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# Policy Analysis: Black Voter Turnout after Shelby v. Holder

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## ABSTRACT

In the United States, state governments have targeted Black voters through a combination of disenfranchising policies. The Voting Rights Act (VRA) was passed in 1965 to remedy this discrimination and ensure equal voting access. Though it was successful at increasing minority voter turnout, the Supreme Court's *Shelby v. Holder* (2013) decision struck down what was arguably the most crucial aspect of the VRA—Section 5. Section 5 of the VRA provided the Justice Department with a formula comprised of states with histories of disenfranchisement, requiring them to receive preclearance from the federal government before pursuing new voting reforms. We look at Black voter turnout between 2008-2018 in states formerly under Section 5—Alabama, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas, and Virginia—to analyze how voting legislation post-*Shelby v. Holder* (2013) has affected Black voter trends. As our findings yield a decrease in Black voter turnout post-*Shelby v. Holder* (2013), we set effectiveness, equity, and political viability as three evaluation criteria to guide our suggestions for policy alternatives to increase voter turnout. In alignment with these criteria, we propose three recommendations for alternatives: Status Quo (existing laws), Modifying the VRA, and Federalizing the US Election Administration System. Based on an analysis of our recommended policy alternatives with the corresponding evaluation criteria, we conclude that 'Modifying the Voting Rights Act', best fulfills our outlined standards.

## EVALUATION CRITERIA FOR ALTERNATIVES

- Equity:** Vertical & Transitional Equity
  - Vertical Equity:* raises questions of the distribution of goods and services to those in unequal circumstances
  - Transitional Equity:* places additional focus to issues of different or unfair situations for specific individuals created by newly-enacted policies
- Political Viability:** Acceptability, Appropriateness, & Responsiveness
  - Acceptability:** alternative is acceptable to stakeholders of the policy process and gauges their receptiveness to new policies
  - Appropriateness:** alternative objectives align with the values of our community and society
  - Responsiveness:** whether our proposed policy alternatives will meet the needs and wants of our target population
- Effectiveness:** Alternatives that are successful in accomplishing the direct goals they were instituted to achieve

# Black voter turnout decreased post-*Shelby v. Holder* (2013) in states formerly subject to preclearance under Section 5 of the Voting Rights Act.

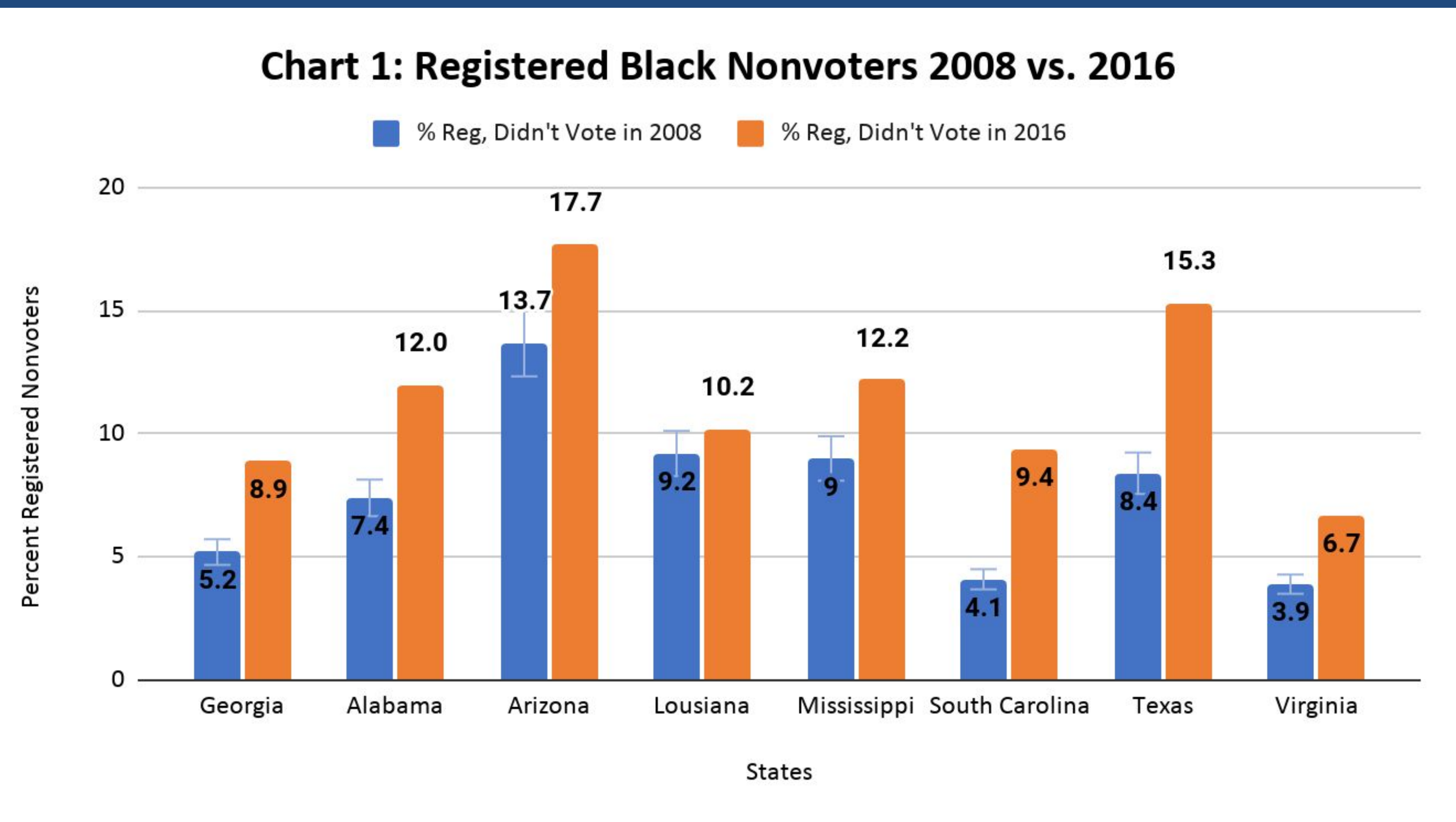
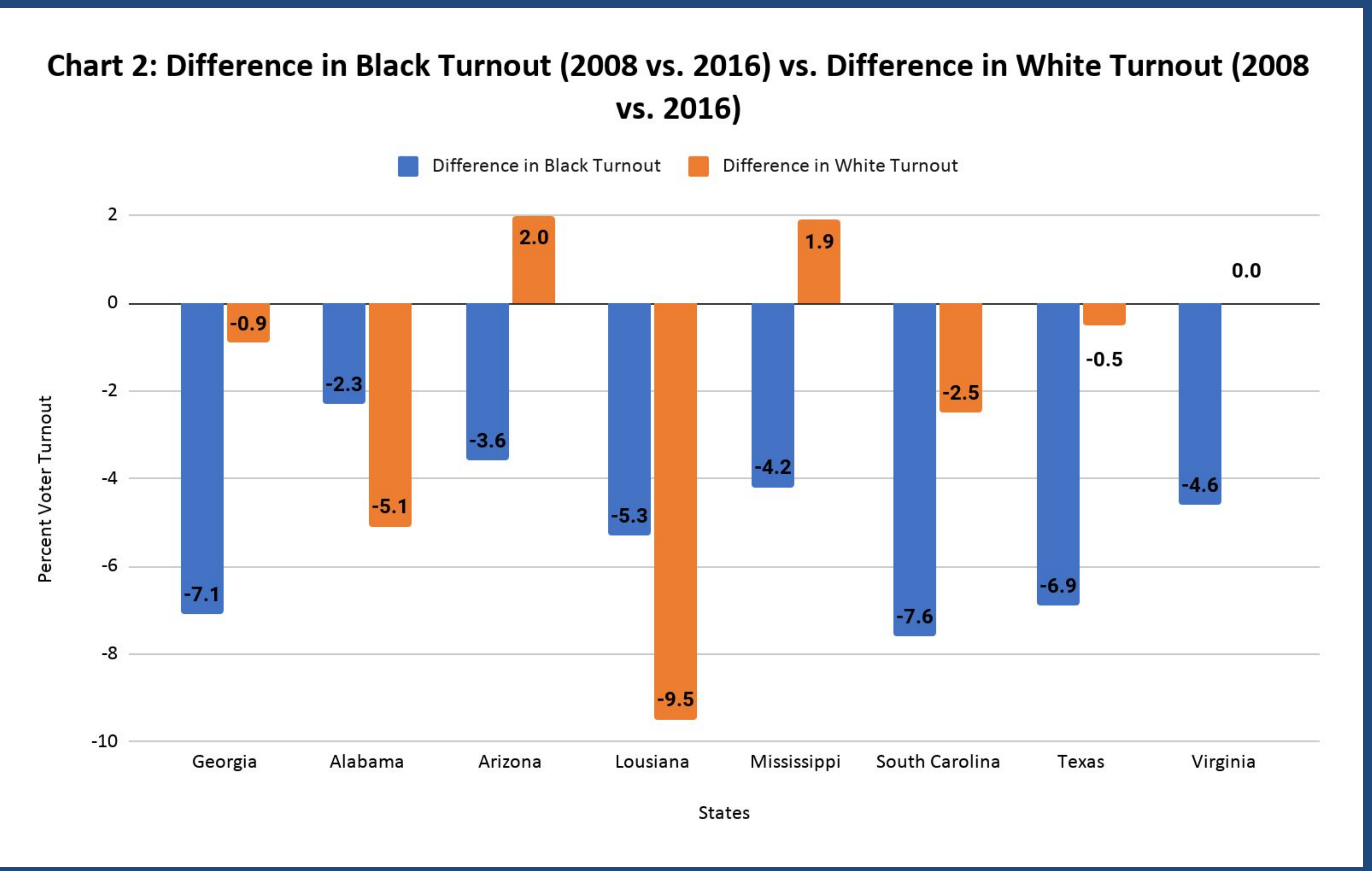


Chart 1 shows data gathered from the Current Population Survey in 2008 and 2016 regarding the percentage of registered Black nonvoters. The increasing margin of Black people registered but not casting a ballot between 2008 and 2016, causes us to suggest that the current status quo has a low effectiveness.

Chart 2 shows the difference in the percent voter turnout for both Black and white communities. Every state shows a decrease in Black voter turnout between these years, after *Shelby v. Holder* passed in 2013.



## CHOSEN POLICY ALTERNATIVE

**Policy Alternative: Modifying the Voting Rights Act**  
 The Voting Rights Act (VRA) of 1965 “codifies and effectuates the 15th Amendment’s permanent guarantee that, throughout the nation, no person shall be denied the right to vote on account of race or color” (Justice, n.d., para. 1, as cited in Blessett, 2015, p. 18). As a body of legislation incited by the Civil Rights Movement, the VRA was part of the United States federal government's initiative to "eliminate the purposeful discrimination and intimidation tactics used by state officials to disenfranchise Blacks from the right to participate in elections” (Blessett, 2015, p. 18). Section 5 of the Act imposed restrictions on state governments, requiring that those known for complicating the voting process for Blacks had to receive federal preclearance from the U.S Department of Justice or the U.S District Court before being permitted to make changes to voting procedures (Gamkhar & Pickerill, 2012). However, the Supreme Court’s decision in *Shelby v. Holder* (2013) deemed this Section unconstitutional, allowing states to once more dictate and change electoral procedures without the need for federal approval (Blessett, 2015).

The removal of a preclearance requirement severely limited the power of the VRA, as it limited federal oversight and restricted the federal government’s ability to protect the Black community from disenfranchised state legislation. With the imposed limitations of *Shelby v. Holder* (2013), “litigation against state and local election laws [must now] be brought under section 2 of the VRA,” which simply prohibits discriminatory voting procedures without dictating how this prohibition is implemented (Miller et al., 2019, p. 476). As such, a policy alternative we propose for increasing Black voter turnout is the reinstatement of a section within the Voting Rights Act to effectuate federal preclearance over state voting procedures. This reinstatement of Section 5 would include a new, preclearance formula with a slight modification from the original—all states would now be required to go through federal preclearance before making changes to voting procedures, and any policies enacted after *Shelby v. Holder* (2013) would be reassessed under the federal preclearance requirement.

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