE WIND: A MEMOIR OF THE MOVEMENT* 217 (1998) (publicly criticizing the bill during the March on Washington for not going far enough to ensure truly free and fair elections).

247. 42 U.S.C. § 1971 (1964). While some claimed that literacy tests merely ensured an educated electorate and were facially neutral, *see, e.g.*, *Lassiter v. Northampton Cnty. Bd. of Elections*, 360 U.S. 45 (1959), literacy tests were in practice tools to disenfranchise poor and minority groups.

248. 42 U.S.C. § 1975(a) (establishing a permanent Civil Rights Commission with no enforcement powers); 42 U.S.C. § 2000(f) (authorizing the Secretary of Commerce to compile registration and voting statistics at the Civil Rights Commission’s request).

249. Holmes Alexander, *Nub of Civil Rights Bill: Centralized Gov’t Control*, HUM. EVENTS, May 16, 1964, at 14; J. A. Rogers, *History Shows*, PITT. COURIER, Aug. 10, 1963, at 11.

250. 110 CONG. REC. S4997 (daily ed. Mar. 11, 1964) (statement of Sen. Ellender). *See also* 110 CONG. REC. S8356 (Apr. 18, 1964) (statement of Sen. Ellender) (arguing the principles embedded in Title II “would completely socialize and communize” the United States); 110 CONG. REC. S9284 (daily ed. Apr. 28, 1964) (statement of Sen. Thurmond) (contending that the Civil Rights Act challenges the notions of the founding fathers and the principle of American freedom).

251. 110 CONG. REC. S4974 (daily ed. Mar. 11, 1964) (statement of Sen. Johnston); 110 CONG. REC. S5231 (daily ed. Mar. 13, 1964) (statement of Sen. Long); 110 CONG. REC. S8208 (daily ed. Apr. 16, 1964) (statement of Sen. Talmadge); 110 CONG. REC. S8067, S8070 (daily ed. Apr. 15, 1964) (statement of Sen. Johnston); 110 CONG. REC. S13173 (daily ed. June 9, 1964) (statement of Sen. Byrd).

252. 110 CONG. REC. S8355 (daily ed. Apr. 18, 1964) (statement of Sen. Ellender).

“communist revolution,”²⁵³ and “Russian meddling.”²⁵⁴ Some pointed to foreign condemnation of U.S. racism as an indicator that communists were successfully wreaking havoc in America.²⁵⁵ Others took umbrage with Title I squarely, with one Congressman warning that Title I would lead to authoritarian control of elections like in Russia and Germany.²⁵⁶

New variants of these xenophobic conspiracy theories emerged during the bill’s debates. Title II of the bill prohibited segregated public accommodations.²⁵⁷ Ostensibly, Title II had nothing to do with the bill’s voting provisions. Segregationists argued that Title II infringed upon states’ rights and the Fifth Amendment of the U.S. Constitution by compelling merchants to serve all people regardless of race.²⁵⁸ According to the bill’s opponents, Title II was nothing more than a Soviet-inspired invasion of private property rights, a cornerstone of U.S. democracy.²⁵⁹ Segregationists reasoned that if they could paint Title II red, they might be able to defeat Title I and indeed the entire bill.²⁶⁰

A new, major, and highly visible target of the FBI’s redbaiting emerged during the bill’s debates: the SCLC.²⁶¹ In 1963, King was *Time Magazine*’s “Man of the Year,” and according to the FBI, “the most dangerous Negro of the future in this Nation from the standpoint of communism.”²⁶² Moreover, the FBI’s redbaiting of King and the bill increased because of King’s relationship with SCLC lieutenant, Bayard Rustin.

In 1963, Bayard Rustin was fifty-one years old, the chief planner on the March on Washington, and an openly gay black man who did not apologize for his sexuality—an unfathomable reality for many in deeply homophobic America.²⁶³ Rustin faced redbaiting as a civil rights activist, but he endured intersecting forms of oppression during the Cold War as the hysteria over communism and

253. 110 CONG. REC. S6045 (daily ed. Mar. 24, 1964) (statement of Sen. Johnston); 110 CONG. REC. S6085 (daily ed. Mar. 24, 1964) (statement of Sen. Long).

254. 110 CONG. REC. S2706-07, S2763 (daily ed. Feb. 10, 1964) (statement of Rep. Sikes); 110 CONG. REC. S2757 (daily ed. Feb. 10, 1964) (statement of Rep. Tuten); 110 CONG. REC. S5958 (daily ed. Mar. 23, 1964) (statement of Sen. Thurmond).

255. Joseph Hearst, *Negroes Inflamed by Kennedy, Gov. Wallace Charges: Assails Senate’s Civil Rights Bill at Hearing*, CHI. TRIB. (July 16, 1963) at 5; *Black Nationalism*, WASH. POST, Mar. 15, 1964, at E6; *Eye U.S. Action After Rights Law*, CHI. DEF., July 20, 1964, at 5; 109 CONG. REC. S15733 (daily ed. Aug. 23, 1963) (statement of Sen. Mundt).

256. 110 CONG. REC. H1605-06 (daily ed. Feb. 1, 1964) (statement of Rep. Dorn).

257. Civil Rights Act of 1964, Pub. L. No. 88-352, tit. II (1964).

258. See Richard Lyons, *Red ‘Rights Plot’ Seen by Barnett*, WASH. POST, July 13, 1963, at A1.

259. *Thurmond in New Attack on Rights Leaders*, L.A. TIMES, Aug. 19, 1963, at 20; 110 CONG. REC. H1605-06 (daily ed. Feb. 1, 1964) (statement of Rep. Dorn) (proclaiming that Title II will give the Attorney General Gestapo power).

260. Richard Lyons, *Committee is Apparently Unshaken by Dixie’s Assault on Civil Rights*, WASH. POST., July 16, 1963, at A5.

261. Frank van der Linden, *Despite Kennedy Claim Thurmond Cites Leftist Ties Among March Group*, NASHVILLE BANNER, July 26, 1963, in 110 CONG. REC. S13968 (daily ed. Aug. 2, 1963).

262. JAY FELDMAN, *MANUFACTURING HYSTERIA: A HISTORY OF SCAPEGOATING, SURVEILLANCE, AND SECRECY IN MODERN AMERICA* 264 (2011).

263. See also Susanna McBee, *March Is Devoted to Non-Violence*, WASH. POST, Aug 11, 1963, at A6.

homosexuality overlapped. For many American Cold Warriors, the U.S. was a Christian nation fighting atheistic communism.²⁶⁴ They believed that homosexuality was un-Christian, and thus, pursuant to this binary logic, un-American.²⁶⁵ They maintained that such “immorality” was part of a communist plot to undermine American decency.²⁶⁶

Two other facts drove redbaiting of Rustin. First, Rustin was a conscientious objector who served twenty-eight months in prison for refusing to fight in World War II.²⁶⁷ This was proof for red baiters that Rustin was un-American. Second, and more provocatively, more than three decades before the March on Washington, Rustin had briefly been affiliated with a group of communist college students.²⁶⁸ Although Rustin had long renounced communism and publicly excoriated the Communist Party, segregationists viewed this as a smoking gun of communist infiltration in the movement.²⁶⁹ Strom Thurmond savored the moment.²⁷⁰ Thurmond denounced Rustin as a “convicted pervert”—a homophobic slur, placed Rustin’s police record into the Congressional Record, and bemoaned major newspapers’ alleged whitewashing of Rustin’s background.²⁷¹ The entire bill was tainted red, segregationists railed, because “Mr. March on Washington” was profoundly un-American.²⁷² For segregationists in Cold War America: once a communist, always a communist.

2. The Voting Rights Act of 1965

The 1965 Selma to Montgomery March occupies a hallowed place in voting rights history. In February 1965, an Alabama state policeman killed Jimmie Lee Jackson, an unarmed demonstrator participating in a voting rights march.²⁷³ Black activists marched to the Alabama statehouse to protest Jackson’s murder and dramatize their struggle for voting rights.²⁷⁴ The activists barely passed the Edmund Pettus Bridge in Selma—the bridge named after the former Confederate Brigadier and Grand Dragon of the Alabama Ku Klux Klan.²⁷⁵ State troopers beat, trampled, and tear gassed nonviolent demonstrators.²⁷⁶ John

264. David K. Johnson, *THE LAVENDER SCARE: THE COLD WAR PERSECUTION OF GAYS AND LESBIANS IN THE FEDERAL GOVERNMENT* 37 (2009).

265. *Id.*

266. *Id.*

267. Devon Carbado and Donald Wiese, *The Civil Rights Identity of Bayard Rustin*, 82 *TEX. L. REV.* 1133, 1135 (2004).

268. *Id.*

269. *Id.*

270. William Moore, *Calls Rustin Convicted Pervert*, *CHI. TRIB.*, Aug. 15, 1963, at 16.

271. *Id.*

272. Joseph Hearst, *Negro Leaders Defended at Rights Hearing: Delay Bob Kennedy’s Testimony*, *CHI. TRIB.*, July 17, 1963, at 5; Richard Wilson, *Red Penetration of Civil Rights Movement Becomes More Evident*, *L.A. TIMES*, July 28, 1964, at A5.

273. Christina L. Moss & Ronald L. Jackson II, *Introduction to Special Issue: We March Lest We Forget*, 28 *HOW. J. COMM.* 123, 123 (2017).

274. *Id.*

275. *Id.*

276. *Id.*

Lewis, who stood at the front of the protest line, suffered a fractured skull.²⁷⁷ The day became known as Bloody Sunday.²⁷⁸

The Selma crisis stirred President Johnson. In a nationally televised speech, Johnson, riffing from the movement anthem, proclaimed that “we shall overcome” racism, and he demanded that Congress, without delay, pass a voting rights bill much stronger than Title I of the Civil Rights Act.²⁷⁹ And Congress did exactly that.²⁸⁰ Then, the U.S. Supreme Court then upheld the strong medicine of the Voting Rights Act in two landmark cases, *South Carolina v. Katzenbach*²⁸¹ and *Katzenbach v. Morgan*.²⁸² The history of the Voting Rights Act of 1965 represents the triumph of popular constitutionalism and the federal government’s heroic efforts to democratize U.S. elections.

This section chronicles the political context leading to the passage of the Voting Rights Act by following two stories. The first is the drama in Selma. The Selma voting rights campaign drove the bill’s proposal and enactment. The second story follows a less familiar voting rights struggle centered in New York City. Although Selma and New York City may seem worlds apart, xenophobic conspiracy theories connected the two campaigns in unexpected ways.

a. Selma

The Selma story also represents a major political triumph over an infamous set of redbaiting segregationists. Alabama Governor George Wallace declared that the Selma to Montgomery march was “led by career and professional agitators with pro-Communist affiliations.”²⁸³ The Alabama Commission to Preserve the Peace, one of the state’s segregation committees, issued a scathing report during the Selma crisis, describing the SCLC, the Congress of Racial Equality (CORE), and SNCC as Red agents.²⁸⁴ Dallas County, Alabama Sheriff Jim Clark insisted that the Selma crisis was a “Communist conspiracy” planned and funded by the Civil Rights Division of the Department of Justice.²⁸⁵ Clark then slammed major media outlets for reporting only “very distorted news” and sensational stories that would sell magazines and newspapers.²⁸⁶ The *Selma Times-Journal* published an op-ed agreeing that the Selma story had been “distorted.”²⁸⁷ The writer claimed that conflict in Selma was not about racism but about states’ rights. He made an originalist argument, asserting that the

277. *Id.*

278. *Id.*

279. *Johnson’s Text: ‘Job for All’*, ATLANTA CONST., Mar. 16, 1965, at 20.

280. Voting Rights Act of 1965, Pub. L. No. 89–110 (1965).

281. 383 U.S. 301 (1966).

282. 384 U.S. 641 (1966).

283. John Herbers, *Wallace Orders Night March Ban*, N.Y. TIMES, Feb. 21, 1965, at 52.

284. ALA. COMM’N TO PRESERVE THE PEACE, BIENNIAL REP. TO THE ALABAMA LEGISLATURE 14 (1965).

285. Richard Corrigan, *Press Distorts News, Selma Sheriff Says*, WASH. POST, Mar. 1, 1965, at A1.

286. *Id.*

287. *Id.*

Constitution's founders designed a government to prevent federal intervention in voting matters and protect against "the autocratic rule of the dictator, the central planning of socialism, or the regimentation of communism."²⁸⁸ Moreover, according to the writer, it was a "farce" that King, the person who had actually encouraged violence in Selma, had just won the Nobel Peace Prize; King should have instead won the "Lenin 'Peace' Prize."²⁸⁹

On Capitol Hill, Judge Leander Perez, Louisiana's most prominent Citizens' Councilor and one of America's most flamboyant segregationists, appeared on the national stage with a creative take on foreign meddling in U.S. elections.²⁹⁰ In the early twentieth century, the Soviet Union and a small band of U.S. communists had attempted to court black support in the U.S. South.²⁹¹ They called for a Black Belt Republic, an autonomous black state stretching from Virginia to Texas.²⁹² Although the communist proposal never found traction in black America, this was no issue for Perez, who was well known across America for his extremist and unwavering defenses of segregation.²⁹³ Perez wove this obscure relic into a newfangled conspiracy theory during his testimony before the Senate Judiciary Committee.²⁹⁴

Under the Voting Rights Act of 1965, jurisdictions with substantial histories of voter disenfranchisement—"covered jurisdictions"—had to seek federal preclearance before changing any voting practices.²⁹⁵ Most "covered jurisdictions" under the Voting Rights Act were in the South.²⁹⁶ The Act's coverage formula, in other words, largely mapped onto the Black Belt Republic.²⁹⁷ Perez seized the moment. He reminded the Senate Judiciary Committee that the Communist Party had demanded "Black Belt voter registration of all Negroes" and "the unlimited right of the Negro majority to exercise governmental authority in the entire territory of the Black Belt."²⁹⁸ For Perez, Congress was now poised to give life to "the original Stalin plan,"²⁹⁹ and

288. Thurman Sensing, *Responsibility for Deaths Solely on Martin Luther King [sic] Lap*, SELMA TIMES-JOURNAL, Mar. 29, 1965, at 4.

289. *Id.*

290. *Voting Rights: Hearing on S. 1564 Before the S. Comm. On the Judiciary*, 89 Cong. 356 (1965) (statement of Judge Leander H. Perez).

291. GERALD HORNE, *BLACK LIBERATION/RED SCARE: BEN DAVIS AND THE COMMUNIST PARTY* 68 (1994).

292. *Id.*

293. See generally JAMES CONWAY, *JUDGE: THE LIFE AND TIMES OF LEANDER PEREZ* (1973) (explaining how Perez played a key role in spreading the notions of segregation across America).

294. *Voting Rights: Hearing on S. 1564 Before the S. Comm. on the Judiciary*, 89 Cong. 356 (1965) (statement of Judge Leander H. Perez).

295. Voting Rights Act of 1965, Pub. L. No. 89-110, § 4(b), 79 Stat. 437, 438 (1965).

296. Katzenbach, 383 U.S. at 318. The states initially qualifying as "fully covered" under Section 4 of the Act were Alabama, Alaska, Georgia, Louisiana, Mississippi, South Carolina, and Virginia.

297. Robert Albright, *New Vote Bill Changes Proposed*, WASH. POST, Mar. 31, 1965 at A9.

298. *Voting Rights: Hearing on S. 1564 Before the S. Comm. On the Judiciary*, 89 Cong. 490 (1965) (statement of Judge Leander H. Perez).

299. *Id.*

he implored mass white registration to counterbalance the voting power blacks would gain if the voting rights bill became law.³⁰⁰

The John Birch Society echoed Perez's conspiracy theory linking the Voting Rights Act and the Black Belt Thesis, but the John Birchers used art to amplify their message. They produced *Anarchy, U.S.A.*, a seventy-seven-minute-long film, which claimed that Communists often hid behind a thin veneer of humanitarianism to beguile well-intentioned people and transform law.³⁰¹ "Sympathetic" victims and "martyrs" in Selma had created the political environment to pass a communist-influenced voting rights plan.³⁰² The film argued that this communist blueprint had successfully toppled healthy governments in China, Cuba, and Algeria and was now working in the U.S. South.³⁰³

The most striking aspect of *Anarchy U.S.A.* was the John Birch Society's heavy reliance on African Americans to redbait the Selma campaign. It was no doubt innovative. The group used black representatives seeking to prove that the organization was not racist at all; John Birchers said they were simply interested in "law and order" and anti-communism. *Anarchy U.S.A.* showcased a black man and a black woman who said they were former communists but who left the party when it became clear that communists only wanted to use blacks "as cannon fodder in a violent and bloody revolution" to establish "an American Soviet dictatorship."³⁰⁴ They said that movement leaders only wanted to make blacks hate whites and open "wounds that have long healed."³⁰⁵ *Anarchy U.S.A.* also cunningly spliced together scenes of mass meetings in black churches and nonviolent demonstrations to illustrate how the alleged communist activists used moral appeals to manipulate Americans' emotions. The film, for example, showed John Lewis preaching in a pulpit to illustrate "pious fraud" and claimed that a protester carrying a "one man, one vote" sign was a "noble sounding" smokescreen for communists' true and nefarious motives.³⁰⁶ *Anarchy U.S.A.* concluded that viewers who believed in "law and order" could start their fight against the communist forces destroying America by reading the John Bircher's literature and "support[ing] your local police."³⁰⁷

Misinformation about the Selma struggle emerged from more respected sources too. Nationally syndicated columnists Rowland Evans and Robert Novak joined the redbaiting.³⁰⁸ On the eve of the Selma to Montgomery march, Evans

300. *Perez Plugs Own Vote Drive*, CHI. DEF., Aug. 19, 1965, at 3.

301. ANARCHY U.S.A. (John Birch Society 1966), C-SPAN, <https://www.c-span.org/video/?420311-1/anarchy-usa> [<https://perma.cc/4GCG-23YN>].

302. *Id.*

303. *Id.*

304. *Id.*

305. *Id.*

306. *Id.*

307. *Id.*

308. See Rowland Evans & Robert Novak, *Inside Report: Danger from the Left*, WASH. POST, Mar 18, 1965, at A25 [hereinafter *Inside Report*]; Rowland Evans & Robert Novak, *See Leftist Pressures on*

and Novak blasted John Lewis and SNCC in a nationally published column. The columnists alleged that SNCC had been “substantially infiltrated by beatniks, left wing revolutionaries and—worst of all—by Communists.”³⁰⁹ The writers opined that SNCC was “not really interested in the right to vote”³¹⁰ or even registering voters—missing that much of SNCC’s activism centered on voting.³¹¹ According to Evans and Novak, the “extremist” organization was more interested in “provoking social turmoil” and “knuckl[ing]” racial moderates and liberals than democratizing U.S. elections.³¹² The columnists argued that there was just one way to end the movement’s “agonizing internal crisis” over communist-infiltration in Selma: “expel” SNCC from the civil rights movement.³¹³

Accusations of foreign meddling in U.S. electoral politics also emerged in a novel way: interracial sex in Selma. Segregationists abhorred the idea of miscegenation, and in a society that characterized school desegregation as communist, miscegenation was certainly communist.³¹⁴ Segregationists’ allegations of foreign subversion also invoked the culture wars of the mid-1960s. Those allegations in part focused on white hippies—those allegedly unpatriotic race traitors who consumed illicit substances, Eastern philosophies, and free love—who had traveled to Selma to protest *side-by-side* with black demonstrators. Segregationists had long raged at what they viewed as liberal’s moral depravity, but counterculture activists’ participation in the Selma campaign heightened segregationists’ suspicions that communist, “sex perverts” had penetrated the voting rights struggle.³¹⁵ This sensational allegation emerged as a particularly pernicious way to stain a campaign led by ministers and occurring in the South, a region of America that congratulated itself for its supposed religiosity.³¹⁶

Back on Capitol Hill, Alabama Representative William Dickinson brought the sex perversion charge to the national forefront. Dickinson fumed that local blacks recruited prostitutes and lured white liberals to Selma by offering for “[\$10 a day . . . room and board] and all of the sex from the opposite members of either

Dr. King, L.A. TIMES, Mar 19, 1965, at A5 [hereinafter *Leftist Pressures*]; Rowland Evans & Robert Novak, *Moderates Beat Radicals: Leftists in Civil Rights Movement Lose Out to the Wilkins Faction*, WASH. POST, Mar 28, 1965, at E7.

309. *Inside Report*, *supra* note 308, at A25; *Leftist Pressures*, *supra* note 308, at A5.

310. *Inside Report*, *supra* note 308, at A25; *Leftist Pressures*, *supra* note 308, at A5.

311. See, e.g., HASAN KWAME JEFFRIES, BLOODY LOWNDES: CIVIL RIGHTS AND BLACK POWER IN ALABAMA’S BLACK BELT (2010) (describing SNCC’s activism in Selma before and after the Selma to Montgomery March).

312. *Inside Report*, *supra* note 308, at A25; *Leftist Pressures*, *supra* note 308, at A5.

313. *Inside Report*, *supra* note 308, at A25; *Leftist Pressures*, *supra* note 308, at A5.

314. See Virginia Grant, *Miscegenation and Communism in Flannery O’Connor’s ‘The Displaced Person’*, 12 FLANNERY O’CONNOR REV. 13, 13 (2014) (revealing that segregationists linked miscegenation with communism).

315. Ben A. Franklin, *Klan Chief Calls 2 Rights Death Part of Red Plot*, Mar. 28, 1965, at 1, 58.

316. See Just Disgusted, *Raps Sex Orgies Charge*, CHI. DEF., May 8, 1965, at 9 (expressing the dissatisfaction that “nuns and priests” were forced to confront these allegations).

race.”³¹⁷ He announced that the coalition of beatniks, local blacks, and “misinformed” white “do-gooders” had littered local streets with empty alcohol bottles, engaged in indecent exposure and interracial sex, and had even used contraceptives during this allegedly illicit, interracial sex.³¹⁸ But he was unwavering that a particular group of interlopers had been at the center of Selma’s moral cataclysm. “Who or what can weld this diverse group together into a formidable force that can and has ‘overcome?’” the congressman asked the gallery with rhetorical flair.³¹⁹ The chamber sat silent momentarily. “The answer is this: the Communist Party.”³²⁰

Dickinson maintained that reporters and law enforcement saw and even possessed photographs of the Selma activists engaged in vice.³²¹ The *Washington Post* launched an investigation into Dickinson’s salacious claims.³²² The *Post* soon debunked his allegations, stressing there was “no evidence” to support them, and none of the lewd photographs he said he had ever appeared.³²³ What upset Alabama segregationists was far less indecent. The *Post* noted that a few interracial couples held hands during the demonstrations “which obviously irritated Alabama policemen and white spectators.”³²⁴

More allegations of foreign interference in the voting rights campaign emerged after the murders of three activists: Jimmie Lee Jackson, James Reeb, and Viola Liuzzo. In February 1965, as Jackson and hundreds of other black activists knelt to pray during one voting rights protest, a white mob descended on the news reporters covering the demonstration and the Alabama state police attacked the nonviolent demonstrators. Troopers clubbed Jimmie Lee Jackson’s mother and eighty-two year-old grandfather as they were attempting to seek refuge from the officers’ attack. When Jackson tried to aid his mother and grandfather, a trooper shot Jackson twice in the stomach. Troopers then clubbed him mercilessly in the street. Eight days later, he died from his injuries.³²⁵

While Jimmie Lee Jackson’s death became a rallying cry for voting rights activists throughout the world,³²⁶ segregationists defended the state police and

317. *Says Sex Is Motive in Rights Movement*, CHI. DEF., Mar. 31, 1965, at 9.

318. *Id.*

319. *Id.*

320. *Id.*

321. *Id.*

322. *House Told Drunkenness, Sex Orgies Marked Part of Selma Rights March*, WASH. POST, Mar. 31, 1965, at A9.

323. *Id.*

324. *Id.*

325. Interview by Blackside, Inc. with Albert Turner, Field Secretary, Southern Christian Leadership Conference (Feb. 24, 1979).

326. Media outlets continued to cover the struggle for voting rights, as activists held solidarity marches across America, including in New York, Los Angeles, Washington, and Chicago. George Goodman, *Selma Crisis Shakes Nation*, L.A. SENTINEL, Mar. 11, 1965, at A1. There were also solidarity marches globally—from Toronto to Hagåtña. See *2,000 March in Toronto*, L.A. TIMES, Mar. 13, 1965, at 14 (describing the Toronto protest); *7-Mile Protest in Guam*, N.Y. TIMES, Mar. 22, 1965, at 27 (describing the Hagåtña protest).

placed black activists on trial. A local grand jury declined to indict the trooper who killed Jackson, and somehow the commander of the Alabama state troopers testified that he did not know of any instances of police brutality during the local voting rights campaign.³²⁷ The state instead blamed Jimmie Lee Jackson for his shooting and beating. They charged Jackson with assault with intent to murder the state trooper as the activist laid on his deathbed.³²⁸ The town's mayor emphasized "[a]ctually, very little went on" during the troopers' bloodthirst, but he then turned to a xenophobic conspiracy theory, denouncing "'outside leadership'" for causing police to act.³²⁹

The Alabama State Legislature described the march of churchgoers as rioting. Legislators passed a resolution, which censured the marchers' "deliberate provocations" and praised state troopers for their "unselfish devotion to the task of preserving the peace and saving lives and preventing damage to the property of all the citizens of this State."³³⁰ There was no evidence of property damage during the protest, but nonetheless, the very idea of protecting whites' property mattered more than Jimmie Lee Jackson or any black protester's life. Legislators also directed ire at the news "propagators" who ran stories on the police brutality, white mobs, and rights denials during the march.³³¹ The state legislature then sent the resolution to media outlets, including those they deemed part of the paper curtain: ABC, NBC, and CBS.³³²

Two weeks after Jimmie Lee Jackson's murder, a white mob murdered James Reeb, a white Unitarian minister from Boston who had just joined the voting rights campaign.³³³ As Reeb left a black-owned, Selma café, a group of white supremacists recognized Reeb as an outsider and beat him to death.³³⁴ Local segregationists thereafter dragged Reeb's name through the mud and wielded a xenophobic conspiracy theory to explain his murder. The Imperial Wizard of the Ku Klux Klan took offense that some believed that the Klan was tied to Reeb's murder, claiming that Reeb was "part of a 'trumped-up Communist plot to destroy the right wing in America.'"³³⁵ The Klan leader maintained that communists were attempting to "blacken" the Klan's reputation.³³⁶

Death seemed to be ever-present during the Selma campaign. During the Selma to Montgomery march, a Klansman shot and killed Viola Liuzzo.³³⁷ Liuzzo

327. *Perry Jury Has Shooting Case*, SELMA TIMES-JOURNAL, Mar. 18, 1965, at 1; *Trooper Shot Negro, Lingo Admits in Court*, ATLANTA CONST., Mar. 14, 1965, at 1.

328. *Perry Jury Will Probe Rights Death*, ANNISTON STAR, Mar. 18, 1965, at 3.

329. James Purks, *Demonstration Planned After Perry Flareup*, SELMA TIMES-JOURNAL, Feb. 19, 1965, at 1.

330. ALABAMA LAWS AND JOINT RESOLUTIONS 30 (1965).

331. *Id.*

332. *Id.*

333. Ben Franklin, *Klan Says Reds Plot "Frame-Up,"* ATLANTA CONST., Mar. 28, 1965, at 14.

334. *Id.*

335. *Id.*

336. *Id.*

337. *Klan Lawyer Accuses FBI of Attempting to Bribe One of Suspects*, BALT. SUN, Mar. 28, 1965 at

was an activist, homemaker, and mother of five from Detroit.³³⁸ She had driven to Selma and used her car to shuttle activists between protest sites.³³⁹ Segregationists attacked Liuzzo, like Reeb, for being an outside agitator stirring up trouble in Selma, and the Klan similarly tied Liuzzo's murder to "a 'trumped-up' Communist plot" that threatened U.S. democracy.³⁴⁰

The Klansman was prosecuted for Liuzzo's murder, but sensational accusations flew throughout the murder trial. A Klan informant had divulged the identity of Liuzzo's alleged shooter to the FBI, and the prosecution relied heavily on this information.³⁴¹ Matthew Murphy, the Klansman's defense attorney in the case, countered the prosecution using multiple conspiracy theories. Murphy, for example, accused Hoover and President Johnson of "being part of a giant conspiracy to crush the Klan and destroy the South."³⁴²

As part of his defense of this Klansman, Murphy also returned to a baseless rumor Congressman Dickinson spread just weeks earlier on the House floor: "sex orgies" in Selma.³⁴³ Murphy asked a stunned courtroom, "Why . . . would a white woman from Detroit desert her husband and children to ride around in a car with a black man?"³⁴⁴ The Klan attorney smeared Liuzzo as "a white n—r who turned her car over to a black n—r for the purpose of hauling n—s and communists back and forth."³⁴⁵ Murphy also directed his anger at Jack Greenberg and Ralph Bunche, notables who participated in the march. Murphy ranted, "I never thought I would see the day when Communists and n—s and white n—s and Jews would be flying around under the banner of the United Nations."³⁴⁶

Despite the informant's compelling testimony and a ballistics report tying the defendant's gun to the bullet that killed Liuzzo, the all-white male jury deadlocked.³⁴⁷ Segregationists reveled in the mistrial. Outside of the courtroom, Murphy blared that the "band of homosexuals, communists and pinkies who encourage of the mixing of races" should be blamed for the unrest in Selma, not his clients.³⁴⁸ The Imperial Wizard piled on. He reiterated his own conspiracy theory around communist infiltration of the voting rights campaign and

1, 3.

338. *Id.*

339. *Id.* at 3.

340. Franklin, *supra* note 333, at 14; see *Klan Lawyer Accuses FBI of Attempting to Bribe One of Suspects*, *supra* note 337, at 1 (reporting that the Klan claimed accusations of involvement in Liuzzo's murder were "trumped up charges by the Federal Government.").

341. Roy Reed, *A Mistrial in Liuzzo Case*, N.Y. TIMES, May 8, 1965, at 15.

342. *Id.*

343. *Says Sex is Motive in Rights Movement*, *supra* note 317, at 9.

344. MARY STANTON, *FROM SELMA TO SORROW: THE LIFE AND DEATH OF VIOLA LIUZZO* 119 (1998).

345. *Id.* at 117.

346. *Alabama Mistrial Proves Anti-Negro Feeling*, PHILA. TRIB., May 18, 1965, at 9.

347. Jack Nelson, *Expert Identifies Klansman's Gun as Liuzzo Murder Weapon*, L.A. TIMES, May 6, 1965, at 1; "The Worst H—I've Ever Been In," BALT. AFRO-AMERICAN, May 15, 1965, at 1.

348. James Felder, *KKK Trio Plead Innocent to Mrs. Liuzzo's Slaying*, CHI. DEF., Apr. 27, 1965, at 1, 4.

emphasized to reporters that Murphy's performance at trial had boosted Klan membership.³⁴⁹

b. New York City

False allegations of foreign meddling also emerged in an unexpected way during the Voting Rights Act debates. Opponents of section 4(e) of the bill alleged that the provision would allow Puerto Rican "immigrants" to infiltrate U.S. elections.³⁵⁰ Section 4(e) provided that no person who has completed the sixth grade in Puerto Rico, in a public or accredited private school, in a language that was not English shall be deprived of the right to vote due to the inability to read in English.³⁵¹ New York's U.S. Senators, Republican Jacob Javits and Democrat Robert Kennedy, sponsored the provision to attack New York State's literacy test.³⁵²

New York State adopted its literacy test in 1922.³⁵³ The literacy test heavily burdened white immigrants in the early twentieth century, but by 1965, the state's literacy test disproportionately disenfranchised Puerto Ricans whose primary language was Spanish. New York City's demographics in particular were changing rapidly.

Opponents of section 4(e) of the Voting Rights Act wielded a false, xenophobic conspiracy theory to attack the legislation. According to this theory, Puerto Ricans were not U.S. citizens; they were "immigrants" who should be denied full access to the franchise.³⁵⁴ They conveniently ignored that Puerto Rico is a U.S. territory whose citizens are citizens of the U.S. This myth rendered U.S. citizens as noncitizens and strangers in their own land.

One of section 4(e)'s most formidable opponents was Paul Fino, a Republican Congressman from the Bronx. Fino had no issues with a voting rights bill that targeted Southern racism. Yet, section 4(e) targeted the North and was, for Fino, an example of reverse discrimination. He submitted that section 4(e) "discriminates in favor of Spanish-speaking citizens who are illiterate in English" and the amendment was thus "clearly and definitely anti-Yiddish, anti-Italian, anti-Greek, [and] anti-German."³⁵⁵ Moreover, according to Fino, section 4(e) would not help Puerto Ricans become *real* Americans. "Other immigrant groups," Fino emphasized, "had to learn English to walk the tenement trail out of the ethnic ghettos." English, he added, was a "ladder to Americanism, an

349. *Confetti*, CHI. DEF., Aug. 5, 1965, at 4.

350. *See, e.g.*, 111 CONG. REC. H6239, H16240 (daily ed. July 9, 1965) (statement of Rep. Paul Fino).

351. Voting Rights Act of 1965, Pub. L. No. 89-110, § 4(e)(2), 79 Stat. 437, 439 (1965).

352. *Provisions of Voting Rights Act of 1965 (PL 89-110)*, in CQ ALMANAC 1965, at 550-51 (Henrietta & Nelson Poynter eds., 1966).

353. F. G. Crawford, *New York State Literacy Test*, 17 AM. POL. SCI. REV. 260, 261 (1923) ("After January 1, 1922 no person shall become entitled to vote . . . unless such person is also able, except for physical disability, to read and write English; and suitable laws shall be passed by the Legislature to enforce this provision.") (quoting an amendment to the New York constitution).

354. *See infra* note 355.

355. 111 CONG. REC. H16239-40 (daily ed. Jan. 9, 1965) (statement of Rep. Fino).

incentive to assimilation, and a beacon light to the path leading out of the slums to the tree-lined streets beyond.”³⁵⁶

The *Wall Street Journal* also opposed section 4(e). Writers editorialized that the provision had “little to do with the law’s main thrust” and was nothing short of a naked, federal power grab designed to benefit *foreigners*, not U.S. citizens.³⁵⁷ According to the *Wall Street Journal*, the Spanish-speaking Puerto Ricans were unfit for the ballot because they could not understand government affairs. The editors lamented that opportunistic liberals had “tenuously dragged” Puerto Ricans into the voting rights debate that should have only dealt with Southern racism. The *Wall Street Journal* concluded, “It’s just that New York’s Senators wanted to substitute their will for that of their state’s legislature” simply “to please Puerto Rican immigrants.”³⁵⁸

Despite this opposition, Congress passed section 4(e) of the Act. The Supreme Court upheld section 4(e) in *Katzenbach v. Morgan*, yet more Northern opposition to the provision emerged.³⁵⁹ The *Hartford Courant* decried *Katzenbach*. According to the *Courant*, while most focused on section 4(e)’s impact on “three-quarters of a million Puerto Ricans in New York,” this Court’s “steady encroachment” on states’ rights would affect “others in communities like Hartford” too.³⁶⁰ The newspaper editorialized that if the Court’s expansion of the Fourteenth Amendment continued “the original theory of 13 sovereign states will be a myth,” and states would transform “into little more than provinces.”³⁶¹

As the *Courant*’s editorialists attempted to distance themselves from better-known bigots like George Wallace “who made bad words of ‘states’ rights,” the writers similarly peddled a xenophobic conspiracy theory to attack section 4(e).³⁶² According to the *Courant*, section 4(e)’s direct beneficiaries were “immigrants” who were apparently dupes unfit for voting.³⁶³ “Immigrant groups,” the *Courant* proclaimed, “have traditionally been the toy of the demagogues.”³⁶⁴ The writers maintained, “When the group does not understand English, they are more susceptible to demagoguery and more likely to vote en bloc.”³⁶⁵ The irony was thick. The editors attempted to justify mass voter suppression by allegedly protecting U.S. democracy and saving Puerto Ricans from themselves.

C. Voting, the Vatican, and the Presidency

An even more powerful xenophobic conspiracy theory dominated national politics a few years later. During the 1960 Presidential race, some conspiracy

356. *Id.*

357. *The Federal Camel in Action*, WALL ST. J., Aug. 12, 1965, at 10.

358. *Id.*

359. 384 U.S. 641 (1966).

360. *Steady Encroachment of the Federal Government*, HARTFORD COURANT, June 20, 1966, at 16.

361. *Id.*

362. *Id.*

363. *Id.*

364. *Id.*

365. *Id.*

theorists suggested that if John F. Kennedy became president, the Pope would rule the White House.³⁶⁶ America had a long history of maligning Catholic politicians for being “foreign” agents and having “dual loyalties.”³⁶⁷ The anti-Catholic, election conspiracy theory held that if U.S. interests conflicted with the Vatican’s positions, Kennedy, would be loyal to the Vatican, because his eternal soul, as a Roman Catholic, was on the line.³⁶⁸

Kennedy wrestled with anti-Catholic bigotry throughout the Democratic primary. During the West Virginia primary, for example, A. James Manchin, a state politician, Roman Catholic community leader, and campaign volunteer was flatly asked, “Are you Catholics trying to take over not only the state of West Virginia but the United States, and are you going to try to bring the pope here?”³⁶⁹ Others traveled into West Virginia to traffic anti-Catholic bigotry. Nationally renowned minister Reverend Norman Vincent Peale joined the fray.³⁷⁰ Peale traveled from New York City to Charleston, West Virginia early in the primary to campaign against Kennedy and urged voters to reject the candidate who took instructions from those whose first loyalty was not to the United States. Peale then rhetorically asked reporters, “Should any ecclesiastical authority be able to interfere with the freedom of a public official of the United States?”³⁷¹

During the general election, Kennedy’s opponent, Richard Nixon, vowed that he would not raise the Pope’s potential influence on Kennedy. Yet, behind the scenes Nixon conducted an extensive anti-Catholic campaign.³⁷² Nixon backers, Peale and Reverend Billy Graham—the country’s foremost white evangelical and Southern Baptist Convention minister—not only courted Protestants using anti-Catholic bigotry, but they also organized an anti-Catholic organization, Citizens for Religious Freedom.³⁷³ The organization attempted to brand religious oppression as sincere concern for protecting the First Amendment and U.S.

366. *Id.*

367. ALBERT MENENDEZ, *THE RELIGIOUS FACTOR IN THE 1960 PRESIDENTIAL ELECTION: AN ANALYSIS OF THE KENNEDY VICTORY OVER ANTI-CATHOLIC PREJUDICE* 51 (2014); *see also* JAMES FISCHER, *COMMUNION OF IMMIGRANTS: A HISTORY OF CATHOLICS IN AMERICA* 100 (2008). In 1928, Al Smith lost the Presidential race to Herbert Hoover in a campaign mired by anti-Catholic campaigning. Smith’s opponents claimed that Smith would build a tunnel between Rome and Washington to give Smith easier access to the White House. *Id.*

368. SHAUN CASEY, *THE MAKING OF A CATHOLIC PRESIDENT* 73–75 (2008).

369. William Lewis Young, *The John F. Kennedy Library Oral History Project, the West Virginia Democratic Presidential Primary, 1960*, at 43 (1982) (unpublished Ph.D. dissertation, Ohio State University) (on file with the OhioLINK Electronic Thesis & Dissertation Center).

370. Interestingly, Peale served as Donald Trump’s childhood pastor, and Trump was married and his parents eulogized at Peale’s church. Gwenda Blair, *How Norman Vincent Peale Taught Donald Trump to Worship Himself*, POLITICO (Oct. 6, 2015), <https://www.politico.com/magazine/story/2015/10/donald-trump-2016-norman-vincent-peale-213220/> [<https://perma.cc/P8N7-ZCWB>]. *See also* MARY TRUMP, *TOO MUCH AND NEVER ENOUGH: HOW MY FAMILY CREATED THE WORLD’S MOST DANGEROUS MAN* 38–42 (2020).

371. *Dr. Peale Expresses Doubts On Kennedy*, BALTIMORE SUN, Apr. 13, 1960, at 6.

372. CASEY, *supra* note 368, at 97.

373. *Id.*

political integrity.³⁷⁴ In September 1960, Citizens for Religious Freedom declared that “[i]t is inconceivable that a Roman Catholic President would not be under extreme pressure by the hierarchy of his Church to accede to its policies with respect to foreign relations . . . and otherwise breach the wall of separation of church and state.”³⁷⁵ The culture wars were central to the Christian right’s attempts to remake American politics. At one Citizens for Religious Freedom rally, Peale warned that “[o]ur American culture is at stake” in the Presidential election. If Kennedy were to win, Peale offered, “I don’t say [American culture] won’t survive, but it won’t be what it was.”³⁷⁶

Kennedy’s ability to secure the Presidency, despite the alleged specter of foreign interference, lifted black electoral hopes like never before. Benjamin Mays, President of Morehouse College—the historically black college in Atlanta and alma mater of Dr. King—called Kennedy’s victory “good for the country,” and Mays turned the xenophobic conspiracy theory on its head.³⁷⁷ “I wouldn’t want Kennedy defeated because he is a Catholic,” Mays asserted.³⁷⁸ “A Negro might want to be President one day,” he reasoned, “and all who oppose a candidate because of his Catholicism might oppose a Negro.”³⁷⁹ For Mays, Kennedy’s ability to win the White House despite fears of the Pope’s potential interference “prove[d] that every American, whatever his religion or race may be, has the chance to aspire and to become the Chief Executive of this nation.”³⁸⁰

IV

LESSONS FOR TODAY

As white nationalists rioted at the Capitol and spewed false conspiracy theories about foreign interference in the 2020 Presidential election, then President-Elect Biden announced to millions, “The scenes of chaos at the Capitol do not reflect a true America.”³⁸¹ This idea became a refrain across the ideological spectrum, as many commentators, in seeming disbelief, proclaimed,

374. *Id.*

375. James Shea, *N.C.W.C. News Service*, NAT’L CATH. WELFARE CONF. 14 (Sept. 12, 1960).

376. Nancy Gibbs, *The Catholic Conundrum*, TIME (June 21, 2007), <http://ti.me/1fi5QS3> [<https://perma.cc/X7BQ-68NN>].

377. Benjamin Mays, *My View: Did TV Hurt Nixon?*, PITT. COURIER, Dec. 3, 1960, at 13.

378. *Id.*

379. *Id.*

380. *Id.* While it is imperative to emphasize that John F. Kennedy’s election did not eliminate all race and religious barriers to becoming or even aspiring to be President, his election certainly offered new inspiration for many people of color. On the anniversary of President Kennedy’s assassination, President Obama remarked, “I think my own sense of what’s possible in this country comes in part from what they said America was like in the days of John and Robert Kennedy.” Kathleen Hennessey, *Obama Pays Tribute to John F. Kennedy*, L.A. TIMES (Nov. 20, 2013), <https://www.latimes.com/nation/la-na-obama-jfk-20131121-story.html> [<https://perma.cc/XK25-6FE5>].

381. Maureen Chowdhury, *Biden: “Our Democracy is Under Unprecedented Assault,”* CNN (Jan. 6, 2021), https://edition.cnn.com/politics/live-news/congress-electoral-college-vote-count-2021/h_1720eb971fab58eb2f141aacc9699b4b [<https://perma.cc/WJ9E-2J4U>].

“This is not America.”³⁸² But upon closer inspection, many of the developments leading to and on January 6 were eerily reminiscent of America’s past.³⁸³ The exhortation that Americans remember the country’s true identity was, at best, ignorance of the country’s racist history. However, no doubt for some, this was willful amnesia.

The past is not simply the past. The past informs the present and the future. The xenophobic conspiracy theories that helped to drive the Capitol insurrection resemble those embraced by conspiracy theorists during the civil rights movement. By understanding how white nationalists have deployed xenophobic conspiracy theories in the past, we might better understand how white nationalism shapes the struggle for voting rights today.

A. Racial Progress is Not Linear

The conventional account of race relations in the U.S. holds that racial progress will inevitably occur.³⁸⁴ According to this account, *Brown* and the civil rights movement moved us from the darkest days of Jim Crow.³⁸⁵ Barack Obama was eventually elected the 44th President of the United States, and his election, in the words of the *New York Times* report on the day following Obama’s 2008 election “swe[pt] away the last racial barrier in American politics with ease as the country chose him as its first black chief executive.”³⁸⁶ And for some commentators, if America had not quite gotten to the racial Promised Land under Obama, the election of Kamala Harris was another sign that America was

382. Stephen Collison & Caitlin Hu, “*This is not America*,” CNN (Jan. 7, 2021), <https://www.cnn.com/2021/01/07/world/meanwhile-in-america-january-7-intl/index.html> [<https://perma.cc/RJ73-FAEN>]. See also Statement from Former President Jimmy Carter, CARTER CTR. (Jan. 6, 2021), <https://www.cartercenter.org/news/pr/2021/statement-pres-carter-010621.html> [<https://perma.cc/H832-L9VV>] (“This is a national tragedy and is not who we are as a nation.”); *Ex-President George W. Bush condemns D.C. Riots as “Sickening and Heartbreaking”*, REUTERS (Jan. 6, 2021), <https://www.reuters.com/article/us-usa-election-bush/ex-president-george-w-bush-condemns-d-c-riots-as-sickening-and-heartbreaking-idUSKBN29B337> [<https://perma.cc/PSW5-TYXV>] (condemning the “Stop the Steal” campaign but using a white nationalist trope of “how election results are disputed in a banana republic”).

383. While white supremacists had never attacked the Capitol, there are other historical parallels we might also note between past and present attempts at depose democratically elected governments in the U.S. White nationalists led riots and even massacres to overturn governments during Reconstruction and in the late nineteenth century. In 1873, for example, white nationalists in Colfax, Louisiana sought to install a Democratic governor, and they massacred approximately 150 blacks during the disputed gubernatorial race. In 1898, white nationalists in Wilmington, North Carolina, massacred as many as 300 people and ousted that city’s biracial government. See Rachel Hartigan, *Historians on the Unprecedented Chaos in Congress*, NAT. GEOGRAPHIC (Jan. 8, 2021), <https://www.nationalgeographic.com/history/2021/01/historians-on-the-unprecedented-chaos-in-congress> [<https://perma.cc/Z4R7-J2L4>] (arguing that the insurrection was “deeply rooted in the American experience”).

384. JACK BALKIN, WHAT BROWN V. BOARD OF EDUCATION SHOULD HAVE SAID: THE NATION’S TOP LEGAL EXPERTS REWRITE AMERICA’S LANDMARK CIVIL RIGHTS DECISION 5 (2002).

385. *Id.*

386. Adam Nagourney, *Obama Wins Election*, N.Y. TIMES (Nov. 4, 2008), <https://www.nytimes.com/2008/11/05/us/politics/05campaign.html> [<https://perma.cc/EJ36-2C49>].

moving in the right direction.³⁸⁷ This is a teleological reading of racial progress over time—that is, a forward moving story taking us from the anachronistic politics of the 1950s to the election of Barack Obama in 2008 to the election of Kamala Harris in 2020.

Yet, a closer inspection of U.S. history shows something far less savory: white supremacy evolves over time. White supremacy did not expire with the end of the civil rights movement or the celebrated twenty-first century elections. Rather, white supremacy is durable and persistent. It exists today despite some meaningful structural reforms and Americans' best hopes and aspirations. While some race problems from midcentury are less pronounced now than in the past, other race problems continue today, even if only in altered form.

Some of these continuities between past and present conspiracy theorists are more striking than what some might think. In mid-twentieth century America, organizations like the John Birch Society relied heavily on xenophobic conspiracy theories to attack perceived racial advances. After Obama's first inauguration, a similar phenomenon happened. The Tea Party movement developed.³⁸⁸ Tea Partiers fashioned themselves as part of a patriotic, right-wing, populist movement, and they became best known for opposing Obama's plan to provide more affordable health care.³⁸⁹ Like their ideological ancestors, they invoked the language of foreign subversion to oppose Obama. They blasted Obama's health care plan as "tyranny" and "socialism," called Obama "anti-American," and lofted picket signs at protests such "Stop Obamunism" and "National Socialist Healthcare."³⁹⁰ They soon expanded their efforts into fighting alleged election fraud. Across the country, Tea Partiers led massive efforts to purge voters and install voter identification laws often under the banner of preventing noncitizen voting.³⁹¹ What was fascinating is that although Tea Partiers styled themselves as a new grassroots movement,³⁹² their political genealogy was clear. Two of the major benefactors of the Tea Party movement

387. See, e.g., Faith E. Pinho & Brian Contreras, *Inauguration 2021*, L.A. TIMES (Jan. 20, 2021), <https://www.latimes.com/world-nation/story/2021-01-20/inauguration-2021-howard-university-celebrates-alumna-harris-becoming-vice-president> [<https://perma.cc/B76N-2LM9>]. After Harris' inauguration, Wayne Frederick, President of Howard University, Harris' alma mater, emphasized that "we would be remiss to overlook the significance of what Harris' inauguration represents." According to Frederick, "Harris' ascendance is a powerful symbol of the progress our country has made" and "a decisive testament to our country's values and its future trajectory."

388. Jeremy W. Peters, *The Tea Party Didn't Get What It Wanted, but It Did Unleash the Politics of Anger*, N.Y. TIMES (Aug. 30, 2019), <https://www.nytimes.com/2019/08/28/us/politics/tea-party-trump.html> [<https://perma.cc/24C4-H3RZ>].

389. *Id.*

390. Dana Milbank, *No One Said Freedom was Pretty*, WASH. POST (Nov. 6, 2009), https://www.washingtonpost.com/wpdyn/content/article/2009/11/05/AR2009110504566.html?nav=rss_opinion/columns [<https://perma.cc/8QY6-AJ4M>].

391. Stephanie Saul, *Looking, Very Closely, for Voter Fraud*, N.Y. TIMES (Sept. 16, 2012), <https://www.nytimes.com/2012/09/17/us/politics/groups-like-true-the-vote-are-looking-very-closely-for-voter-fraud.html> [<https://perma.cc/F4GB-UHAC>].

392. Peters, *supra* note 388.

were David and Charles Koch—the sons of Frederick Koch, a founder of the John Birch Society.³⁹³

Xenophobic conspiracy theories were on full display during the 2020 and 2021 elections. Redbaiters did not only smear the Biden-Harris ticket,³⁹⁴ but their tactics went well beyond Presidential politics. Raphael Warnock, the senior pastor of Ebenezer Baptist Church, Martin Luther King, Jr.'s home church, learned this firsthand during his Georgia senatorial race.³⁹⁵ Warnock's opponent, Kelly Loeffler, repeatedly rebaited Warnock, calling him part of a potential Marxist takeover of the federal government.³⁹⁶ This type of criticism was nothing new for ministers from Ebenezer Baptist Church. King's political opponents rebaited King too.³⁹⁷ Jon Ossoff, the Democratic candidate in Georgia's other U.S. Senate race, was rebaited as well,³⁹⁸ and he also endured anti-Semitism during his race. Ossoff's opponent, David Perdue, ran an advertisement which exaggerated the size of Ossoff's nose.³⁹⁹ The advertisement also featured Senate Minority Leader Charles Schumer, who is Jewish, and proclaimed, "Democrats are trying to buy Georgia!"⁴⁰⁰

White nationalist groups found new and greater prominence in presidential politics during the 2020 campaign,⁴⁰¹ and these xenophobic groups again seek to police the very lines of Americanness in familiar ways. The names of these groups

393. Frank James, *Tea Party Group Gets \$1 Million From Unnamed Source*, NPR, <https://www.npr.org/sections/itsallpolitics/2010/09/21/130025325/tea-party-gets-1-million-donation-from-unnamed-source> [<https://perma.cc/9E9W-546Y>] (explaining that the Koch brothers financially supported the movement).

394. Tal Axelrod, *Trump Knocks Idea of a "Female Socialist President,"* THE HILL (Oct. 24, 2020), <https://thehill.com/homenews/campaign/522563-trump-knocks-idea-of-a-female-socialist-president> [<https://perma.cc/KTC6-ZPSB>].

395. Cleve R. Wootson, *At Georgia Senate Debate, Warnock and Loeffler Argue over Coronavirus Relief, Police Funding*, WASH. POST (Dec. 6, 2020), <https://www.washingtonpost.com/politics/2020/12/06/georgia-senate-debate-live-updates> [<https://perma.cc/W3S7-Q35Z>].

396. *Id.*

397. See Paul Beck, *Welch Speaks Out*, L.A. TIMES, Mar. 9, 1965, at A1 (showing Robert Welch rebaiting King during the Selma campaign).

398. *Id.*

399. Felicia Somnez, *Democrat Jon Ossoff Denounces 'Anti-Semitic' Ad by Sen. David Perdue that Made His Nose Look Larger*, WASH. POST (July 28, 2020), https://www.washingtonpost.com/politics/democrat-jon-ossoff-denounces-anti-semitic-ad-by-sen-david-perdue-that-made-his-nose-look-larger/2020/07/27/93099ada-d068-11ea-8d32-1ebf4e9d8e0d_story.html [<https://perma.cc/63C3-WB6T>].

400. *Id.*

401. Meg Cunningham, *Extremist Group Relishes in Trump's Mention during Debate*, ABC NEWS (Sept. 30, 2020), <https://abcnews.go.com/Politics/extremist-group-relishes-trumps-mention-debate/story?id=73341826> [<https://perma.cc/AN76-C8Y5>].

are the strong indications: the Oath Keepers,⁴⁰² the Three Percenters,⁴⁰³ and the Patriot Front.⁴⁰⁴ During the “Stop the Steal” campaign, although many of these insurrectionists spewed white supremacist language, carried anti-Semitic and Confederate symbols, and sought to keep a white supremacist in office,⁴⁰⁵ they often did not self-identify as white supremacists in an attempt to make their cause appear more mainstream. Contemporary white supremacists have increasingly opted for a euphemism for white supremacy: white nationalism.⁴⁰⁶ This is old wine in new wine skins.

Even the presidential candidates’ responses to these groups offer a way to see historical continuities in white nationalist politics. Both Barry Goldwater and Donald Trump found support amongst xenophobic conspiracy theorists, and on the campaign trail, Goldwater and Trump were asked to denounce groups like the John Birch Society and the Proud Boys.⁴⁰⁷ Both men balked.⁴⁰⁸ Yet, what was perhaps more arresting than even their refusals to denounce white nationalist organizations at these key moments was how Goldwater and Trump actually

402. *Oath Keepers*, S. POVERTY L. CTR., <https://www.splcenter.org/fighting-hate/extremist-files/group/oath-keepers> [<https://perma.cc/P8SD-7GVW>] (last visited Aug. 4, 2021) (explaining that the organization is comprised of present and former law enforcement and military officers who believe their efforts are extensions of “the oaths they took on joining law enforcement or the military to ‘support and defend the Constitution of the United States against all enemies, foreign and domestic’”).

403. *Antigovernment Movement*, S. POVERTY L. CTR., <https://www.splcenter.org/fighting-hate/extremist-files/ideology/antigovernment> [<https://perma.cc/TN8Y-XZVZ>] (last visited Aug. 4, 2021) (explaining that the Three Percenters’ name derives from the “dubious historical claim that only 3 percent of American colonists fought against the British during the War of Independence”).

404. *Patriot Front*, S. POVERTY L. CTR., <https://www.splcenter.org/fighting-hate/extremist-files/group/patriot-front> [<https://perma.cc/D23C-M5JZ>] (last visited Aug. 4, 2021) (explaining that the organization formed after the “Unite the Right” rally in Charlottesville, Virginia, casts its politics as a resurrection of an “allegedly authentic American identity,” and calls for the creation of a white ethnostate).

405. Nicole Gaouette, *Terrifying Scope of Capitol Attack Becoming Clearer as Washington Locks Down for Biden’s Inauguration*, CNN (Jan. 16, 2021), <https://www.cnn.com/2021/01/16/politics/insurrection-investigation-washington-lockdown/index.html> [<https://perma.cc/28RC-W4GC>].

406. Jennifer Rubin, *Media Must Stop Quibbling about “White Supremacy” vs. “White Nationalism.”* WASH. POST. (Aug. 9, 2019), <https://www.washingtonpost.com/opinions/2019/08/09/media-must-stop-quibbling-about-white-racism-terms-they-dont-understand> [<https://perma.cc/WU5C-LJ8K>].

407. See *Scranton Vows Fight on Rights*, *supra* note 196, at 1 (reporting that Goldwater refused to condemn the John Birch Society); see also Maegen Vazquez & Paul LeBlanc, *Trump Refuses to Condemn White Supremacists at Presidential Debate*, CNN (Sept. 30, 2020), <https://www.cnn.com/2020/09/30/politics/proud-boys-trump-white-supremacists-debate/index.html> [<https://perma.cc/9PSS-B9FG>] [hereinafter *Trump Refuses to Condemn*] (reporting that Trump refused to condemn white supremacy groups for inciting violence).

408. *Scranton Vows Fight on Rights*, *supra* note 197, at 1; *Trump Refuses to Condemn*, *supra* note 407.

praised white nationalists in public—with *very similar* rhetoric.⁴⁰⁹ Both men credited white nationalist groups for having “fine people” in their ranks.⁴¹⁰

New media have also been instrumental to white nationalists’ misinformation campaigns, past and present. During the 1950s, newswires crisscrossed the world like never before, radio waves amplified, and television was indeed new technology. The Citizens’ Council seized this technological revolution, and in the process developed creative ways to amplify their messages and counter what they believed was a liberal media bias.⁴¹¹ During the white nationalist backlash to Obama, new media outlets, like the One America News Network, similarly sprouted and sought to counter the so-called liberal media bias.⁴¹² This network traffics in xenophobic conspiracy theories and routinely aired false claims around the 2020 Presidential election.⁴¹³ White nationalists have also taken keen advantage of this era’s newest media—the internet—to disseminate conspiracy theories. When social media platforms in particular began to regulate misinformation more stringently, white nationalism evolved. White nationalists, for instance, founded platforms like Gab and Parler as social media alternatives.⁴¹⁴ While these new platforms have served as havens for many forms of bigotry and conspiracy theories, founders and users alike—like white nationalists of the past—have often relied on a colorblind rationale for flocking to these newer platforms: protecting free speech.⁴¹⁵

There are strong historical parallels in the media personalities which often broadcast xenophobic conspiracy theories. Clarence Manion and John Eastman offer one prominent example. Both men taught constitutional law, served as law school deans, have styled themselves as conservative public intellectuals, and rely on new media technologies to propagate conspiracy theories.⁴¹⁶

409. See *Scranton Vows Fight on Rights*, *supra* note 197, at 1 (reporting that Goldwater said there were “many fine people” in the John Birch Society); see also Jane Coaston, *Trump’s New Defense of his Charlottesville Comments is Incredibly False*, VOX (Apr. 26, 2019), <https://www.vox.com/2019/4/26/18517980/trump-unite-the-right-racism-defense-charlottesville> [<https://perma.cc/LNQ6-VXS7>] (noting that Trump stated that there were “very fine people, on both sides” after the Unite the Right rally in Charlottesville).

410. *Id.*

411. *Councils Take Lead in TV-Radio*, *supra* note 118, at 1.

412. Jason Wilson, *OANN: What is the Alternative Far-Right Media Outlet Trump is Pushing?*, GUARDIAN (Nov. 16, 2020), <https://www.theguardian.com/us-news/2020/nov/16/oann-what-is-tv-network-trump-is-pushing> [<https://perma.cc/K6SA-ZTV9>].

413. Rachel Adams, *One America News Network Stays True to Trump*, N.Y. TIMES (Apr. 19, 2021), <https://www.nytimes.com/2021/04/18/business/media/oan-trump.html> [<https://perma.cc/M5SX-AS9J>].

414. Chloe Hadavas, *What’s the Deal with Twitter Competitor Parler?*, SLATE (July 3, 2020), <https://slate.com/technology/2020/07/parler-free-speech-twitter.html> [<https://perma.cc/EB7Y-FPDD>].

415. *Id.*

416. Michael T. Nietzel, *John Eastman Retires from Chapman University*, FORBES (Jan. 13, 2021), <https://www.forbes.com/sites/michaelt Nietzel/2021/01/13/john-eastman-retires-from-chapman-university/?sh=386f324d65e7> [<https://perma.cc/FBK4-H5R8>] (detailing Eastman’s background and his participation in the January 6, 2021 rally leading to the Capitol Insurrection); see also John Eastman, THEMENTORSRADIO.COM (n.d.), <https://thementorsradio.com/tag/john-eastman> [<https://perma.cc/39P5-938P>] (publishing Eastman’s radio broadcasts, streaming audio, and podcasts). More broadly, we might also consider continuities between those able to sell conspiracy theories—

The most recent and perhaps most troubling continuity is the fight over voting rights in state governments. The echoes of state sovereignty commissions ring loud in our present moment. In Georgia, for instance, the false, xenophobic conspiracy theory that Venezuelan affiliated voting machines rigged the election in favor of Biden became part of a major effort to change the state's voting laws.⁴¹⁷ Although there was no foreign election interference in Georgia, state legislators nonetheless successfully weaponized a xenophobic conspiracy theory as a voter suppression tactic.⁴¹⁸

In Arizona, state officials audited the 2020 Presidential election due to bizarre, xenophobic conspiracy theories. These officials alleged that Asian subversives had interfered with the 2020 voter ballots in Arizona and that these subversives left evidence of their tampering: bamboo in the counterfeited ballots.⁴¹⁹ One version of the bamboo ballot theory was that China had flown in 40,000 illegal ballots and stuffed Arizona's ballot boxes to help Biden win.⁴²⁰ Another version of this false theory was that these counterfeited ballots were flown from South Korea to Arizona.⁴²¹ After extensive testing to see whether the ballots were legitimate, the theory was determined to be meritless.⁴²² Nonetheless, it led to an unprecedented, very extensive and costly election audit, public confidence in our existing election infrastructure was damaged, and the legitimacy of the Biden Presidency tarnished. The fight over xenophobic conspiracy theories and voter suppression in Arizona is far from over. Although the audit did not lead to an overturn of the election, one of its ardent supporters, the Arizona Senate President, stated that the benefit is that it could lead to changes in law for future elections.⁴²³

In Florida, state lawmakers passed legislation with voting restrictions under the pretext of ensuring election security.⁴²⁴ State legislators pointed to the "Stop the Steal" campaign as justification for the legislation, and Governor Ron DeSantis, ostensibly in tribute to the former President, signed the legislation at a

businessmen from Robert Welch to My Pillow, Inc. CEO, Michael Lindell, and Donald Trump.

417. Zachary Wolf, *How Trump's Election Fraud Lie Turned into Law in Georgia*, CNN (Mar. 26, 2021), <https://www.cnn.com/2021/03/26/politics/trump-election-fraud-lie-georgia/index.html> [https://perma.cc/5HMK-BS96].

418. *Id.*

419. Sam Levine, *Arizona Republicans Hunt for Bamboo-Laced China Ballots in 2020 'Audit' Effort*, Guardian (May 6, 2021), <https://www.theguardian.com/us-news/2021/may/06/arizona-republicans-bamboo-ballots-audit-2020> [https://perma.cc/UB59-6F4H].

420. *Id.*

421. Jonathan Cooper & Bob Christie, *Inside Arizona's election audit, GOP fraud fantasies live on*, AP NEWS (July 7, 2021), <https://apnews.com/article/arizona-election-recount-b38a9205c306796f914d62bbad601587> [https://perma.cc/DR2K-VDX3].

422. *Id.*

423. *Id.*

424. Wendy Rhodes & Antonio Fins, *Gov. Ron DeSantis to Sign Controversial Voter Bill Thursday in West Palm Beach*, PALM BEACH POST (May 5, 2021), <https://www.palmbeachpost.com/story/news/politics/state/2021/05/05/desantis-expected-sign-bill-restricting-voting-west-palm-beach/4954451001> [https://perma.cc/MQ7E-Q63T].

pro-Trump fan organization.⁴²⁵ More remarkably, in states like Florida, the legislature passed these voting restrictions during the same session during which legislators passed laws preventing public schools from teaching about white supremacy but then requiring public schools to teach about the evils of communism and totalitarianism.⁴²⁶ State lawmakers are now suppressing the vote and targeting antiracist pedagogies often by invoking xenophobic conspiracy theories. For instance, Governor DeSantis' first example of the academic content now banned in Florida schools conjured up a xenophobic theme: that teachers were forcing students to learn about "Black communism."⁴²⁷ Like the period after *Brown*, the white nationalist political climate that produced a major assault on voting rights likewise produced a major assault on antiracist public education.

B. Racist Regress Can Be a Reality

Despite the powerful continuities in white supremacy, it is also crucial to highlight historical discontinuities—and especially those that disrupt the dominant race progress narrative. One might justifiably assert that there are expressions of white nationalism that are worse now than during the civil rights movement. Recent presidential politics offer examples. Most conspicuously, neither the Citizens' Council nor the John Birch Society, as despicable as they were, ever attempted to overturn a presidential election by assaulting the U.S. Capitol.⁴²⁸ Goldwater ran for president in 1964, and he lost by a landslide.⁴²⁹ Trump, on the other hand, was indisputably elected president in 2016 and garnered a whopping seventy-four million votes in his 2020 loss to Biden, the second largest vote total in presidential history after Biden.⁴³⁰ One way to understand this historical discontinuity is that a twenty-first century white nationalist is able to profit politically and to ramp up white electoral anger in ways that those decades ago could never do. This is racist regress.

425. *Id.*

426. Ann Ceballos, *Gov. Ron DeSantis Targets Critical Race Theory as Florida Examines Academic Standards*, TAMPA BAY TIMES (June 7, 2021), <https://www.tampabay.com/news/florida-politics/2021/06/07/gov-ron-desantis-targets-critical-race-theory-as-florida-examines-academic-standards> [<https://perma.cc/SLS3-QB34>].

427. Governor Ron DeSantis, *Governor DeSantis Emphasizes Importance of Keeping Critical Race Theory Out of Schools at State Board of Education Meeting* (June 10, 2021), <https://www.flgov.com/2021/06/10/governor-desantis-emphasizes-importance-of-keeping-critical-race-theory-out-of-schools-at-state-board-of-education-meeting> [<https://perma.cc/K6EB-AQNK>] (condemning a "Philadelphia elementary school [which] forced fifth-graders to celebrate 'Black communism'"). Many white supremacists wrongly describe antiracist teaching as "critical race theory." It must be emphasized critical race theory is generally not part of K-12 curricula, and the anti-"critical race theory" legislation often includes themes not related and even antagonistic to tenets of critical race theory.

428. *Historians on the Unprecedented Chaos in Congress*, *supra* note 383.

429. Michael LeMay, *THE AMERICAN POLITICAL PARTY SYSTEM: A REFERENCE HANDBOOK* 36 (2017) (noting that Goldwater won only 38.5% of the popular vote and 52 electoral votes).

430. Kate Sullivan & Jennifer Agiesta, *Biden's Popular Vote Margin over Trump Tops 7 Million*, CNN (Dec. 4, 2020), <https://www.cnn.com/2020/12/04/politics/biden-popular-vote-margin-7-million/index.html> [<https://perma.cc/ZCN2-WJMU>].

Recent developments in the other federal branches sadly challenge the notion of inevitable racial progress. During the civil rights movement, activists won voting rights legislation despite the widespread xenophobic attacks on the voting rights struggle. Although Congress, for example, passed the Civil Rights Act of 1957 despite Strom Thurmond's filibuster, today the filibuster has proven to be an unmovable barrier in the march for federal voting rights legislation.⁴³¹ Moreover, the Roberts Court is far from the Warren Court in the area of voting rights. In fact, in 2013, the Roberts Court's decision in *Shelby County v. Holder* invalidated the Voting Rights Act's coverage formula, the very same one the Warren Court upheld in *South Carolina v. Katzenbach*.⁴³² The Roberts Court's attack on voting rights continued in 2021. In *Brnovich v. Democratic National Committee*, the Court upheld two Arizona voting laws purportedly enacted to prevent voter fraud, but that have a disparate racial impact on voting opportunity.⁴³³ The Roberts Court ignored that state lawmakers relied on a false, conspiracy theory centered on "illegal alien" voting to propel the legislation forward.⁴³⁴ Contemporary voting rights activists cannot expect to receive justice through Congress or the Court in the ways they did a half century ago.

Finally, recent developments in technology suggest that ending the spread of xenophobic conspiracy theories, and more broadly, white nationalism will not be easy. While the civil rights movement saw its own technological revolution, the internet now offers white nationalists unprecedented platforms. White nationalists have matchless opportunities to produce their own content, win recruits, and spread conspiracy theories and other forms of misinformation—all of which can occur in ways that can protect their anonymity.

White nationalism is thriving in twenty-first century America. This is a proposition that many might have never expected, especially for those who believe in the idea of linear racial progress over time. Given how polarized

431. Jason Lemon, *Schumer Calls out Manchin, Sinema over Filibuster, Voting Rights*, NEWSWEEK (July 22, 2021), <https://www.newsweek.com/schumer-calls-out-manchin-sinema-over-filibuster-voting-rights-get-this-done-1612278> [<https://perma.cc/D9XA-NWH2>].

432. 570 U.S. 529, 554 (2013).

433. 141 S. Ct. 2321, 2330 (2021) (declaring that the laws did not violate Section 2 of the Voting Rights Act because they were neutral voting laws allowing Arizona to regulate the time, place, and manner of voting pursuant to its constitutional authority).

434. State Senator Don Shooter and Maricopa County Republican Chair A.J. LaFaro led the voting rights assault in Arizona by stoking fears of noncitizen voting fraud. See Mark Brnovich, Attorney General of Arizona, et al., Petitioners, v. Democratic National Committee, et al., Respondents, Arizona Republican Party, et al., Petitioners, v. Democratic National Committee, et al., Respondents., 2021 WL 242302 (U.S.), 12–13. The brief states:

Legislative debates on the bill were contentious. . . . Supporters [of Shooters' bill] repeated the same baseless claims originally propagated by Senator Shooter and pointed to "a racially charged video created by Maricopa County Republican Chair A.J. LaFaro." The "LaFaro" video showed surveillance footage of a Hispanic man delivering a stack of completed ballots to election officials. Accompanying commentary from LaFaro included "statements that the man was acting to stuff the ballot box; that LaFaro did not know if the person was an illegal alien, a dreamer, or citizen, but knew that he was a thug; The video featured prominently in legislative debates, at Republican district meetings, and in a television advertisement for a successful 2014 Arizona Secretary of State campaign.

America is and the utter ubiquity of domestic misinformation, one might easily worry about continued backsliding. Racial progress is never promised.

V

CONCLUSION

The country needs a full reckoning not merely of January 6, but also of how the country got to such a state that millions of Americans falsely believed Venezuelan voting machines helped a U.S. presidential candidate steal the election. Our democracy did not get to this dangerous point overnight. It is past time for Americans, across the ideological spectrum, to tell the truth about the centrality of white nationalism in U.S. politics and indeed of all of American life. We will not be able to build the democracy we need if we cannot be honest about the one we have.