BLACK VOTES MATTER

FROM SELMA TO SHELBY

Robin Stafleu
S4659961
Master's Thesis
Professor Marr
03-07-2020

ENGELSE TAAL EN CULTUUR

Teacher who will receive this document: Prof. Marr

Title of document: Stafleu_Marr_Thesis

Name of course: MA Thesis: Colloquium and Workshop

Date of submission: 03-07-2020

The work submitted here is the sole responsibility of the undersigned, who has neither committed plagiarism nor colluded in its production.

Signed

Name of student: Robin Stafleu

Student number: s4659961

Abstract

Throughout the history of the United States the authority over a state's electoral process has shifted four times from a state itself to the government and back. Although a state has the constitutional right to oversee its own elections, the federal government has had the power to oversee a state's elections twice in order to ensure the right of the 15th Amendment and to safeguard the democratic concepts of one person, one vote and citizen equality. This thesis argues that these four shifts can be divided into cycles, each containing two stages, one in which the state has the authority, and one in which the federal governments oversees a state's electoral process. These cycles are analyzed in order to answer the question if a pattern exists regarding the dis- and re-enfranchisement of African Americans, depending on who is in charge of the elector process, and focuses on southern, former Confederate states. Cycle one covers slavery up to the Compromise of 1877. Cycle two covers the Jim Crow era and the Voting Rights Act of 1965 up to 2013. Cycle three started with *Shelby County v. Holder*, which gave states their constitutional authority back in 2013 and is ongoing. By discussing the concepts of federalism, state sovereignty and equality, and the influence of the Supreme Court, it is concluded that the vote of African Americans has been and is being suppressed and diluted in predominantly southern, former Confederate states when the state oversees the electoral process, which in turn warrants federal intervention. This is especially the case in this thesis' case study of Alabama, that currently has in place voter ID laws, a current-day poll tax and disenfranchises African Americans through disproportionate incarceration. Additionally, it is concluded that the Supreme Court holds great power in determining the scope of the federal government and that its rulings influence one's access to the ballot.

Keywords: African American voter suppression, federalism, voting rights, state rights, Alabama, Voting Rights Act of 1965, *Shelby County v. Holder*

Acknowledgements

I would like to thank my supervisor, Professor Tim Marr for his invaluable suggestions and help in creating this thesis. Although we were mostly restricted to online Zoom sessions, I greatly enjoyed them and found them to be both informative and inspiring. I greatly appreciate you making the time for me throughout this semester and, when it is possible again, would like to go for a cup of coffee either here or in Chapel Hill to look back on this project. I am also thankful towards my family and friends for their continued support and enthusiasm. I would also like to thank Loïs Machelessen for her inexhaustible moral support and distractions that were necessary to clear my mind. It made this all much easier.

Table of Content

Introduction 1

Literature review and Methodology 12

Chapter 1 – Cycle One From Social Death to the Reconstruction Amendments 15

Chapter 2 – Cycle Two From Jim Crow Laws to the Voting Rights Act of 1965 18

Chapter 3 – The Start of Cycle Three with *Shelby County v. Holder* 25

Chapter 4 – Perpetual Voter Suppression in Alabama 35

Stage 2 of Cycle Two – Federal intervention in Alabama through the Voting Rights Act 35

Stage 1 of Cycle Three – Alabama in Charge After *Shelby* 44

Stage 2 of Cycle Three – Voting Rights Advancement Act 53

Conclusion 57

Work Cited 60

Literature 60

Court Cases 70

Introduction

May of 2020 ended in a tumultuous manner. The death of George Floyd has had intense and potentially far-reaching consequences. Floyd died at the hands of Minneapolis police officer Derek Chauvin after Chauvin held his knee on Floyd's neck for 8 minutes. This has resulted in mass protests that exceeded the national border. Indeed, in for example Europe, Australia and Mexico people have gone to the streets to protests police brutality against racial minorities and racial inequality in general. In each of the 50 states there have been protests and in at least 25 the National Guard has been deployed in response to the civil unrest. Although most protests are peaceful, some have included looting and skirmishes with the police. Numerous people have been killed or injured during the protests as a result of teargas or rubber bullets. The death of George Floyd was not a unique event, but a characteristic of a society that is racist and unequal in numerous ways. As much as 69 percent of Americans belief that Floyd's death is indeed part of a bigger problem (Tamkin par. 3). Research shows that there is inequality between African Americans and white people regarding educational access, economic chances and mobility, healthcare insurance, life expectancy, and incarceration (Alexander 2012; Iceland 2014; Edmond 2020; Horowitz 2019; Luhby 2020). Conventionally, the president of the United States would take the mantel of a unifier during mass protests and frame the problem as an American problem, rather than intensifying polarization between both racial and political groups. President Johnson is a prime example of this. In the 1960s, a decade of civil rights and unrest, he played a big part in the progress of civil rights, including the right to vote. President Trump, however, threatened to send in the military in order to restore the status quo from before Floyd's death, engaged in conspiracy theories regarding Black Lives Matter protestors (Bump 2020), and blamed those who protest inequality rather than addressing the inequality. Speaker Pelosi stated that "[w]e would hope that the president of the United States would follow the lead of so many other presidents and be a healer in chief and not a fanner of the flame" (Qtd. in Edmondson par. 1). This all combined with the pandemic Covid-19 results in an America that is in uproar.

The current system in place and how certain aspects of society are arranged can be changed in more than one way. A peaceful protest is a good way to display one's dissatisfaction, another is to cast a ballot. The party that is in charge can establish new litigation and has the power to change the system. If one is not satisfied with the actions or inactions of those in power one should vote to change the leadership. Numerous politicians have stressed the paramount importance of voting to changing the system and existing leadership of the United States of America. Indeed, "activists, celebrities and elected officials nationwide have taken up a familiar

call to action in the wake of George Floyd's death while in the custody of Minneapolis police: vote" (Litt par. 1). The uncomfortable truth, however, is that African Americans' access to the ballot is also not equal to that of other people.

Democracy is arguably the most quintessential characteristic of American society. At its core then, is the right to vote. The Constitution and state laws establish one's eligibility to vote, and the legal franchise has been expanded numerous times throughout history. It is argued that "polities must establish voting rules and procedures that weigh the benefits of making the ballot box as open as possible to all eligible voters against the possibility that lenient procedures might allow eligible people to cast more than one ballot or for ineligible people to vote" (Heller, Miller and Stephenson 147). Throughout its history, the United States of America has adopted many laws and procedures regarding the electoral process. The 15th and 19th Amendments are most important here, granting the right to vote to African Americans and women respectively. However, there have also been a plethora of local laws or attempts that infringed on citizen's right to vote or made the process to cast a vote considerably harder. This predominantly occurred on the state level and varied between states, since the electoral process is constitutionally a state affair. Although the Voting Rights Act of 1965 secured the right to vote by eliminating disenfranchise measures adopted by states and would serve as a watchful guardian over new legislation, today there are still many restrictions that are imposed on Americans and African Americans in particular. This is due in part to the fact that the ruling in *Shelby County v. Holder* deemed the Voting Rights Act of 1965 in part unconstitutional in 2013. This resulted in the federal government losing its ability to conduct proper oversight of new electoral laws that states desired to adopt.

Although the instances are rather scarce, winning an election can be a manner of a difference of only a few votes, sometimes only a couple of hundred or thousand. The prime example of this is the Presidential election of 2000 between George W. Bush Jr. and Al Gore. A point of discussion and controversy here was the use of a butterfly ballot. This entails a ballot which has names on both sides and the punch hole centered, and has been compared to a maze. Wand et al. (2001) have shown that "more than 2,000 Democratic voters to vote by mistake for Reform candidate Pat Buchanan, a number larger than George W. Bush's certified margin of victory in Florida" (793). Ultimately, the Florida recount was settled with a difference of just 537 votes. The butterfly ballot shows then that a ballot that is not crystal clear can result in a different outcome. The "very close election taught political operatives that the rules of the game matter, and in the post-2000 period we have seen a rise in new election legislation as well as litigation" (Hasen in Norris et. al 31). In general, it is important to secure everyone's right to

vote and to have a proper electoral process, not only because voting is a core constitutional right, but also because just a few votes can change the outcome of an election. In the United States, however, the electoral process is differentiated amongst the states and is not always properly or equally regulated. Indeed, as Norris, Cameron and Wynter, authors of *Electoral Integrity in America* (2018), state: "the contemporary era has raised a series of red flags about the integrity of American elections. Problems include plummeting public trust, exacerbated by Republican claims of widespread electoral fraud. Confidence in the impartiality and reliability of the news media has eroded. And Russian meddling has astutely exploited both these vulnerabilities, through breaches of cybersecurity in state election records and misinformation campaigns online" (3). The electoral process is thus not held in high regard and vulnerable to both domestic opposition and foreign intervention.

Tactics to disenfranchise people have changed considerably throughout history, mostly due to the implementation of the Voting Rights Act of 1965. In the early years of the United States of America African Americans were disenfranchised through slavery. When slavery was abolished African Americans were racially discriminated against through Jim Crow laws, such as poll taxes and literacy tests. The VRA remedied this greatly, but *Shelby* was a step backwards. Today, the most prominent tactics or adopted measures to disenfranchise segments of voters include voter identification laws, gerrymandering, disproportionate incarceration, and purging voter rolls.

One vital law that has been increasingly frequently adopted in more recent times is the voter ID law. Voter ID laws tend to have a negative effect on the voting capability of African Americans, since they disproportionately lack proper identification. Under the VRA this type of law has not been approved, but post-*Shelby* there has been an increase in the number of voter ID laws. The Brennan Center for Justice has conducted research regarding voter restrictions and the results were telling. After 2010 increasingly more voting restriction measures surfaced. As can be read in its report

> 15 states have more restrictive voter ID laws in place (including six states with strict photo ID requirements), 12 have laws making it harder for citizens to register (and stay registered), ten made it more difficult to vote early or absentee, and three took action to make it harder to restore voting rights for people with past criminal convictions [and] in 2016, 14 states had new voting restrictions in place for the first time in a presidential election. Those 14 states were: Alabama, Arizona, Indiana, Kansas, Mississippi, Nebraska, New Hampshire, Ohio, Rhode Island, South Carolina, Tennessee, Texas, Virginia, and Wisconsin (New Voting Restrictions 1).

Similar research found that since 2000 “many states have enacted more stringent voter identification (ID) requirements, including several states which require government-issued photo IDs to cast a ballot” (Heller, Miller, and Stephenson 147). Voter ID laws, however, are not nationally organized, but vary considerably among states (Bergman, Tran, and Yates 102). In general, there are two types of voter ID laws, strict and non-strict. Strict ID laws require voters that lack required identification to take extra steps that take place outside of the polling place prior to them voting. They are then allowed to cast a provisional ballot, which is not counted unless the voter brings a valid form of identification within 24 hours to the voting office. Non-strict ID laws require voters that lack sufficient identification to sign an affidavit, thereby swearing that they are who they say they are, after which they can cast their ballot (Heller Miller and Stephenson 2019).

There has been a lot of controversy regarding voter ID laws, among politicians but also among scholars. Bergman, Tran and Yates (2018), authors of the chapter on Voter Identification in *Electoral Integrity in America: Securing Democracy*, note that there lacks proper data on the effect of voter ID laws (102). Yet, this type of law can have a serious effect on the outcome of an elections. Their study concluded with the fact that voter ID laws significantly influences the vote in favor of the GOP, increasing its support by 1.8% and decreasing support for the Democrats by 0.7% in the 2016 presidential election (102). As the presidential election of 2000 showed, few votes can change the outcome and a 1.8% increase is thus massively important for the final result.

A tactic that may have severe consequences regarding voter dilution is gerrymandering. Voter dilution differs from voter suppression in the sense that access to the ballot is not hindered, but that the vote does not carry the weight it should. Gerrymandering entails redistricting in such a manner that a political party obtains an advantage. Two types of gerrymandering exist, cracking and packing. Cracking concerns diluting voter power by placing the opposing party’s supporters across many districts. Packings concerns the opposite, placing the opposing party’s supporters in one district to diminish their voting power in other districts. Historically redistricting has been a state issue, but the Supreme Court has intervened more than once. Regarding redistricting on the basis of race *Thornburg v. Gingles*, 478 U.S. 30 (1986), *Shaw v. Reno*, 509 U.S. 630 (1993), *Miller v. Johnson*, 515 U.S. 900 (1995), *Bush v. Vera*, 517 U.S. 952 (1996), *Alabama Legislative Black Caucus v. Alabama*, 135 S. Ct. 1257 (2015), and *Cooper v. Harris,* 581 U.S (2017). A detailed description of all these cases exceeds the scope of this thesis, but they all touch upon racial gerrymandering and hold that districts drawn on the basis of race are not allowed and that a racial group must be sufficiently present to form a

majority in a single-member districts. It is noted that “under the Court’s current precedents, a court is much more likely to invalidate a redistricting map if it concludes it is motivated by racial considerations rather than by political considerations. This asymmetry gives map-drawers an incentive to claim that they were motivated by the latter” (Marshall Manheim and Porter 245). African Americans are in general more inclined to vote Democrat. A study by Pew Research Center noted that 84% of African American lean Democratic, while only 8% lean Republican (Wide Gender Gap par. 3). A political-motivated drawn map is thus likely to disenfranchise African Americans. One of the reasons why the election of 2020 is especially important at the state level is because reapportioning takes place every ten years. Many Republicans now hold office and since they are in charge of the redrawing of districts, African Americans may be negatively affected.

Voter restrictions or voter dilution are two ways that affect African Americans in their electoral participation. Their right to vote being taken away is another. In total there are 21 states in which felons lose their right to vote while being incarcerated, and for a certain period after being incarcerated. Most of the times the right to vote is being reinstated automatically after such a period, but it does occur as well that any outstanding fines or fees must be paid first. In 11 states it is the case that felons lose their voting rights indefinitely for some crimes. Only in Maine and Vermont felons never lose their voting rights. Mauer (2000) was relatively early in discussing the problem of voting disenfranchisement regarding felons or ex-felons. Although laws that disenfranchise felons or ex-felons are not new, they have existed since the onset of the United States, their impact has never been greater. Mauer notes that “since the early 1970s the number of inmates in state and federal prisons has grown from 200,000 to 1.2 million, the number of persons on probation (about half of whom are felons) from 900,000 to 3.4 million, and the number on parole from 150,000 to 700,000. All these figures are record highs and thus result in record numbers of disenfranchised persons” (249). Between 2000 and today, these staggering numbers have only increased. Notably, African Americans are disproportionately incarcerated and, as a result, hurt the most by such laws. In 2000, as “a consequence of disproportionate representation in the criminal justice system, an estimated 13 percent of adult black males cannot vote because of a current or prior felony conviction” (Mauer 249). In 2018 African Americans constituted 33% of the prison population, while only constituting for 12% of the general population. In absolute numbers, 465,200 African Americans were incarcerated in 2018 (Gramlich 2020) and, depending on their state, may have lost their right to vote or must meet certain criteria before regaining their right to vote. An example of this is paying all the legal financial obligations.

A well-known and more recent work on this issue is *The New Jim Crow* by Michelle Alexander. She argues that the War on Drugs of the 1980s under both Reagan Administrations predominantly targeted African American people, who were incarcerated and, in some instances, lost their constitutional right to vote, depending on in which state they resided. Today, this trend can still be seen widely across the United States. Mass incarceration "emerged as a stunningly comprehensive and well-designed system of racialized social control that functions in a manner strikingly similar to Jim Crow," (Alexander 2012) effectively disenfranchising hundreds of thousands of people, of which the majority is African American. In 2016, The Sentencing Project produced a report called "6 Million Lost Voters – State-Level Estimates of Felony Disenfranchisement" that clearly indicated that the number of people that are disenfranchised as a result of incarceration has significantly risen, and continues to rise. It found that "over 7.4 percent of the adult African American population is disenfranchised compared to 1.8 percent of the non-African American population" (Uggen et al. 3). The African American population is thus disproportionately disenfranchised by the criminal justice system.

Voters are also purged from the roll. There are numerous legitimate reasons for this to occur. One can think of a person dying of moving from one state to another. However, illegitimate purging, meaning purging eligible voters, occurs as well. *Husted v. A. Philip Randolph Institute* is an important Supreme Court ruling regarding this matter. In short, Ohio is permitted to purge voters from the rolls, if the voter has not voted for six years and if they fail to return a postcard which is send to the address that is in the system. This course of action may result in the "needless and routine purging" of a large number of eligible and registered voters (Marshall Manheim and Porter 213-214). Theoretically, "the case represents a culmination of two mutually reinforcing trends: the Supreme Court's deepening ambivalence in matters of voting rights, and a successful propaganda campaign […] to persuade legislators and the public that rampant voter fraud demands suppressive voting restrictions" (Marshall Manheim and Porter 214-215). Now with a Supreme Court precedent, jurisdictions can more easily adopt bureaucratic measures that make it more troublesome to cast a ballot. Ohio has not been exception. Morris et al. (2018) found that

> since 2013, Florida, New York, North Carolina, and Virginia have conducted illegal purges. Moreover, Brennan Center research has uncovered that four states (Alabama, Arizona, Indiana, and Maine) have written policies that by their terms violate the National Voter Registration Act and provide for illegal purges. Alabama, Indiana, and Maine have policies for using data from a database called the Interstate Voter Registration Crosscheck Program (Crosscheck) to immediately purge voters without

> providing the notice and waiting period required by federal law. Arizona regulations permit Crosscheck purges during the 90 days prior to an election, a period during which federal law prohibits large-scale purges. These eight states are home to more than a quarter of registered voters across the nation (1-2).

Voter purging then has become an increasingly more popular way to withhold people from voting. A study by the Brennan Center for Justice reveals that between 2016 and 2018 in total 17 million American voters were purged from the rolls, with racial minorities hit hardest (Morris 2019). This occurred predominantly in counties with a higher record of voter discrimination. Indeed, "prior to *Shelby*, jurisdictions covered under Section 5 of the Voting Rights Act collectively had purge rates right in line with the rest of the country. A major finding in last year's report was that jurisdictions that used to have federal oversight over their election practices began to purge more voters after they no longer had to pre-clear proposed election changes" (Morris 2019). The study by the Brennan Center for Justice did not specify what percentage of minorities were purged. However, it did establish that jurisdictions that were previously covered by preclearance under the VRA had a higher purge rate that those that were not. Those that were subject to preclearance had in general large African American communities that were disenfranchised. Although it must be done carefully, one could assume then that African Americans were disproportionately affected by purging methods in the jurisdictions previously covered by preclearance.

The current pandemic has massive effects on American society. The most obvious ones are the health care issues and the economic consequences. But it also affects voting. Numerous primaries were postponed, for example, and the manner in which people could cast their ballot was altered as well. An intriguing case study regarding this is the election in Wisconsin of April 2020. Executive director of the Milwaukee Election Commission Neil Albrecht stated that "a lot of people suffered because of the government's lack of responsiveness. What I mean is, they lost their right to vote" (Qtd. in Bazelon par. 13). The issue was the provision of absentee ballots, a term that is synonymous to voting by mail. Due to the pandemic, voting in person was not as straightforward as it used to be. There was thus need of a safe alternative, which is an absentee ballot. The demand for these spiked enormously and the government of Wisconsin was unable to cope with the demand. On top of that, many residents struggled with requesting one due to the technological aspects of such a request. The division of a Democratic governor and Republican Congress did not come to a consensus about what to do with the election and how to arrange a proper election. The governor wished to postpone the election so as many people as possible could cast a ballot. The Republican Congress did not for an increased number

of votes might result in their loss, despite a republican gerrymandered map (Bazelon 2020). The Supreme Court did not allow the election to be postponed and furthermore reversed the decision to extend the deadline to hand in absentee ballots. The choice for many voters was thus to face the risks of the pandemic at the polling stations or to not vote. Although the liberal candidates won in three judicial elections, the situation of Wisconsin's voting process may be a gruesome indicator for the presidential election come November.

A joint publication between the Center for American Progress and the NAACP found that African Americans are disproportionately disadvantaged by voting by mail. The reason is two-fold. First, they are more likely to have changed their address. Second, they traditionally rely on in-person voting (Root et al. 2020). Data shows that African Americans have the lowest number regarding voting by mail in 2018 with just 11% (Voting and Registration table 14). In general, there is a lot of skepticism around voting by mail, with people wondering if the votes will be counted. Additionally, as Sabrina Stevens, a campaign director for Color of Change PAC, notes: "there's a very deep emotional connection to casting a ballot in person, to really be able to see and hold that receipt that your ballot was cast" (Qtd. in Bowman 2020). This is the case with traditional absentee balloting. With the pandemic today, properly regulated voting system is thus vital for all voters, including African Americans. The president, however, has expressed his concern with voting by mail repeatedly. In recent time president Trump has been "turning a process designed to safeguard voters' health and ballot access into a political wedge, arguing falsely that it will lead to widespread voter fraud and creating fear among election experts that the President is undermining the legitimacy of the contest" (Villa 2020). These claims are unsubstantiated and odd, since Republicans "historically have done fine if not better in heavy-mail scenarios" (Steel in Villa 2020). It is unclear why President Trump takes this stance, as is the effect of a proper vote-by-mail system on African American participation (Villa 2020).

An additional example is the state primary in Georgia of 2020. Due to the pandemic fewer polling places were open and staff was reduced. This disproportionately hit neighborhoods with higher numbers of African Americans. There were also numerous problems with the voting machines, and many complained that their absentee ballot did not arrive, and they still had to physically vote. In some places, voters had to stand in line for 5 hours before they could cast their ballot. The primary election was overwhelmed by a "full-scale meltdown" (Fausset, Epstein and Rojas par. 1). Chaotic elections such as in Wisconsin and Georgia must be avoided this November.

The mentioned adopted measures concerning the electoral process come across as specifically designed to suppress minorities and are morally unjust. A question that arises then is how it is possible that such measures exists? It is stated that "as *Husted* confirms, there have been, and likely will continue to be, at least five Justices on the Court with records suggesting, on the one hand, resistance to more assertive forms of judicial review over election administration and, on the other, relative indifference to the threat of voter suppression (Marshall Manheim and Porter 254). *Husted* happened in 2018. An earlier, perhaps even more vital example of judicial negligence concerning the electoral process occurred in *Shelby County v. Holder* 570 US 529, a landmark case that was ruled in 2013. Later chapters will discuss this in more detail, but in short, *Shelby* ruled section 4 of the Voting Rights Act of 1965 unconstitutional. Section 4 entails a coverage formula, under which certain states and counties need pre-clearance, which is Section 5, in order to alter their electoral process. For the majority opinion Chief Justice John Roberts argued that the coverage formula was no longer "grounded in current conditions" for the "country has changed". Post-2013 then, the states and counties that used to need pre-clearance could now implement legislation far more quickly, as well as legislation now could be passed that would have previously not have been granted federal approval. This explains why there are laws in place that are discriminatory in effect towards African Americans. So, whereas *Husted* concerned a piece of legislation in only Ohio, *Shelby* "has opened the floodgates to a wild west in the arena of election law and election administration, and political and legal observers hang on every word of the Supreme Court's latest decision because it remains unclear what the political parties can and cannot do to gain an electoral advantage" (McKee 312). Rather than preventing laws that are unjust through the Voting Rights Act, there has now been a shift to reacting to unjust laws and predominantly Republican initiatives. Consequently, minorities may be discriminated against under legislation that would not have seen the light of day under the Voting Rights Act. The course of action now to combat this type of legislation is through litigation, which shifts the burden of proof to the citizen.

The statistics are telling. Many states with Republican legislatures have adopted restrictive voting laws. Judicially, the legality of such laws is often determined among partisan lines. Data shows that "the pace of litigation [regarding restrictive voting laws] has remained at more than double the pre-2000 rate, and litigation in the 2016 election period is up 23 percent compared to the 2012 election period" (Hasen in Norris 30). The post-*Shelby* elections are thus filled to a much higher extent with restrictive laws than pre-*Shelby* elections. Interestingly,

when a state can act on its sovereignty and alter its electoral process at will, the number of discriminatory laws under a Republican majority rises.

The Supreme Court argued in *Shelby* that the coverage formula of the Voting Rights Act was unconstitutional for it infringed on a state's sovereignty and equality amongst states. Furthermore, it was opined that the burdens that justified the needs of the 1960s are no longer relevant. These burdens entailed voting disenfranchisement laws that severely targeted African Americans, the needs were then a coverage formula which targeted states with a discriminatory past and a preclearance statute that stated that jurisdictions subject to the coverage formula needed federal approval in order to alter their electoral process. But 50 years after the VRA was installed, it was ruled that this was no longer justifiable. Later chapters will elaborate extensively on these intricacies, the argumentation, and its effects.

Constitutionally, a state has full authority over its own electoral process. Yet, throughout the United States' history the authority over a state's electoral process has shifted from a state itself to the federal government. This shift from a state being in charge to the federal government overseeing the electoral process or vice versa has happened four times. This thesis will divide these shifts into three cycles, each containing two stages, one in which the state has the authority, and one in which the federal government infringes on a state's sovereignty and intervenes in its electoral process. The central research question is as follows: Depending on who is in charge over a state's electoral process, can a pattern be discerned regarding the dis- or re-enfranchisement of African Americans and how has this manifested itself in southern states, especially in Alabama from 1965 up to today? Sub-questions this thesis will address are: How are African Americans currently being disenfranchised in Alabama, how do the disenfranchise tactics differ per cycle, and how does the Supreme Court influence federalism? These are central questions for the field of American Studies. Not only does this thesis provide a historic context regarding voter disenfranchisement, but it elaborates on how the United States' quintessential characteristic of democracy is at times undermined from within, for not all citizens are equal in practice. Furthermore, the pattern of dis- and re-enfranchisement depending on who is in charge, may be an indicator of why it is paramount that the federal government takes action to protect all its citizens post-*Shelby*, as well as an indicator of what happens if it does not, namely continued attempts to disenfranchise African Americans. This thesis does then fit well into the current debate on structural racism and voter suppression.

Alabama has been chosen as a case study for numerous reasons. First, it has an extensive history of African American suppression and their access to the ballot, dating back to the beginning of slavery. Second, it has played a paramount role in all three cycles, including being

at the center of both the end of stage 1 of the second cycle and beginning of the third cycle. Specifically, Selma in 1965 and Shelby in 2013. And third, *Shelby* gave states their authority over their electoral process back. It is vital to investigate if, and if so how, voter suppression takes place on that level of government.

Prior to discussing the cycles, an overview of existing relevant literature will be provided, and the methodology will be discussed. Subsequently, chapter 1 will discuss cycle one. Stage 1 of this cycle started with slavery and the "social death" off African Americans. It ended with the Reconstruction Amendments, notably the 15th Amendment, their enforcement by federal troops, and the Compromise of 1877, which was the beginning of cycle two. This chapter will thus concisely provide a historical context up to 1877. Chapter 2 will thoroughly discuss cycle two. Stage 1 of this cycle started with the attempt from white southerners to retain their power by disenfranchising African Americans through Jim Crow Laws and violent intimidation tactics. Stage 2 was the re-enfranchisement of African Americans under the Voting Rights Act of 1965. The social and political climate surrounding the Voting rights Act of 1965 will be discussed. Chapter 3 will dissect the *Shelby* ruling which constituted the opening of cycle three. It will touch upon the constitutional questions of state equality and sovereignty and the issues of federalism and current burdens and needs. Chapter 4 will discuss Alabama and how its electoral process changed from 1965 up to today and how African Americans were both dis- and re-enfranchised. This timeframe has specifically been chosen because it covers a stage 1 and stage 2 of a two different cycles, meaning that from 1965 up to 2013 the federal government had the authority over its electoral process and post-2013 the states had regained their authority. Additionally, it will be examined how stage 1 of cycle three may end through newly proposed federal legislation, namely the Voting Rights Advancement Act. Finally, it will be concluded that more disenfranchisement occurs when a state can act on its sovereignty regarding the electoral process and that the ruling in *Shelby* was negligent of existing voter suppression data. The ruling was also surprising, since it was only seven years after Congress had reauthorized the Voting Rights Act of 1965 with bipartisan support. In Alabama, *Shelby* has had major consequences for minority voter participation in particular, and new federal legislation is needed to combat voter disenfranchisement. The Supreme Court's rulings have strong implications regarding the scope of the federal government. The current conservative climate limited the scope of the federal government and the Supreme Court's acting has marked the transition of cycle two to cycle three with *Shelby*.

Literature review and Methodology

The nature of this thesis is predominantly one of legal history and it touches upon democratic theory through the lens of the structure of government. A clear concept of democratic theory is equality of citizens as well as the concept of one person, one vote. This is the democratic standard. This implies then, that is unethical for one vote to have a disproportionate impact compared to another. The United States' electoral process will be evaluated based on these concepts. It will be investigated how the scope of the federal government is influenced by Supreme Court rulings, and how the scope of federal and state power influence equality of citizens in each cycle. The concepts of state sovereignty and state equality are thus paramount in all three cycles and their effect on the right of citizens. This will be done by dissecting primary documents, such as the Voting Rights Act and the Voting Rights Advancement Act, to then use academic work and newspaper articles to see how the theory translates into practices. Building upon a framework of legal history is paramount for the field of American studies, for the United States has a common law system. This means that rulings are based, to a large extent, on precedents. The Supreme Court has set, and overruled, many of these and continues to do so today. The impacts and implications a precedent may have regarding voter suppression must be examined for they also may indicate the current course of the Supreme Court and what might be a proper approach to respond to newly set precedents.

To answer the research and sub-questions this thesis also relied heavily on court cases by the Supreme Court that influenced the voting process on both a federal and state level. Michael Klarman, author of *From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality* (2006) has conducted thorough research on the influence on this topic, and some of his work that relates to Alabama will be used. An additional core example of a Supreme Court ruling is *Shelby County v. Holder*, which marked the end of cycle two and beginning of cycle three. Government documents, such as primary legislation, will also be used. Additionally, information amassed by Congress that was used as a justification for both federal legislation and the reauthorization of such legislation, will analyzed to discuss the Supreme Court ruling in *Shelby*.

There exists and extensive body of academic literature on African American suppression in general, as well as regarding voter suppression. The struggle for voting equality is described by, among others, Alexander Keyssar in *The Right to Vote – The Contested History of Democracy in the United States* (2000), Coleman in *The Voting Rights Act of 1965: Background and Overview* (2015), and Chandler Davidson and Bernard Grofman in *Quiet Revolution in the South – The Impact of the Voting Rights Act 1965-1990* (1994). These works will be utilized to

paint a broader picture of African American suppression and their struggle for equal access to the ballot. Michelle Alexander wrote the influential book *The New Jim Crow – Mass Incarceration in the Age of Colorblindness* (2012). She argues that African Americans were disproportionately target during the War on Drugs in the 1980s. This resulted in African Americans being disproportionately incarcerated. This theory is vital for Alabama's case study, for incarceration there leads, in some instances, to the loss of the right to vote. Additionally, Alabama requires formerly incarcerated people to pay their legal financial obligations prior to their right to vote being reinstated, which can be seen as a second-generation poll tax. Alexander argues that this thus can be traced back to the 1980s, and it will be investigated what the current day situation is and if African Americans are still disproportionately incarcerated and what the ramifications may be if that is the case. Additionally, her work provides a useful historical overview of African American suppression.

With regards to the case study of Alabama this thesis relied heavily on local sources, such as *The Birmingham News* and *Alabama Daily News*. Additionally, reports by organizations, such as the Brennan Center for Justice and the United States Commission on Civil Rights, will be used for their data and insights. The data accumulated by these sources are useful as evidence for the argument that Red states are more likely to disenfranchise African Americans when they have the authority to alter their electoral process. Furthermore, the data has been used to distinguish first-generation and second-generation voter suppression mechanisms. Carol Anderson, in her book *One Person, No Vote* (2019) has conducted similar research as this thesis, and her insights and recommendations will be used for this thesis' case study of Alabama.

The methodology then can be described as follows: both stage 1 and stage 2 of the cycles will be examined through, among others, the mentioned books, official documents, and local sources. Each chapter then will operate on both a state and federal level, for it will be analyzed whether the state is in control over its electoral process or if the federal government can influence a state's electoral process. There will be a comparative element between cycle two and three. Cycle one is not included in this, for the comparison touches upon measures adopted by the states to suppress African Americans' right to vote, and in cycle one African Americans did not yet have that right and could thus not be suppressed yet in such manner. As stated, the influence of the Supreme Court will be analyzed. Albert Samuels (2015) for example, argues that there is a similarity in how the Supreme Court did not allow Congress to exceed its power both after the Reconstruction period and in *Shelby*. His work will be touched upon and utilized to distinguish the different cycles.

The core research question has developed throughout this project. Initially, the objective was to analyze voter suppression of African Americans in Alabama post-*Shelby*, and how the democratic concept of one person, one vote manifested itself in practice. As this project went on, however, the cycles started to become clear; throughout the United States' history there have been the aforementioned 4 shifts over who is in control over a state's electoral process, specifically southern, former Confederate states. When these shifts became clear, the question shifted to not only if and if so, how African Americans' access to the ballot was suppressed, but also if a pattern could be distinguished under whose authority this occurred.

Chapter 1 – Cycle One From Social Death to the Reconstruction Amendments

As Carl Sagan put it: "You have to know the past to understand the present" (1980). This is very much the case for the suppression of African Americans, and that past is vast. Regarding the overarching theme of voter disenfranchisement of this thesis, African Americans have faced incredible tactics from those in charge throughout American history to eliminate or dilute their vote. These suppression and dilution tactics began after African American gained rights. Indeed, during the era of slavery African Americans were in a state of "social death" (See Patterson 1982), in which African Americans had no rights at all. This is stage 1 of cycle 1. The states were in control and there was no federal legislation in place that granted African Americans the right to vote or much rights in general. Rather, for white male Americans, African Americans represented "profits, fancies, sensations, and possessions" (Johnson 224). Slavery, however, became part of an issue between northern and southern states, the Union versus the Confederacy, which culminated in the Civil War. The defeat of the Confederacy resulted in 4 million African Americans being freed, which was formalized through the 13th Amendment.

However, despite the 13th Amendment African Americans were disenfranchised on both a state and federal level for a long time. The Constitution is the law of the land, but it provides each state separately the power and freedom to determine how the electoral system is regulated within that state and which qualifications must be met for its residents in order to vote. After president Lincoln was assassinated, President Johnson became in charge of reconstructing the United States. Johnson was in favor of state rights and was lenient towards Southern states (Pruitt par. 3). This leniency was abused through the implementation of 'Black codes', which, among other restrictions, denied African Americans suffrage. Restrictions on this state freedom were imposed through the three Reconstruction Amendments, of which the 13th Amendment was the first. The 14th Amendment granted citizenship to those "born or naturalized in the United States" and guaranteed equal protection rights; and the 15th Amendment ensured that "[t]he right of citizens [thus now including former slaves too] of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude". The election of Grant was important for the development of African American suffrage. African Americans voted en masse for Grant in 1868, and most of Grant's constituency, the Radicals, supported congressional Reconstruction. This entailed a process of making the Reconstruction of ex-Confederate states longer, harsher, and under

greater congressional control (Norton et al. 418). In 1869 the Radicals pushed through the 15th Amendment.

Vitally important was that the Reconstruction Amendments empowered Congress to enforce their provisions through "appropriate legislation". This was needed but remained absent for decades. Indeed, "although African Americans rejoiced [the 15th Amendment], it left open the possibility for states to create countless qualifications tests to obstruct voting" (Norton et al. 419) and "notably absent from the Fifteenth Amendment, for example, was language prohibiting the states from imposing educational, residential, or other qualifications for voting, thus leaving the door open to the states to impose poll taxes, literacy tests, and other devices to prevent blacks from voting" (Alexander 29-30). This language was absent so women and other minorities, such as Chinese immigrants and those too poor to pay poll taxes, could be denied suffrage in northern states. On the surface the 15th Amendment was a great stride forward, in practice it left open countless opportunities for states to continue to disenfranchise, amongst others, African Americans.

Tests and devices that infringe on the right to vote for African Americans can be traced back to the late 19th century. federal attempts proved to be insufficient to combat these permanently but yielded temporary positive results. To enforce the Reconstruction Amendments the government sent federal troops to the Southern states. The 15th Amendment and its enforcement through the deployment of federal troops is stage 2 of cycle one. A stage 2 is thus characterized by the federal government being in control and exercising its authority over a state's electoral process. As Coleman, author of *The Voting Rights Act of 1965: Background and Overview* describes, the presence of federal troops in former Confederate states yielded temporary results in the form of rapid increased African American voter participation and representation (1). During the Reconstruction period, many African Americans were elected for office in Alabama (167), Georgia (108), Louisiana (210), Mississippi (226), North Carolina (180), and South Carolina (316) (Coleman 6).

There was, however, plenty of resentment too. White Southerners were furious that they suffered tremendous financial losses and power in general. In response their resistance to African American independence manifested itself in numerous ways, including violently oppressing those that wished to vote. Conservatives used "black domination" as a rallying cry for a return to white supremacy (Norton et al. 421). The rights guaranteed by the 14th and 15th Amendment "were stripped away with astonishing speed, largely as a result of a ferocious white southern backlash" (Davidson and Grofman 379). The leeway the 15th Amendment granted to

states resulted in mechanisms that denied newly enfranchised African Americans their political right, without "blatantly violating" the 15th Amendment itself (Davidson and Grofman 380).

During the Compromise of 1877, however, it was agreed upon that the federal troops were to be withdrawn. These troops had provided African Americans who went to the polls to vote with protections. The Radicals that were in favor of a harsh congressional Reconstruction did not manage to retain the political initiative. Rather, as Reconstruction ended the Democrats started to impose racial boundaries that subverted civil right laws and the Reconstruction Amendments. Consequently, the progress African Americans had made was almost nullified and at the turn of the 20th century "blacks were almost completely disenfranchised in the South" (Coleman 2). This marks the end of stage 2.

The role of the Supreme Court must be addressed here too. It did not rule on the constitutionality of the Reconstruction Amendments but did touch upon the scope of congressional power regarding the Civil Rights Act of 1875. In *the Civil Rights Cases* (1883) the Supreme Court held that Congress exceeded its power by banning racial discrimination in public places. Congress, the Supreme Court ruled, had done enough for the freed slaves (Samuels 2015).

Cycle one showed clearly that the federal government has the power to re-enfranchise African Americans, through legislation and the presence of federal troops in former Confederate states. It also showed that said states are determined to disenfranchise African Americans to either retain or regain their political power and abuse the loopholes in existing legislation. The Compromise of 1877 was the end of cycle one. Cycle two, stage 1 began with the states having full authority again.

Chapter 2 – Cycle Two From Jim Crow Laws to the Voting Rights Act of 1965

Jim Crow laws were a response by white southerners to African American enfranchisement and had the objective to suppress African Americans. The result would be that white people, predominantly men, remained in power. Jim Crow laws were segregation laws that increased rapidly in number throughout the south and emphasized the inferior status of African Americans. These type of laws on both the state and local level that passed in the 1890s restricted African Americans to the rear of streetcars, separated public drinking fountains as well as toilets, and to separate sections in, for example, hospitals. African Americans were furthermore denied legal and voting rights and faced exclusion, intimidations, and extreme forms of violence such as lynching (Norton et al. 502-530). Jim Crow Laws were effective. In Virginia "there was a 100% drop – in other words, to zero – in estimated black voter turnout between the Presidential elections of 1900 and 1904. North Carolina managed the same complete elimination of black voter turnout over an eight-year period, between the Presidential elections of 1896 and 1904" (Pildes 304). Pildes, in his article "Democracy, Anti-Democracy, and the Canon" (2000) explains that the situation in Alabama was particularly dire:

> The white-supremacy purposes of these new constitutions were not disguised (though the concomitant aim of reducing populist white political influence was). As expressed by the President of the Alabama Convention whose handiwork Jackson Giles would soon challenge, 'what is it that we want to do? Why it is within the limits imposed by the Federal Constitution, to establish white supremacy in this State'. The resulting 1901 constitution of Alabama offered 'the most elaborate suffrage requirements that have ever been in force in the United States;' going on for pages, they 'contained almost every qualification for voting ever devised by the mind of man,' with the exception of a religious qualification: racially-gerrymandered criminal disfranchisement provisions, lengthy residency requirements, a cumulative poll tax of $1.50, along with temporary clauses requiring good character but with grandfather provisions for ex-soldiers and their lineal descendants (302-303).

The freedom that all states had to shape their voting system was thus largely abused. The early states to hold disfranchisement conventions were Mississippi in 1890 and South Carolina in 1895. It is likely that these were the frontrunners, since they held the largest African American populations and the earliest decline of Republican parties on the state level (Klarman 52; Coleman 2014). In spite of the Reconstruction Amendments, African Americans were still discriminated against through poll taxes, grandfather clauses, old soldier clauses, and literacy

tests, which were more subtle than blatant slavery, but still incredibly effective at barring them from the polls. See table 1. Alabama, Georgia, and Virginia were particularly devoted to keep African Americans from voting.

Table 1. Poll Taxes, Grandfather Clauses, Old Soldier Clauses, and Literacy Tests Enacted in Former Confederate States, 1890-1918

State	Poll Tax	Grandfather Clause	Old Soldier Clause	Literacy Test
Alabama	X	X	X	X
Arkansas	X			
Florida	X		X	
Georgia	X	X	X	X
Louisiana	X	X		X
Mississippi	X			X
North Carolina	X	X		X
South Carolina	X			X
Tennessee	X			
Texas	X			
Virginia	X	X	X	X

Source: Rusk 2001

Since the 15th Amendment ended racial discrimination, white people in charge found other ways to bar African Americans from the polls, as described above.

Violence, specifically lynching, was a major factor in barring African American people from the ballot as well. In the Southern states "the bloodshed was inextricably linked to maintaining white supremacy" (Coleman 9). In sum, despite the 15th Amendment African American registration and participation was greatly reduced as a result of Jim Crow laws and an existing culture of which the foundation was intimidation and violence towards African Americans (Coleman 10).

As now explained, these discriminating and racist practices began not shortly after the Civil War and continued well into the 20th century. This is a clear characteristic of stage 1 of a cycle, namely African American voter suppression under a state's authority. Stage 1 of cycle two lasted for a long time. As Keyssar (2000) notes: in the 1950s in seven states "literacy tests kept African Americans from the polls: failure of the test could result simply from misspelling or mispronouncing a word", in 1954 "Mississippi instituted a new, even more difficult

'understanding test', complete with a grandfather clause exempting those already registered", moreover, "black residents of the five remaining poll tax states (Alabama, Arkansas, Mississippi, Texas, and Virginia) faced not only an economic hurdle but also discriminatory administration: poll tax bills were not sent to blacks and receipts were hard to obtain" and furthermore, in Louisiana, "members of the White Citizens Council purged black registrants from the voting lists for minor paperwork irregularities, and a 1960 law provided for the disfranchisement of a person of 'bad character'" (258-259). The gruesome reality was that African Americans that were determined to exercise their constitutional right could lose their jobs, face physical harm, have their loans called due, and many were even killed (Keyssar 259). The Voting Rights Act of 1965 would single out the jurisdictions guilty of discriminatory behavior and low numbers in both registration and turnout and made those subject to regulation in Section 4.

The Supreme Court has ruled important cases too regarding voting equality. *Guinn v. Oklahoma* (1915) and *Myers v. Anderson* (1915) "invalidated under the Fifteenth Amendment grandfather clauses, which were devices that insulated illiterate whites from disfranchisement by exempting from literacy tests those persons and their descendants who were enfranchised before 1867, when most southern blacks first received the vote" (Klarman 62). Klarman argues that "thus, Progressive Era race cases may show that where the law is relatively clear, the Court tends to follow it, even in an unsupportive context" (62). Important during these years was the establishment of the National Association for the Advancement of Colored People in 1909. This became the central organizations to combat racially discriminatory voting laws (Davidson 22). Its first significant breakthrough occurred over 30 years later in 1944 when the Supreme Court unanimously "held that the Texas Democratic party's exclusive white primary elections violated the Fifteenth Amendment" (Davidson 22) in *Smith v. Allwright*. Although the NAACP, the civil rights movement, and the Civil Rights Acts of 1957, 1960, and 1964 were great strides forward, African American disenfranchisement remained present and "resistant to wholesale change" until the adoption of the Voting Rights Act (Coleman 2). This shows that racial discrimination was not only perpetual, but also versatile and could work despite efforts of both the judicial and legislative branch.

The Civil Rights Act of 1957 provided the attorney general the power to file federal civil suits against those who attempted to infringe on the voting process with racial motives. Although it was modest legislation, it had the federal government commit to some enforcement guarantees of the Fourteenth and Fifteenth Amendments (Garrow 1990, 384). Indeed, "the Civil Rights Acts of 1957, 1960, and 1964 had included provisions intended to guarantee voting

rights but, according to the Johnson Administration Attorney General Nicholas Katzenbach, "had only minimal effect. They [were] too slow" (Garrow 2015, 113). The VRA would be different in that it would measure progress and have jurisdictions be subjected to federal oversight.

Klarman, author of *From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality* (2006) argues that it took serious voter participation of the African American community to eradicate Jim Crow Laws and segregation (189). Keyssar, author of *The Right to Vote: The Contested History of Democracy in the United States* (2000) notes that this cannot be achieved without significant governmental support, "the black community by itself could not compel city and state authorities to cease discriminating" (259). It was almost a century after the 15th Amendment, in the 1960s, a decade of fighting for civil rights for all, when this was achieved. The Selma to Montgomery Marches is what spurred action on voting rights legislation (Davidson 14-17). Civil activism in Selma, Alabama was violently struck down in 1965. This was broadcasted globally and resulted in outrage. Nationwide activism with presidential support of Johnson resulted in Congress making massive legislative steps, securing the right to vote for all. In 1965 President Johnson signed into law the Voting Rights Act. President Johnson stated that the vote "is the most powerful instrument ever devised by man for breaking down injustice and destroying the terrible walls which imprison men because they are different from other men" (Qtd. in Garrow 377). The Voting Rights Act was than both a recognition of how important the ballot was, "but also an explicit admission of the extent to which that fundamental right had been repeatedly denied all across the American South for decade after decade prior to 1965" (Garrow 378-379). It took the "concerted action of Congress, the President, and the federal courts-including sending federal officials into Southern counties to take over the registering of voters" (Pildes 311). The fact that this concerted action was necessary, shows well how deeply embedded African American disenfranchisement was in southern states.

Two sections are important so single out from the Voting Rights Act. These are sections 4 and 5. Section 4 entails a coverage formula. States or separate political subdivisions in which the turnout for the presidential election of 1964 or the number of eligible voters who were registered was below 50 per centum were subject to this coverage formula, as well as states that utilized a "test or device" that had to be compelled with and made the voting process more challenging. The covered areas in 1965 were Alabama, Georgia, Louisiana, Mississippi, South Carolina, Virginia, 39 counties in North Carolina, and specified counties in Arizona and Hawaii. A "test or device" included "any prerequisite for registration or voting to demonstrate

a person‘s literacy, educational achievement or knowledge of any particular subject, good moral character, or prove his or her qualifications by the voucher of registered voters or others (Coleman 15). The burden on the government was high to ensure its citizens could indeed all vote, as a democracy demands. There was thus a need for “appropriate legislation” the 15th Amendment allowed. This manifested itself in the Voting Rights Act of 1965. The VRA was “designed by Congress to banish the blight of racial discrimination in voting, which has infected the electoral process in parts of our country for nearly a century” (383 U.S. 301, 308).

The VRA made any state discriminatory laws and practices illegal through Section 2, but also went a step further. It made sure that the federal government presided over a state’s electoral processes. There was thus a shift from certain states having the power to determine which shape its electoral process would take. It not only eliminated legislation from the past, but heavily influenced legislation that was to be. Section 5 entails that those subject to section 4 must obtain federal preclearance in order to implement a new qualification, prerequisite, standard, practice, or procedure to its electoral system. The procedure was rather straightforward: each qualification, prerequisite, standard, practice, or procedure would have to be precleared by the Attorney General or a three-judge panel of the United States District Court for the District of Columbia. The proposed qualification, prerequisite, standard, practice, or procedure would be examined and approved only if it does not have the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. An Attorney General had 60 days to object to each proposal and could have asked for additional information if the request was unclear.

When the VRA was adopted the intention was for it to be in effect for the duration of 5 years. However, it was prolonged in 1970, 1975, 1982, and in 2006 for an additional 25 years up to 2031. In 1970 and 1975 the VRA was amended and “new provisions were added, other states and political subdivisions were added under the coverage formula, adjusted according to the presidential election year in which a test or device had been used as a condition of registration or voting (1968, and 1972). The 1972 amendments added the minority language provision that included under the coverage formula those jurisdictions where voting information was provided only in English and members of a single language minority were more than 5% of the citizens of voting age” (Coleman 12). Federal reach over state affairs was thus expanded. Important to note too was the adding of a bailout provision, which was amended in 1973 and will be discussed in greater detail in chapter 3. Concisely put, a covered jurisdiction could rid itself free of federal oversight if certain criteria were met.

Since the Voting Rights Act of 1965 eliminated discriminatory laws African Americans were re-enfranchised. As can be seen in table 2, the percentage of registered African Americans was significantly increased just one year after the VRA was implemented. But what is equally if not more important is that the VRA protected African Americans from becoming disenfranchised once again.

Table 2. Percentage of Voting Age African Americans Registered to Vote in Southern States, 1947-66

State	1947	1952	1956	1966	Overall increase
Alabama	1.2%	5%	11%	51.2%	50
Arkansas	17.3%	27%	36%	59.7&	42.5
Florida	15.4%	33%	32%	60.9%	45.5
Georgia	18.8%	23%	27%	47.2%	28.4
Louisiana	2.6%	25%	31%	47.1%	44.5
Mississippi	0.9%	4%	5%	32.9%	32
North Carolina	15.2%	18%	24%	51%	45.8
South Carolina	13%	20%	27%	51.4%	48.4
Tennessee	25.8%	25%	27%	71.7%	46.9
Texas	18.5%	31%	37%	61.6%	43.1
Virginia	13.2%	16%	19%	46.9%	33.7

Source: Hanes Walton 1972

The Voting Rights Act was thus vitally important for the re-enfranchisement of African Americans. However, it accomplished this by providing leeway for the federal government to interfere in what constitutionally is a state matter, namely the voting process and additionally infringed on the concept of state equality, for not all states were subject to the coverage formula. A clear pattern can be analyzed too. If a state has the authority over its electoral system African Americans are likely to be disenfranchised. The core reason for this is that African Americans do not belong to the constituency of the Republican Party, which is most often recently in charge in the southern states. If the federal government is involved, African Americans are re-enfranchised. This has gone full circle twice now. First there was slavery and the social death of African Americans, followed by federal enforcement of the Reconstruction Amendments. The second cycle started with the Compromise of 1877 and states adopting Jim Crow Laws that disenfranchised African Americans and saw its second stage with the adoption of the Voting

Rights Act of 1965. The ruling in *Shelby*, which stopped federal intervention in states' electoral processes, was the beginning of the third cycle. Chapter 3 will touch upon the ruling and argumentation in *Shelby*.

Chapter 3 – The Start of Cycle Three with *Shelby County v. Holder*

The Voting Rights Act of 1965 was of paramount importance regarding equal voting opportunities, and served as the transition between stage 1 and 2 of cycle two. *Shelby County v. Holder* was paramount too regarding voting rights, but in a far more negative sense. *Shelby* marked the end of cycle two, and the beginning of stage 1 of cycle three. Shelby County, Alabama filed suit to have section 5 of the VRA declared unconstitutional by a federal court in Washington, DC. The argument was that the coverage formula infringes on a state's sovereignty and that not all states are equal, for not all are subject to coverage. Part of the argument is thus that the Voting Rights Act of 1965 was discriminatory. To recapitulate, section 5 entails the preclearance section. This means that all jurisdictions that fall under section 4(b) must have federal approval in order to alter their electoral process. Newkirk, writer for the *Atlantic* argues that it has "become clear that the decision has handed the country an era of renewed white racial hegemony" (Par. 3). The reason is that states with a racially discriminatory past now could operate without first needing federal preclearance. Citizens lost a vital ally that secured the integrity of the electoral process. Indeed, Anderson, in her book *One Person, No Vote* states that the gutting of the VRA has placed the responsibility for upholding the right to vote on the backs of the individual citizen (2019). This burden is often too much to bear or to take up for individual citizens.

Shelby County v. Holder was, however, not the first court case that questioned the validity of the Voting Rights Act. Within a year after its implementation, six southern states challenged the legality of the core provisions of the Voting Rights Acts. South Carolina, Alabama, Georgia, Louisiana, Mississippi and Virginia argued that these core provisions "on the fundamental ground that they exceed the powers of Congress and encroach on an area reserved to the States by the Constitution" (383 U.S. 301 (1966), 323). It was thus an issue of federalism and the scope of federal involvement. In 1966, the Supreme Court rebuffed these challenges in *South Carolina v. Katzenbach* by an 8-1 majority. Chief Justice Earl Warren wrote the majority opinion, which stated that: "We here hold that the portions of the Voting Rights Act properly before us are a valid means for carrying out the commands of the Fifteenth Amendment. Hopefully, millions of non-white Americans will now be able to participate for the first time on an equal basis in the government under which they live" (383 U.S. 301 (1966) at 337). Chief Justice Warren came to this conclusion for laws previously installed by the Justice Department and federal judges "have done little to cure the problem of voting discrimination" (313), a problem he described as "the blight of racial discrimination […] which has infected the electoral process in parts of our country for nearly a century" (308). Thus, "after enduring nearly

a century of widespread resistance to the Fifteenth Amendment, Congress has marshalled an array of potent weapons against the evil, with authority in the Attorney General to employ them effectively" (Warren 337). Chief Justice Warren's court set a precedent, namely that the VRA was constitutionally sound and that Congress could interfere in what was originally a state affair. Congress and the Supreme Court under Warren thus had an aligning vision.

An additional and similar case is *Katzenbach v. Morgan* in 1966. In this case the Supreme Court ruled with a 7-2 majority that the use of an English-language literacy test in New York was unconstitutional, for it violated section 4(e), which ruled that disenfranchisement on the basis of insufficient English is not allowed. This test in the state of New York predominantly disqualified Puerto Rico natives that were American citizens, but had been educated in Spanish-taught schools. In effect, the Supreme Court provided great latitude towards Congress in utilizing Section 5 of the Voting Rights Act, for it now no longer just applied to African American but other minorities as well (Keyssar 267). *Gaston County, N.C. v. The United States* from 1969 ruled that a North Carolina literacy test could be barred under the VRA, despite the fact that it lacked overt racial bias. Looking beyond the simple legislative aspect, but further to its social context, the Court concluded with a 7-1 majority vote that a segregated and inferior school system made it more difficult for African Americans to vote if a literacy test was adopted. In 1970 the Court ruled that "the Fifteenth Amendment gave Congress the power to ban literacy tests or 'other devices' that discriminated against blacks in state as well as federal elections" in *Oregon v. Mitchell.* These court cases made two important aspects clear. First, racial barriers to the franchise were illegal. And second, Congress possessed the authority to enforce a proper electoral system and prevent racially discriminatory laws from being implemented (Keyssar 267).

The Voting Rights Act was reauthorized in 1970, 1975 and 1982 with bipartisan support. As the mentioned court cases indicate, the Supreme Court, with overwhelming majorities, and Congress were on the same page. If rampant discriminatory practices were in place, the federal government could infringe on a state's sovereignty and determine to a large extent how the electoral process would look like.

In 2006, with bipartisan support once more, Congress reauthorized and amended the Voting Rights Act again, this time for an additional 25 years in what was called the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006. To justify this reauthorization, Congress had amassed a legislative record of over 15,000 pages long, consisting of findings by courts and the Justice Department, statistics, and first-hand reports of voter discrimination. The core finding was that considerable progress has

been made as a direct result of the Voting Rights Act. This had become clear in eliminating first generation barriers, minority voter turnout and minority representation on all levels, local elected offices, state legislatures and Congress (577). However, the "continued evidence of racially polarized voting in each of the jurisdictions covered by the expiring provisions of the Voting Rights Act of 1965 demonstrates that racial and language minorities remain politically vulnerable, warranting the continued protection of the Voting Rights Act of 1965" (578). There was considerable evidence concerning continued discrimination.

This evidence consisted of a high number of objections by the Attorney General, who had to preclear new laws, as well as requests for more information, which means that the proposal by a state does not indicate clearly enough that the new desired law is not racially discriminatory in intent or purpose. Furthermore, there was a high number of Section 2 cases, which means that laws that were already in place were challenged in court for they were arguably racially discriminatory (578). In numbers this translates to:

- 626 Attorney General objections that blocked discriminatory voting changes;
- 653 successful section 2 cases;
- over 800 proposed voting changes withdrawn or modified in response to MIRs (more information requests);
- tens of thousands of observers sent to covered jurisdictions. Between 1984 and 2000 there were 300 to 600 annually in covered jurisdictions;
- 105 successful section 5 enforcement actions;
- 25 unsuccessful judicial preclearance actions;

And additionally, section 5's strong deterrent effect, i.e., "the number of voting changes that have never gone forward as a result of Section 5" (H.R. Rep. No. 109-478 at 24).

Although these aspects are all relevant, there are two that are of high significance. First, there is the high number of successful section 2 cases. One of Congress's findings was that Section 5's "strength lies not only in the number of discriminatory voting changes it has thwarted, but can also be measured by the submissions that have been withdrawn from consideration, the submissions that have been altered by jurisdictions in order to comply with the [Voting Rights Act], or in the discriminatory voting changes that have never materialized" (H.R. Rep. No. 109–478 at 36). Since discriminatory laws, such as gerrymandering and at-large districts, which negatively affect minorities, are not allowed to be implemented as a result of the Attorney General objecting, the need for section 2 litigation is to an extent diminished in covered jurisdictions. However, when one combines the number of successful section 2 cases,

the number of Attorney General objections, and section 5 strong deterrence effect, it becomes clear that discriminatory practices are not an issue of the past, but that there are still a high number of attempt to implement racially discriminatory laws. The Voting Rights Act then stops this process. The absence of racially discriminatory laws does not mean that there is no desire for such laws, it means that the Voting Rights Act, especially Section 4 in conjunction with Section 5, works.

Second, the high number of federal observers is relevant. This "demonstrates that the discriminatory conduct experienced by minority voters is not solely limited to tactics to dilute the voting strength of minorities but continues to include tactics to disenfranchise, such as harassment and intimidation inside polling locations" (H.R. Rep. No. 109-478 at 44). It has occurred that a jurisdiction, that is subject to Section 4 and as a result fails to discriminate by adopting new laws, has resorted to a practical approach. This manifests itself in voter intimidation, for example, and keeping people away from the polls. Federal observers are thus necessary to not only prevent this, but also to make an account of it when it happens. Since federal observers are dispatched to a covered jurisdiction based upon written meritorious complaints from residents, officials or civic participation, or when the Attorney General deems it necessary in order to enforce the 14th or 15th Amendment (Title 52 – Voting and Elections) the high number is both alarming and telling of the perpetual discriminatory practices in covered jurisdictions.

The VRA is effective and halts a high number of voting discrimination attempts. Still, Congress also noted that "many defiant covered jurisdictions and State and local officials continue to enact and enforce changes to voting procedures without the Federal Government's knowledge" (H.R. Rep. No. 109-478 at 21). The "continued need and increased use of the temporary provisions demonstrate that efforts to discriminate are as real today as they were in 1965 and 1982" (H.R. Rep. No. 109-478 at 35). As a result, the VRA was extended up until 2031.

Nearly half a century after the Voting Rights Act was challenged for the first time it had to answer to questions of constitutionally once again. Important to note here is that the Supreme Court under Chief Justice Roberts was different than Warren's court. Robert's court consisted of five conservative-leaning judges, and four more liberal-leaning judges. This is vital, for conservatives are in general in favor of less federal intervention and thus in favor of state sovereignty.

In 2009 the Supreme Court touched upon the bailout provision of Section 5 of the VRA in *Northwest Austin Municipal Utility District No. 1 v. Holder*. The appellant was a small utility

district that had to seek preclearance for it was located in Texas, which is subject to Section 5 of the VRA. The Supreme Court touched upon whether the county was subject to a declaratory judgement under section 4 or not, which would effectively mean a bailout for the county. This entails that it would no longer be subject to the coverage and preclearance sections of the Voting Rights Act, and it can thus alter its electoral process as it deems fit. The Supreme Court reversed the initial decision and stated that the county did meet the criteria regarding a bailout with a vote of 9-0. The concept of a bailout has been altered with the VRA's numerous extensions and is thus not the same as it was in 1965. In simplified terms, a jurisdiction is eligible for bailout if it has, in the ten preceding years, not utilized discriminatory practices, eliminated existing old discriminatory practices, if no federal observers have been assigned to monitor elections, and there have been no objections by the Department of Justice or the District Court for the District of Columbia to any submitted voting changes (42 U.S.C. § 1973b(a)). A bailout is predominantly sought for the reason that new laws can be implemented far more quickly, for the Attorney General does not then have to preclear new laws.

The county also deemed section 5 unconstitutional. The Supreme Court, however, refused to rule upon the constitutionality of the act, stating "that constitutional question has attracted ardent briefs from dozens of interested parties, but the importance of the question does not justify our rushing to decide it. Quite the contrary: Our usual practice is to avoid the unnecessary resolution of constitutional questions. We agree that the district is eligible under the Act to seek bailout. We therefore reverse, and do not reach the constitutionality of §5" (Roberts 2). The vote concerning the refusal to rule on the constitutionality was 8-1. Chief Justice Roberts did raise his concern regarding the constitutionality of section 5 stating that "[t]he Act's preclearance requirements and its coverage formula raise serious constitutional questions" (2009: 2-16). These two questions concerned first, whether the current burdens of the VRA were proportionate and justified by the current needs or not and second, if the targeted geographic area is adequately related to the problem it targets. These questions are key, and their soundness must be evaluated for their answers will have major implications regarding who is in charge of a state's electoral process. In line with historical prerogatives, if the Supreme Court rules the VRA unconstitutional the effect would be minority disenfranchisement through state legislation.

Yet, the Supreme Court cited the principle of constitutional avoidance. The Constitutional avoidance doctrine "encourages a court to adopt one of several plausible interpretations of a statute in order to avoid deciding a tough constitutional question" (Hasen 1-2). Newspapers at the time covered this ruling as a victory for the VRA. Although it was

narrowed down in the sense that it was made easier for jurisdictions to bail out, it was also upheld and preserved (See Liptak 2009; Barnes 2009; Savage 2009). One year later however, the conservative majority of the Supreme Court chose a different path.

The story of *Shelby* began in April of 2010 when the county in Alabama filed suit against the United States District Court for the District of Columbia. Shelby County sought after a "declaratory judgment that Section 5 and Section 4(b) are facially unconstitutional, and a permanent injunction prohibiting defendant from enforcing these provisions" (2). Shelby County argued that section 4(b) the coverage formula and section 5's preclearance obligation exceed Congress's authority permitted by the 14th and 15th Amendment and are in violation with the equal sovereignty principle which are endowed by the 10th Amendment and Article IV of the Constitution. Shelby County then questioned the constitutionality of section 4 and 5, not how it has been applied nor whether it had the right for bailout.

The questions that the Supreme Court refused to answer in *Northwest Austin Municipal Utility District No. 1 v. Holder* had to be answered in *Shelby County v. Holder*. One core principle which was laid out in *Northwest Austin Municipal Utility District No. 1 v. Holder* was that, regarding section 4 and 5, "the Act imposes current burdens and must be justified by current needs". After a serious review of the legislative record Congress had amassed in 2006, the District Court for the District of Columbia concluded that Congress' reauthorization was justified and that section 5 remained a "congruent and proportional remedy" (4) for voting discrimination in covered jurisdictions. Thus, the questions at hand were if section 5 was congruent and proportional and if its disparate geographic coverage is sufficiently related to the problem it targets

The concept of current burdens and current needs does need to be explained. The burden for a jurisdiction that is subject to section 4 of the VRA, the coverage formula, is that is must submit its desired alteration to its voting system, no matter how minor the alteration. Either the Attorney General or a three-judge district court in Washington must deem the proposal non-discriminatory. It is the burden of the jurisdiction then to show that it is not discriminatory before the change can be put into effect. The need for this burden was rather straightforward in 1965, namely the institutionalized discriminatory voting laws that predominantly targeted African Americans. One of the questions posed in *Shelby* is if the need of 1965 was comparable today in 2010 in ways that still could justify the burden, which had not changed since 1965.

When the District Court for the District of Columbia did not rule in favor of Shelby County, Shelby County appealed its case to the Court of Appeals. This too, was to no avail. In an extensive majority opinion Circuit Judges Tatel and Griffith concurred with the ruling of the

District Court. Senior Circuit Judge Williams Dissented. Circuit Judge Tatel elaborated extensively on his ruling, citing precedents and Congress's aforementioned amassed legislative records. Circuit Judge Tatel states that historically the Supreme Court sides with Congress if Congress could base its acting on substantial evidence. The questions at hand remained the same, namely if Section 5 was congruent and proportional and if its disparate geographic coverage is sufficiently related to the problem it targets. Regarding the issue of Section 5 being congruent and proportional, Circuit Judge Tatel discussed the high number of successful section 2 cases. To quote: "Does the legislative record contain sufficient probative evidence from which Congress could reasonably conclude that racial discrimination in voting in covered jurisdictions is so serious and pervasive that section 2 litigation remains an inadequate remedy? Reviewing the record ourselves and focusing on the evidence most probative of ongoing constitutional violations, we believe it does" (27). Regarding the second question at hand, Circuit Judge Tatel emphasizes that not solely section 4(b), which is the coverage formula, must be examined, but the statute as a whole. This also includes the bailout and bail-in option. Circuit Judge Tatel's opinion relied heavily on the Katz et al. report "Documenting Discrimination in Voting: Judicial Findings Under Section 2 of the Voting Rights Act Since 1982" (2006). The core finding of this study was that racial discrimination is still predominantly centered in covered jurisdictions and that there was a higher success rate regarding section 2 cases as well in covered jurisdictions (656). He furthermore reiterated the significance of the bailout mechanism. Congress's report states that "covered status has been and continues to be within the control of the jurisdiction such that those jurisdictions that have a genuinely clean record and want to terminate coverage have the ability to do so" (H.R. Rep. No. 109-478 at 25). Once the criteria for a bailout is met, section 2 litigation is deemed sufficient to ensure an equal voting process. After taking all necessary information into account, Circuit Judges Tatel and Griffith thus concurred with the District Court for the District of Columbia and decided that solely section 2 was insufficient legislation and section 5 was still vital for an equal voting process and was constitutional. The next and final step for Shelby County was the Supreme Court.

In a 5-4 decision the Supreme Court reversed the District Court and Court of Appeal's decision. The implications of this are severe. The federal government lost its coverage formula, which rendered Section 5, the preclearance section, useless. From then on, the federal government could no longer prevent the implementation of racially discriminatory laws in the covered jurisdictions, but now had to act responsively to laws that states adopted at will. Samuels, in his essay "Shelby County v. Holder: Nullification, Racial Entitlement, and the Civil Rights Counterrevolution" (2015) argues that this ruling is part of a larger trend of a "doctrine

of nullification", entailing an ideology that "asserts the prerogatives of states to resist the perceived unconstitutional encroachments of federal power" (2). The current climate of conservatism is characterized by the notion that reliance on the federal government is no longer necessary or desirable. Consequently, "these policies need to be eliminated to prevent Blacks from being 'the special favorite of the laws' entitled to more legal protections than other citizens" (Samuels 2). Comparable rulings that were a step back for civil rights and thus fit in such climate were *Gratz v. Bollinger* (2003) which struck down an affirmative action program at the undergraduate level by the University of Michigan for it was not narrowly tailored, and *Schuette v. Coalition to Defend Affirmative Action* (2014) that held that the Equal Protection Clause of the 14th Amendment does not prevent states from barring affirmative action programs in education. Samuels argues that there is a resemblance between *Shelby* and *The Civil Rights Cases* (1883). During that time, the Supreme Court argued that Congress had done enough for the freed slaves and that banning racial discrimination in public places exceeded congressional power. Samuels notes that "Justice Antonin Scalia expresses an eerie echo of this same sentiment during the oral arguments in Shelby County when he referred to the Voting Rights Act as a "racial entitlement" (1). The Majority Opinion was written by Chief Justice Roberts, who was joined by Justices Scalia, Kennedy, Thomas, and Alito, and its overarching theme was that times had changed compared to 1965, that Congress's efforts of the 1960s had completed its purpose. Justice Kennedy's stance was important here. Although Kennedy was mostly conservative in his ruling, regarding high profile social issues like gay-rights and abortion, he sided with the more liberal camp (Hurley 2018). Voting rights and voting equality are high profile social issues, yet Justice Kennedy was the swing vote here in favor of the conservative-leaning judges.

Two central themes in the majority opinion are federalism and equal state sovereignty. In *Northwest Austin,* the Supreme Court concluded that "a departure from the fundamental principle of equal sovereignty requires a showing that a statute's disparate geographic coverage is sufficiently related to the problem that it targets" (8). This would be the guiding principle concerning the ruling in *Shelby*. Chief Justice Roberts firstly elaborated on the vast history of legislation that secured state's right to determine its own electoral process and notes that the federal government cannot review and veto state enactments prior of those going into effect. So not only do states retain sovereignty under the Constitution, it is reiterated that there is also equal sovereignty. It is opined then, that the Voting Rights Act of 1965 strongly deviates from these core principles. Not only does it infringe on a state's capacity to legislate its own electoral process, it only applies to a certain selected number of states as well. In theory then, state A that

is not subject to sections 4 and 5 of the Voting Rights Act can implement a new voting law at will, while state B that is subject to said sections, must first obtain preclearance for the exact same law, which may take 60 days maximum if the Attorney General handles the case, or possibly much longer if a three-judge panel handles it. Chief Justice Roberts began the Majority Opinion by stating that "the Voting Rights Act of 1965 employed extraordinary measures to address an extraordinary problem" (1). His conclusion was that voter discrimination in 2013 was no longer extraordinary enough to warrant federal intervention.

Two strong criticisms are first, that the VRA's restrictions have not been eased, despite that "[v]oter turnout and registration rates now approach parity. Blatantly discriminatory evasions of federal decrees are rare. And minority candidates hold office at unprecedented levels" and "the tests and devices that blocked access to the ballot have been forbidden nationwide for over 40 years" (14). And second, that had Congress "started from scratch in 2006, it plainly could not have enacted the present cover age formula. It would have been irrational for Congress to distinguish between States in such a fundamental way based on 40-year-old data, when today's statistics tell an entirely different story" (23-24). However, numerous vital statistics are not considered. The Katz study which found that racial discrimination is still predominantly centered in covered jurisdictions and which was important in the reasoning of the Court of Appeals' majority opinion, is not mentioned in the Supreme Court's majority opinion. Congress's record is not ignored, but "[the majority opinion is] "simply recognizing that it played no role in shaping the statutory formula before us today" (21), meaning the one that was crafted in 1965. Still, no specific findings of the record are utilized, but the majority opinion relies mostly on data from the Census Bureau. This is of course important data but does not tell the whole story. Intriguingly then, it is opined that "and yet the coverage formula that Congress reauthorized in 2006 ignores these developments, keeping the focus on decades-old data relevant to decades-old problems, rather than current data reflecting current needs" (20), whilst important current data is ignored or not utilized adequately. The majority of the Supreme Court then opines that with the data of 2006 the coverage formula of 1965 could not have been devised and therefore the coverage formula is no longer constitutionally grounded, while Congress and civil rights groups justify the continued existence of the coverage formula, since data of 2006 shows that discrimination is still most prevalent in covered jurisdictions, albeit to a lesser extent than in 1965 and of a different shape.

One could expect a conservative ruling from a majority conservative-leaning Supreme Court, but the Majority Opinion should have taken into account all the available data.

Regardless of the facts, the Majority Opinion deemed state sovereignty and state equality more important than voter equality. The dissenting opinion was clear: “Throwing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet” (33). Chapter 4 will clearly show that it was still raining in Alabama.

Chapter 4 – Perpetual Voter Suppression in Alabama

Stage 2 of Cycle Two – Federal intervention in Alabama through the Voting Rights Act

The consequences of *Shelby* are profound. It has given the authority to shape a state's electoral system back to states themselves and in doing so, limited the federal government's influence and capability to protects all its citizens. Historically, especially southern, former Confederate states have attempted to nullify the concept of one person, one vote by suppressing and diluting the vote of African Americans. It is then paramount, post-*Shelby*, that the democratic concepts of one person, one vote and citizen equality are evaluated on a state level. Alabama is particularly suited to serve as a case study. This southern state has been on the wrong side of history more than once. The first capital of the confederacy was Montgomery, Alabama. In the post-Civil war era Alabama adopted some of the most severe Jim Crow Laws (Pildes 2000). It was subject to the coverage formula of the Voting Rights Act of 1965, which yielded positive results for African American voter participation and turnout. Yet, there was an influx in new discriminatory laws post-*Shelby*. This chapter will first discuss how the Voting Rights Act of 1965 influenced the electoral system in Alabama. Subsequently, it will demonstrate that the voter restriction methods mention in the introduction, those being disproportionate incarceration and current-day poll taxes, voter ID laws, voter purging, and gerrymandering, are all present in Alabama.

The federal government stepped up the pace regarding civil rights in the 1960s, mostly due to severe political tensions in the south (Keyssar 261). African Americans went to the streets to protest the Jim Crow Laws and mass protests reached the white supremacy cores of Alabama and Mississippi. The 1970 census showed that in total Alabama had 3,444,165 residents, compared to 3,266,740 in 1960 (3). In 1967 there were approximately 478,000 African Americans, constituting almost 14% of the Alabamian population. The mass protests, however, stiffened the opposition. The governor of Alabama, for example, refused to desegregate universities and gerrymandering practices diluted the vote of the African Americans that did manage to register. The most influential course of action by African Americans was the Selma to Montgomery Marches, which were comprised of three marches. They were organized by peaceful and pro-suffrage activists, amongst others the Southern Christian Leadership Conference which was formed by Martin Luther King Jr, and the Student Nonviolent Coordinating Committee. The march, however, was met with violence. The first march on March 7, 1965 became known as Bloody Sunday. Amelia Boynton, one of the organizers was severely beat by the police and pictures of her laying on the ground wounded circulated the globe. The second march was on March 9 and was led by Martin Luther King Jr.

In the night that followed; however, a white group killed activist James Reeb. These two brutal events spurred national outcry and resulted civil disobedience towards both the Alabama and federal governments. The third march was on March 21 and was heavily protected by federal troops. President Johnson was sympathetic to the cause and went to Congress to urge passage of the Voting Rights Act which was adopted not shortly after (Keyssar 263). The violent attempt then to stop the protests and halt civil rights progress unwittingly “dealt the cause of white supremacy a mortal blow” (McCrary et al. 38).

Alabama was thus the epicenter of the civil unrest that resulted in the adoption of the Voting Rights Act. The adoption of the Voting Rights Act heavily influenced the electoral process in Alabama and increased African American participation. The numbers of African American registrations and participation were extremely low just prior to and at the beginning of the VRA. A mere 23.0% of African Americans was registered in 1964 (The National Commission on the VRA 37). By contrast, the percentage of the white population which was registered was 69% (McCrary et al. 38). By 1967 a total of 248,432 African Americans, 52% of the black population was registered. This massive increase was due to the VRA suspending literacy tests and the voucher system. The voucher system entailed that an already registered voter had to vouch for you if you wanted to register yourself. Moreover, the VRA resulted in numerous court cases that benefited voter registration and participation. Federal courts “struck down state court injunctions that would have prevented registrars in several black-belt countries from complying with the act” (McCrary et al. 39) and eliminated the state poll tax, which eased the process of adding new voters to the rolls.

The Voting Rights Act’s effects were visible shortly after its implementation, both in the removal of what had become illegal legislation and in the number of African Americans that begun to participate in the electoral process. The VRA was on the side of African American people in Alabama, but its governor was not. George Wallace, who served four terms as governor, was a strong proponent of segregation and put serious time and effort in the disenfranchisement of African Americans. Wallace lost the election of 1958, for which he blamed the NAACP. This was due to his opponent John Patterson having the support of the Ku Klux Klan which was the deciding factor. Wallace then thought that being soft on school segregation, for example, had cost him the election. He did not take this well: “John Patterson out-niggered me,” he complained bitterly to friends. “And boys, I ain’t going to be out-niggered again!” (Qtd. in Schumacher 125). Consequently, Wallace became a fervent supporter of segregation. He ran again for years later in 1962, but now with a more populist, strong pro-segregation approach that won him the gubernatorial election. One particular part stands out of

his inaugural speech: "In the name of the greatest people ever trod this earth, I draw a line in the dust and toss the gauntlet before the feet of tyranny. And I say, Segregation now! Segregation tomorrow! Segregation forever!" (Qtd. in Schumacher 125).

In 1963 tension rose regarding the issue of African American segregation and how that eluded them African Americans from higher education. The Civil Rights Movement challenged these notions. In Alabama this came down to a conflict between the state and federal government, in what is now known as the Stand in the Schoolhouse Door. Vivian Malone and James Hood were not allowed to enter a university building. A court ordered that these two students had to be admitted and it came to a showdown between Wallace and Robert Kennedy, then United States Attorney General and Deputy Nicholas Katzenbach. Wallace took numerous moments in the spotlight and was furious about federal intervention and the presence of federal troops that were sent to ensure the safe passage of the two African American students to their dorms. Wallace condemned and attacked the federal government for offering "a frightful example of oppression of the rights, privileges, and sovereignty of this state by officers of the federal government" and claimed Alabama was winning the bigger battle for "we are awakening the people to the trend toward military dictatorship in this country" (Schumacher 128-129). Thus, already before the VRA was in effect, Wallace displayed a strong sense of discomfort towards federal intervention in state sovereignty.

Wallace put significant effort in mobilizing white voters, with serious results. Just as the number of African Americans rose, so did the number of white voters to 276,662, or 90%, in 1967. This trumped the number of African American registers, who then still were a minority in most districts, and no African Americans were elected to public office (McCrary et al. 39).

The Voting Rights Act did not solely act on a legislative level, but also on a practical level in the form of federal observers. One of the initial changes in Alabamian elections was the presence of federal observers. The first Alabamian elections that occurred while the VRA was in effect were the primaries in Wilcox County, Sumter County, Marengo County, Lowndes County, Hale County, Greene County, and Dallas County on 3 April 1966. The federal government sent respectively 70, 38, 104, 18, 19, 60, and 48 observers (a total of 357) and their impact was twofold. First, they directly assisted in voter registration, monitored elections and reported on discriminatory practices (Voting Rights Act: objections and observers 8). Second, their presence indirectly manifests as a threat that federal intervention will occur if the electoral system in not just and sound. Indeed, "the threat that federal examiners might intervene in the registration process throughout the state, as they did in a few counties that had registered virtually no blacks, helped persuade white officials to give up their discriminatory manipulation

of registration laws" (McCrary et al. 38-39). In total, there have been 5,233 federal observers that were deployed in Alabama during primaries, federal elections, primary runoffs, special elections, municipal elections, municipal primaries, municipal runoffs, special primaries and general elections from April 3, 1965 up to November 6, 2012 (Voting Rights Act: objections and observers 1-8).

Voter suppression is one way to disenfranchise African Americans, voter dilution, through gerrymandering and at-large district elections, is an additional one. When the VRA came into effect most Alabama jurisdictions already had "citywide or countywide elections designed, together with a 'numbered-place' requirement, to dilute black voting strength" (McCrary et al. 39). Since these were already in effect, they were not subject to pre-clearance by the federal government and could thus remain in place. The path to remove this type of laws was then litigation, this was however, a far more arduous and time-consuming path. However, "major shifts in black representation were the result almost entirely of Justice Department intervention or voting rights litigation" (Grofman and Handley 122). But the time-consuming effort of lawsuits does explain why African Americans were not elected into public office immediately, but only after the lawsuits had been decided.

An important issue is the distinction between at-large elections and single-member-district elections. As McCrary et al. (1994) note, Barbour County, home of George Wallace, is a good example of this. For many years all sixteen districts had elected their representatives through a single-member district, with 5 at-large elections. Due to the VRA the number of African Americans that were registered rose from 723 to 3,100, resulting in four districts which now had an African American majority. Six African Americans chose to run for office. Consequently, the incumbents adopted legislation that all members had to run countywide, rather than in their single district. The county was still predominantly white, which was then detrimental for the chances for an African American to become elected. In *Smith v. Paris* Circuit Judge Johnson in Barbour County held the at-large elections racially motivated and ruled it unconstitutional, which was upheld by the Fifth Circuit Court of Appeals. Intriguingly, Barbour County defied both court orders and continued holding at-large elections. This time, the federal Government sued Barbour County in what "appears to be the first vote-dilution case filed by the Department of Justice, and the first in which it challenged the adoption of at-large elections as a violation of Section 5 of the Voting Rights Act" (McCrary et al. 41). *United States v. Democratic Executive Committee of Barbour County, Alabama* ruled that the 1968 resolution was "purposeful discrimination against Negroes in violation of the Fourteenth and Fifteenth Amendments" (946). Although single-member districts in Alabama were not immune from

lawsuits from the Justice Department for the reason of voter dilution, it was confirmed that "a shift to single-member districts inevitably results in an increase in the number of black legislators elected. For example, the elimination of multimember districts between 1970 and 1975 led to a gain of 13 black representatives in the Alabama house" (Grofman and Handley 120-127). Nationwide African Americans made proper progress with regards to representation. In 1970 "there were only 1,469 in the entire nation. In the six southern states originally covered entirely by Section 5, there were 345 at all levels of government. By 2000, the number nationally had increased to 9,040 — a gain of over 600 percent, and in the same six states, 3,701—a gain of over 1,000 percent" (The National Commission on the VRA 37). This is clear evidence that the Voting Rights Act yielded proper results.

In 1965 approximately one in every three of Alabama's county commissions were elected through a single-member district. In the two subsequent decades sixteen of these sought to adopt an at-large election type. Since these now had to be pre-cleared, the Department of Justice resided over these alterations. In total 11 were denied for the African American community was either too small or geographically dispersed to form an African American majority district. For example, Barbour County attempted once more to install an at-large election but received an objection letter from the Department of Justice in 1978 (Voting Determination Letters from Alabama).

The legislative and executive branch were not the only two that were responsible for progress on the voting rights front. The Judiciary too, ruled important cases that favored civil rights activists. This especially occurred in the subsequent decade after the implementation of the VRA, but also just prior to it. In 1964 the Supreme Court ruled for *Reynolds v. Sims*, which originated in Alabama, that districts for a state chamber must be roughly equal in population. This was part of a series of court cases under the Warren Court that established the "one person, one vote' concept. *Baker v. Carr* (1962) and *Wesberry v. Sanders* (1964) were similar in content.

District Courts were paramount in the aforementioned decisions of *Smith v. Paris* and *United States v. Democratic Executive Committee of Barbour County, Alabama.* The Supreme Court too, ruled favorably regarding equal voting rights. In 1969, in *Allen v. State Board of Elections* it made clear that all proposed voting changes, including dilution tactics, had to be precleared by the Justice Department. Thus these now included dilution tactics.

In 1985 the Supreme Court deemed § 182 of the Alabama Constitution in violation of the Equal Protection Clause of the 14th Amendment and was adopted with racially discriminatory intent (Shapiro 542). § 182 entailed that all of those who had committed a crime

involving moral turpitude would lose their right to vote (471 U.S. 222 at 224). This is a form of disenfranchisement based on penal records. Edwards and Underwood, an African American and white respectively, had their voting rights removed under § 182 for they had presented a worthless check. They sued the Board of Registrars. The federal District Court decided against them, but the Court of Appeals reversed, and the Supreme Court upheld the ruling of the Court of Appeals. § 182 of the Alabamian Constitution was adopted during the Constitutional Convention of 1901, along with a plethora of other laws. This convention was fixated on disenfranchising African Americans and segregating them from society. As the president of that Constitutional Convention stated: "And what is it that we want to do? Why it is within the limits imposed by the Federal Constitution, to establish white supremacy in this State" (Shapiro 542). In the early 20th century this was rather successful, but in the second part of the 20th century many of these laws were reversed. Laws that were already in place prior to the enactment of the Voting Rights Act was not subject to Section 4 or 5, but had to be taken down through Section 2, which prohibited discriminatory laws in general.

A judiciary setback also took place in Alabama, in *City of Mobile, Alabama v. Bolden* (1980). The ruling was that disproportionate effects alone were insufficient to establish a claim of racial discrimination affecting voting, for it lacked the basis of purposeful discrimination which the VRA demanded (446 U.S. 55 at 446). As a result, the law was simplified "while making it far more difficult for claims of vote dilution to be sustained" (Keyssar 292). Indeed, the result was that hard evidence of purposeful racial discrimination was needed, like the president's words of the Alabama Constitutional Convention of 1901 that established clear intent. But if such evidence was lacking, it would be difficult to succeed in challenging an at-large system. Consequently, "most blatantly discriminatory system would fall. The more subtle system, but no less devoid of true access, would survive" (Chardwell 865). In response, activists asked Congress for support.

In 1982 the VRA was extended and to an extent successfully amended to reverse *City of Mobile v. Bolden.* It was amended in such a way that "permits the courts to examine the effects of alleged discrimination, but the 'totality of the circumstances' must be examined" (Chardwell 865) and became known as the Bolden Amendment. Congress thus intended to banish election practices that were discriminatory in effect and not solely intended as such (McCrary et al. 52). As a result, the Courts adopted more of a totality approach. Purposeful intent of racial discrimination was still obligated, but if the situation as a whole shows clear exclusion of a minority group without considerable efforts to correct the system, it now could be concluded that the system is not changed to continue the disenfranchisement of that minority

(Chardwell 866). In Georgia this became apparent in *Rogers v. Lodge*, a comparable case to *City of Mobile v. Bolden*, which relied heavily on historical evidence of intended discrimination, but also took into account economic hardship of African Americans, limited African American access to the ballot "and several other conditions which enhances and perpetuates" the system. Taken together, the evidence was overwhelming that African Americans were deliberately disenfranchised. The *Mobile* case in Alabama laid the foundation for further activism and additional legislation that enhanced voter participation, and thus shaped national voting rights legislation.

In 23 years, the voter registration rate for African Americans in Alabama rose from 19.3% to 68.4%. The gap compared with white voters had shrunk to a mere 6.6% in 1988 from 49.9% in 1965. By 1989 African American officeholding neared proportional representation. In their book *Quiet Revolution in the South – The Impact of the Voting Rights Act 1965-1990* (1994) McCrary et al. explain that there were two possible reasons for this. One was that racial attitudes had changed considerably enough that white people now too voted for African Americans (See Thernstrom 1987). There is extensive research, however, that links the increased number of elected African Americans to the increased number of single-member districts and thus to the abolishment of at-large elections (See Jones 1976; Karnig 1976; Latimer 1979; Davidson and Korbel 1981; Engstrom and McDonald 1981). In turn, the abolishment of at-large elections was a result of the implementation of the Voting Rights Act of 1965 and its subsequent reauthorizations and amendments. By 1989, 42 out of 48 Alabama cities of 6,000 or larger had switched from an at-large election to a district or mixed plan. 11 did so voluntarily, but the other 31 through coercion. 27 of these through litigation and 4 in response to objections by the Department of Justice (McCrary et al. 55).

The Voting Rights Act was reauthorized by Congress in 1982 and continued to be effective in protecting minorities. Section 2 of the VRA is a more general provision that prohibits laws that are discriminatory in nature and has not been affected by the ruling in *Shelby*. The National Commission on the Voting Rights Act wrote a report called "Protecting Minority Voters - The Voting Rights Act at Work 1982-2005", which was carefully researched and used as argumentation for the VRA's reauthorization in 2006. The report shows clearly that voter disenfranchisement was still present after the initial 25 years of the VRA and that the VRA halted legislation that would have the effect of disenfranchisement. From June 1982 up to December 2005 in total 192 successful section 2 cases occurred in Alabama, affecting 275 county voting populations (135). *Harris v. Graddick* (1984) was a singular section 2 litigation case which had major implications, since the state of Alabama was also a defendant and the

ruling thus had to apply state-wide. The plaintiffs of this case claimed that the practices for the appointment of poll officials in Alabama was racially discriminatory, which violated Section 2 of the Voting Rights Act. The District Court ruled in favor of the plaintiffs. This singular Section 2 case "ultimately forced 65 of Alabama's 67 counties to implement a non-discriminatory poll worker appointment process that allowed African Americans to participate equally" (The National Commission on the Voting Rights Act 85-86), and thus benefited African Americans greatly. It is difficult to state the impact of this on the disenfranchisement of African Americans, for one would have to argue that white poll workers were biased towards African Americans and in any shape of form obstructed African American access. I have found zero evidence for this. I would argue then that the ruling in *Harris v. Graddick* is positive regarding participation, not just in casting a ballot, but also being received at a polling station.

The National Commission on the Voting Rights Act's report shows that in Alabama there were 21 declaratory judgment actions favorable to minorities, 15 Section 5 submission withdrawals, and 46 objections from August 1982 to 2004. This means Alabama withdrew 15 law proposals, most likely because it was certain it would not receive preclearance, and that 46 proposed laws were not precleared and could not be adopted. After 1990 there was a decline in the number of Section 5 objections. In total, there have been 104 Section 5 objections concerning Alabama from August 1, 1969 up to August 25, 2008. Twenty of these were later withdrawn, mostly due to a change in type of election after which the desired change would thus no longer be discriminatory in neither purpose nor effect. From 1990 up to 2008 however, just 24 of the 104 took place. One Section 5 objection must be addressed, namely the objection to the redistricting proposal of the City of Calera, Shelby County in 2008. This was not the first time the City of Calera came into contact with the VRA. *Dillard v. City of Calera* (1980) resulted in the adoption of single-member district elections, which resulted in the election of an African American for the subsequent time up to at least 2008. In 2008 177 annexations and their designations to districts were under review. This was important, for certain ways of designating these annexations could result in the loss of an African American majority district. The burden was on the city to show that its desired way of designating the annexations would not have a discriminatory purpose nor effect. Then acting Assistant Attorney General Becker concluded that this was not proved by the City of Calera, and thus objected to the voting changes on behalf of the Attorney General according to standard procedure. In the objection letter Becker stated that "for 13 years, the city has failed to submit their adopted annexations for Section 5 review. Our Department has not received an annexation submission from the city since 1993, and the city admits that it is at fault for not submitting the 177 annexations" (2).

Citing the precedent of *City of Rome v. United States* Becker also notes that "the City of Calera also has failed to provide any reliable current population information about the 177 annexations here" that "the demographic data provided by the city regarding total population and voting age population in the city as a whole is also unreliable", and that "the estimate of racial composition in the city has no basis" (2). As a result, "the annexations and concomitant redistricting plan will continue to be legally unenforceable" (3). A year and a half later Shelby County, in which the City of Calera is located, filed suit, claiming Section 4 and 5 were unconstitutional. As can be read in chapter 2, the Supreme Court read in favor of Shelby County and as of 2013 no jurisdiction is subject to preclearance anymore. Consequently, plaintiffs must now rely on section 2 of the VRA. This may be burdensome for many. As the report of the National Commission of the Voting Rights Act states: "Section 5 has proven to be effective and efficient in preventing discriminatory voting changes. Because the burden is on the covered jurisdiction to show that its proposed changes are not discriminatory, preclearance is efficient in a way that Section 2 often is not. For in a Section 2 case, the burden is on the plaintiff, and shouldering that burden, meaning the costs of the case, can add up in the millions" (55). The concepts of one person, one vote and citizen equality can thus no longer be instituted by the federal government, but have now, in some instances, be acquired by citizens themselves through litigation.

To conclude this section, the Voting Rights Act of 1965 was immensely successful in a multitude of ways and yielded great results in Alabama. African American participation and representation grew massively and neared being proportionate to the population. The VRA halted new litigation by not preclearing them through Section 5 and cleared the way to challenges to existing litigation through Section 2. The federal government reauthorized the VRA and amended it in such a way in 1982 that African Americans and other minorities could in a more effective manner be enfranchised. The Supreme Court too then played a big role, ruling landmark cases that resulted in big increases in minority representation. Furthermore, it followed Congress's objective of increased participation and representation by adhering to the Voting Rights Act amendments. This was, however, no longer the case nearly 5 decades after the VRA was first implemented. In *Shelby County v. Holder,* the Supreme Court chose an opposite path to Congress and deemed that the VRA was no longer necessary. I will argue that now the federal government has taken a step back and can no longer prevent racially discriminatory laws from being implanted, there has been an influx of disenfranchisement laws and/or tactics in jurisdictions that were subject to the VRA. This which would be in line with history, since each new cycle starts with the voter suppression of African American when a

state oversees the electoral process. the next section will evaluate if this has also been the case for cycle three.

Stage 1 of Cycle Three – Alabama in Charge After *Shelby*

After Section 4 of the Voting Rights Act was ruled unconstitutional Section 5 was rendered useless, for no jurisdiction was subject to it anymore. Section 2, which prohibited practices or procedures that discriminate on the basis of race, color, or membership in one of the language minority groups was still in effect. In theory, laws could now be adopted that dilute voter strength or are discriminatory in effect. These would still be illegal, but rather than those type of laws not receiving preclearance and thus not coming into effect, the path now was to file suit through Section 2, which was expensive and time-consuming. Furthermore, since the law has already been adopted, harm could be inflicted for a certain period of time, harm that would have been prevented had the VRA still be in effect.

Just one hour after *Shelby* was decided by the Supreme Court, Texas adopted a voter-ID law. The law, SB 14, had not been precleared under Section 5 in 2011, but now that *Shelby* had been decided Texas reacted quickly. SB 14 restricted the number of acceptable forms of identification that voters had to present to cast a ballot and was initially signed into law in 2011 by then Governor Rick Perry. Texas sought preclearance under Section 5, the opposition, Texas NAACP, and the Mexican American Legislative Counsel, filed suit in *Texas v. Holder*. In 2012 the U.S. District Court for the District of Columbia had ruled that Texas failed to show that the law would not have a discriminatory effect and was thus deemed unconstitutional. But the law was thus reinstalled in 2013. Texas Attorney General Greg Abbott said in a statement: “With today’s decision, the State’s voter ID law will take effect immediately. Redistricting maps passed by the Legislature may also take effect without approval from the federal government” (Qtd. in The Effects of Shelby). A Section 2 complaint was filed by the Brennan Center of Justice alongside, among others, partners at the Lawyers Committee for Civil Rights, the NAACP, in *NAACP v. Steen* (2013). It was estimated that 600,000 people would not have had a valid means of identification under the new law. Justifiably then, *Steen* was successful. Shortly after, however, Texas implemented a modified version of SB 14, namely SB 5, which was upheld by the judiciary. Regardless, the issue had shifted. Prevention is better than cure. The reality was, however, that voter suppression could no longer be prevented by the federal government, but now had to be cured trough Section 2 litigation. This has also been the case in Alabama.

Not shortly after Texas adopted SB 14, Alabama adopted its own voter-ID law in 2011. This law at the time was subject to Section 5, but was not submitted for review, most likely

because similar litigation had not been precleared five times (Dunphy par. 2). After the Shelby ruling Alabama did put the law into effect. Under this law voters had to present "one of a limited number of state-issued photo IDs to vote either at the polls or absentee (The only exception is if two election officials at the polls positively identify you)" (Dunphy par. 2). Proper ID entailed one of the following: "driver's license; non-driver state ID; photo voter ID; ID issued by another state; federal government ID; passport; state, county or municipal government employee ID; student or employee ID from a public or private college or trade school in Alabama; and ID issued by a state college in another state" (Cason 2014). Estimates vary, but local news reported on the assertion by NAACP lawyers that "100,000 registered voters in Alabama can't vote because they don't have the photo identification required by the state, and that most were poor, black or Latino" (Faulk 2017). A more gruesome estimation had the number of people that cannot vote range between 250,000 and 500,000 (Jealous and Haygood 8). An additional issue regarding this law was the obtaining of valid identification. In October 2015 budget cuts would be responsible for the closing of 31 driver's license offices. As local reporters noted these were primarily located in rural, low-income, majority African American counties (Lachman 2015; Faulk 2015; Strong 2020). It took public outrage and intervention by the U.S. Department of Transportation for Alabama to scrap the plan (Dunphy par. 2). University of Alabama law professor Jenny Carroll testified that "the rationale was saving taxpayer money" (Qtd. in Moser par. 26). The results, however, were marginal, only saving between $200,000 and $300,000, on a budget that "typically range from $100 million to $200 million" (Moser par. 26). After a court challenge in 2015, the state agreed to reopen the disputed offices for one day a month. Carrol remarked: "But good luck finding them, or figuring out their hours" (Qtd. in Moser par. 26) since the state does not post that information. One year later after the U.S. Department of Transportation had investigated the situation, it was agreed upon by the Alabama government, despite not agreeing with the findings that predominantly minorities were hit, but in the spirit of establishing a good relationship, "Alabama will double or triple the hours that many Black Belt offices are open – collectively adding 2,020 hours of operation each year" (Feds: Alabama to expand par. 8).

In 2011 when the voter-ID law was passed by the Republican-led legislature the prevention of voter fraud was stated as a core reason to adopt the law (Cason 2014). The myth of voter fraud, however, has been debunked (McKee 2018; Marshall Manheim and Porter 2019). When it comes to the implementation of new legislation "Republican leaders generally st[i]ck to the script, repeatedly citing the threat of fraud to explain why they [are] pushing reforms that otherwise seemed to be in tension with accessible and well-functioning elections"

(Marshall Manheim and Porter 232). This is then to accomplish less support for the reigning opposition. This "supposed 'threat' of voter fraud is used as a pretense to take actions and pass laws that suppress voting by people of color and others who are more likely to vote for the opponents of officeholders promoting the myth" (Southern Poverty Law Center 19). Research by Justin Levitt, a Senior Justice Department Official, has shown that there were only 31 credible instances of voter fraud out of 1 billion votes cast between 2000 and 2014 (Ho Par. 13). Voter fraud is not non-existent, but it is extremely rare. Yet, voter fraud ironically remains a core argument for predominantly Republican legislators to push through legislation that disenfranchises African Americans.

The course of events regarding the Alabamian voter identification law is interesting, for Republicans justify their actions with statements that fail to hold up under closer scrutiny. It is claimed that the law is not discriminatory in effect, yet it was not sent to the Justice Department while Section 4 of the Voting Rights was still in effect, but only after said section was ruled unconstitutional. In practice, the law does negatively affect African Americans disproportionately to white people. The same is the case for the closing of driver's license offices, which occurred predominantly in African American majority, rural areas. This is then evidence that when a state has full authority over its electoral process, voter disenfranchisement is more likely to occur through political actions and possible to a far greater extent than when Section 4 of the Voting Rights Act has been in effect and the federal government could be pro-active. The removal of accountability for political jurisdiction to the federal government and has negatively affected minorities.

The Sentencing Project is an organization that pleads for reforming the criminal justice system of the United States and has accumulated data regarding the criminal justice system since 1986. Its statistics show that in 2017 Alabama had a high number of people incarcerated. In total, 416 people per 100,000 were in prison, or in total 23,724. Furthermore, 51,694 were on probation, and 8,150 on parole. The Black / White ratio was 3.3/1 and in total 286,266 or 7.62% was disenfranchised. Of this number, 143,924 were African American, which is 15.11% of the African American population in Alabama. 1 in every 13 Alabamians was disenfranchised, which was the seventh highest state-wise. An important aspect of Alabama's law regarding the voting rights of convicted people, is that the repercussions may differ per county. As *The Birmingham News* reported in 2016, a felony conviction can bar a person from voting for the rest of their lives, but "it depends on which county you live in. And when you register. And who processes your voter registration. A burglary conviction might disqualify you in one county but not in another. Or it might have disqualified you last year, but you could get lucky this year"

(Vollers 2016, 1). In the same article Martha Shearer tells her story about voting. She was in 1990 for the possession of drugs and had begun the process for applying for a full pardon at the state's Board of Pardons and Paroles. "When I went to Pardons and Paroles to apply for a pardon, they asked if I wanted to be able to vote," said Shearer. She told them she'd already been voting. "They told me, 'Then you've been committing fraud'" (Vollers 2016, 1). The problem with the Alabamian system then, was that there was no Alabamian state-wide system but it dependent on which county you were a resident of and what the judgement of the poll workers was. Voting, at times, came down to luck.

Alabamians that have been convicted of a crime of "moral turpitude" are stripped of their voting rights. As discussed earlier, the moral turpitude standard was decided in the Alabama Constitutional Convention in 1901, but the Supreme Court had struck the phrase from state law in 1985 for it was in violation with the Equal Protection Clause. However, in 1996 it was added to the state's felony disenfranchisement law in such a way that it only applied to felonies and was thus no longer discriminatory in effect. What constitutes a moral turpitude offense was not defined, however, which was problematic in a multitude of ways. First, since there is no definition of which crimes can be categorized under moral turpitude ones, "the job of deciding which ex-felons get to vote falls to the three voting registrars in each of Alabama's 67 counties — 201 state-appointed people who are not required to have specific education or training in matters of law. "The majority of registrars are not attorneys and we don't have law degrees," said Lynda Hairston, chairman of the Board of Registrars in Madison County. "But we do our best not to take anyone off (the voter rolls) that should not be taken off" (Vollers 2016, 2). It then comes down to being fortunate with your three registrars on the day of voting and them not having make a mistake. Voting is a constitutional right and it should not come down to untrained people doing their best regarding deciding who is eligible and who is not. The standard should be crystal clear and leave no room for any mistakes. This is not evidence for structural voter suppression, but it does affect all eligible voters and should not be possible. Second, since the definition of moral turpitude is not clear, some people have been committing fraud since they were technically not allowed to vote. The story of Martha Sheared is a prime example of this. And third, there is no equality among the counties. If a person has committed a crime of moral turpitude, they may lose their right to vote in one county, but not in another since it is up to the judgement of each county and its residents what constitutes moral turpitude.

In 2017 Governor Kay Ivey signed into law the Definition of Moral Turpitude Act (HB 282). This law made cleared the confusion. It outlined a 46-conviction list of crimes which constitute crimes of moral turpitude and those who are convicted of such crimes lose their

voting rights. If the crime is not on the list, the right to vote is not lost. Committing a moral turpitude felony will result in complete disenfranchisement. Moral turpitude crimes “still results in disenfranchisement, but felons convicted of those felonies can submit a form and regain their voting rights once they have repaid their debts to society” (Sheets 2; see ACLUAlabama for a full overview of moral turpitude felonies and crimes). African Americans have been hit especially hard by this law (Strong 1).

The Definition of Moral Turpitude Act did re-enfranchise thousands of Alabama residents and thousands more were and are now eligible to regain their right to vote. In total 200,000 would be re-enfranchised as a result of the Act (Sheets 1). The problem was however that many of them were unaware of that fact. Just this February *The Birmingham News* reported that an estimated 70% of people with prior convictions do not know this law is in place and could potentially have their right to vote reinstated (Strong 1). Alabama Secretary of State John Merrill (R) reported to *The Huffington Post* in 2017 that he was “not going to spend state resources dedicating to notifying a small percentage of individuals who at some point in the past may have believed for whatever reason they were disenfranchised,” he said. “But I am going to continue to spend state resources to promote the opportunity for all citizens to determine their eligibility and to assist them in becoming registered to vote and obtaining a photo ID so they can participate in whatever level they’d like to” (Qtd. in Levine par. 7). Thus, rather than disenfranchising thousands of people, Merrill would simply not let those people know they were now legally enfranchised. I would argue then that this constitutes indirect disenfranchisement, for having people continuously believe they remain disenfranchised while they are not, has the same result, of preventing a massive block of people from voting.

An additional problem is the fact that requirements must be met prior to the right to vote being completely reinstated. Although “even those whose crimes were listed as a disqualifying offense could potentially regain the ability to vote by applying for a pardon or a Certificate of Eligibility to Register to Vote (CERV) with the Board of Pardons and Paroles” (Yawn 2019), those who qualify for a CERV must have repaid all outstanding debt associated with their conviction. Treva Thompson for example, was sentenced to probation for five years for theft of property. While “her crime may not have been one of moral turpitude, she faces permanent disenfranchisement because she’s unable to pay off more than $40,000 in fines and court costs — which increase with interest each year — by working minimum-wage jobs” (Vollers 2016, 3). This has been compared to a poll tax. This then is a prime example of a second-generation voting barrier. First-generation poll taxes first came up in 1877 but were abolished through the 24th Amendment. This modern prerequisite to have no outstanding fees can be seen as a second-

generation barrier that, as for its first-generation, heavily targets African Americans in Alabama since they are disproportionately disenfranchised trough the criminal justice system. As Dev Wakeley, writer for Alabama Arise, states: “One significant step toward voting rights for all would be to change state law to ensure that the right to vote is never conditioned on someone’s ability to pay money” (Par. 5). Indeed, poverty should not be the crime of which the penalty is loss of a constitutional right. Meredith and Morse (2017) conducted a study on how legal financial obligations for felons affected them after they were released or after parole and probation in Alabama. They found that “people who are disproportionately indigent—blacks and those utilizing a public defender—are even less likely to be eligible to restore their voting rights” (309) and “that black ex-felons are about 9.4 percentage points less likely to be eligible to vote because of an outstanding legal financial obligation debt” (328). The 2014 report “The Burden of Criminal Justice Debt in Alabama – 2014 Participant Self-Report Survey” by Foster Cook, associate professor at the University of Alabama, found that under 943 participants under supervision for a felony the “median income [was] $8000.00 and [they on average had] a mean income of $10,894.00 annually” (4). On average the amount of outstanding costs accumulated to $7,885.21 (16), close to an annual median income. The report’s conclusion was that “under current policies, the poorer the defendant the longer they are in the system and the more they pay” (18). In her influential book *The New Jim Crow – Mass Incarceration in the Age of Colorblindness* Michelle Alexander states that “once a person is labeled a felon, he or she is ushered into a parallel universe in which discrimination, stigma, and exclusion are perfectly legal, and privileges of citizenship such as voting and jury service are off-limits” (94). Voting is a right and should not be subject to prerequisites. Yet, in St. Clair County it is estimated that those under supervision for a felony spend on average 136 months paying their fees (Cook 17). This is over 11 years. With bad luck, such a person cannot vote in three consecutive presidential elections.

It is difficult to state whether or not the Voting Rights Act of 1965 could have prevented this chain of events, had Section 4 still be in effect. As research shows, the poll tax does negatively discriminate against African Americans, who are more likely to suffer from any outstanding financial legal obligations. I would argue then that the current system discriminates on the basis of wealth, which is equal to discrimination on the basis of being part of the minority since “white Alabamians earn $50,402 a year on average, compared with black Alabamians' average of $29,180” (Vollers 2017). African Americans are then incarcerated to a higher degree, to a 3.3 ratio to white people, and have more trouble “buying” their voting right back. Since the VRA forbids racially discrimination in intent and *effect*, I would argue that a Section

5 complaint would have been successful. The Alabamian felon disenfranchise system has been legally challenged, but through Section 2. In 2016 the unclearness of the moral turpitude crimes were later defined in the discussed Definition of Moral Turpitude Act, and the poll tax were challenged in court, stating it was unconstitutional under Section 2 of the VRA in *Thompson v. Alabama*.

It was ruled that legal financial obligations are not a poll tax. It was stated that "several courts, including the Sixth Circuit, have reasoned persuasively that requiring full payment of criminal fines and restitution as a condition of re-enfranchisement does not amount to a poll tax because the fines are terms of the sentence that 'Plaintiffs themselves incurred'" (2:16-CV-783-WKW 11). On May 27, 2020, a new motion was filed to halt the law that required the payment of fees prior to be able to vote. Interestingly, a federal court in Florida struck down a similar law just prior to that in May of 2020, which would have denied people the right to vote in the 2020 election due to inability to pay legal financial obligations. This may affect Alabamian law as well, since now a binding precedent has been set in the 11th Circuit Court of Appeals, which includes Alabama (Goldstone 2020). This story in ongoing then, but this is a positive development for the re-enfranchisement of ex-felons.

In the immediate decades after the implementation of the Voting Rights Act of 1965 the Supreme Court largely sided with Congress on the issue of voter disenfranchisement, ruling numerous cases that enhanced voting equality. *Shelby* was the real turning point. Another good example of the Supreme Court heading into a different direction is *Husted V.A. Philip Randolph Institute* (2018). The Supreme Court ruled that a purging method of Ohio was not unconstitutional. The method in question was about people who had been inactive for 2 years. Those people would receive a confirmation notice. If that notice is not answered, or that person does not re-register or vote in the next four years, he or she is purged from the voter rolls. A precedent has thus ben set that if you fail to respond to a postcard and have not voted for a set period of time, you lose your voting right. If you do not exercise your constitutional right, you lose it. Alabama has adopted a similar practice. After *Shelby,* the voter roll can be purged without federal preclearance. The voter roll is purged every four years in Alabama, the last time was in 2017. In 2017 every registered voter had been sent a postcard to identify who had moved. Consequently, Alabama officials listed more than 340,000 voters as inactive, a precursor to removal from the rolls if they do not vote in the next four years (Astor par. 6). This is in violation of federal law, that states that a voter must have been inactive for at least two-election cycles. The Voting Rights Act would have halted such practice before it could have gone into effect.

Alabama utilizes a system called Interstate Voter Registration Crosscheck. States send their voting list to this program, which checks if there are any double registrations based on first, middle and last name, date of birth and the final four digits of one social security number. The Brennan Center for Justice has found, however, that Crosscheck data is inaccurate (Brater 5). The program is makes mistakes by not distinguishing between people with the same name and date of birth and counts those as one and the same person. Furthermore, its data is not secure. Administrators of Crosscheck had sent passwords through unsecured mails (Lerner par. 2). Despite this being known, Alabama started utilizing the system in 2016.

A problem that occurred was that voter fraud alarmists started to focus more and more on the voter rolls. The Brennan Center for Justice Report noted that “in recent years, organizations such as the American Civil Rights Union (ACRU), Judicial Watch, Public Interest Legal Foundation (PILF), and True the Vote have both threatened and filed lawsuits seeking to institute more aggressive purge practices” (Brater 6). The Judicial Watch targeted thirteen counties in Alabama, nine of these had higher minority populations than the state average. Public Interest Legal Foundation “sent letters far and wide, in several states a large percentage of the counties they targeted had higher minority populations than the state average, including [12 out of 12 in] Alabama” (Brater 11).

Alabama then uses Crosscheck as a purging tool, which does not operate as it should be and is pressured to purge more aggressively by voter fraud alarmists. A Republican-led Congress may give in to this pressure, since, just as the voter fraud alarmists, it cites voter fraud extensively. Furthermore, since Crosscheck purges people with the same name and date of birth, African Americans, and other minorities, are more vulnerable than white people. This because “non-whites are more likely to have the same names. According to the U.S. Census Bureau, 16.3 percent of Hispanic people and 13 percent of black people have one of the 10 most common surnames, compared to 4.5 percent of white people” and additionally “Black and Hispanic voters are more likely to move, often in the same jurisdiction, but voter purges based on address eliminate them from voting” (Harriot 2018). The program also does not differentiate on date-of-birth or social security number. Rather, “the Crosscheck instruction manual says that ‘Social Security numbers are included for verification; the numbers might or might not match’ – which leaves a crucial step in the identification process up to the states” (Palast 2016). If a state then does not follow up with the proper administrative work, but acts based on the data Crosscheck produces, many may be purged incorrectly. A study by Goel et al. (2020) found that of all the illegal double voters the program singles out, “fully 99.4% of votes cast with the same name and DOB were cast by distinct individuals” (457).

The lists Crosscheck produces regarding double voting is one of potential voter fraud instances, which is a felony and are thus classified. However, *The Rolling Stone* got its hands on some lists through a clerk in Virginia and obtained additional lists of Georgia and Washington state. Mark Swedlund, a database expert, analyzed these lists and was shocked by Crosscheck's "childish methodology." He added: "God forbid your name is Garcia, of which there are 858,000 in the U.S., and your first name is Joseph or Jose. You're probably suspected of voting in 27 states" (Qtd. in Palast 2016). Swedlund was asked the question if the program was designed to target minorities, to which he answered "I'm a data guy, I can't tell you what the intent was. I can only tell you what the outcome is. And the outcome is discriminatory against minorities" (Qtd. in Palast 2016). In Virginia, thirteen percent of people on Crosscheck's list, were almost immediately removed, which were 41,637 people that lost their right to vote (Palast 2016).

Palast, writer for the *The Rolling Stone,* states that "based on the data, the program – whether by design or misapplication – could save the GOP from impending electoral annihilation. And not surprisingly, almost all Crosscheck states are Republican-controlled" (2016). So too is Alabama, that adopted it in 2017, despite the report by amongst other *The Rolling Stone*. A Red Alabama then, that is known for citing voter fraud as justification for discriminatory laws, adopted a flawed program that disproportionately hits minorities, to purge its rolls.

Gerrymandering is a first-generation tactic that is persistent and keeps coming back as an issue. As explained in the introduction, there are two types of gerrymandering, packing and cracking. Cracking concerns placing the opposing party's supporters across many districts. Packings concerns placing the opposing party's supporters in one district to diminish their voting power in other districts. Already by the late 19th century it was pervasive disruptive in such an extreme manner that President Harrison called it "political robbery" (Qtd. in Anderson 76). Section one of this chapter dealt with the redistricting issues in Alabama while the VRA was still in effect. After Shelby there was one noteworthy case regarding racial gerrymandering in Alabama is *Alabama Legislative Black Caucus v. Alabama* (2015). The Supreme Court overruled the decision by a federal District Court and did deem Alabama's districts, that were drawn in 2012, to be racially gerrymandered. It stated that the focus should not be on minority percentages, but what percentage would be "appropriate to allow minority voters to select their preferred representatives" (Lyman 2017). So rather than packing 70 percent of African Americans in one district, the population should more evenly be distributed while still having a reasonably chance of electing a preferred official.

Now the VRA is no longer in effect there is no longer the obligation to preclear redistricting plans. With the census coming up and subsequently the redrawing of district lines, this must be taken into account. The same problem as with the other voter suppression or dilution tactics remains, citizens can now only react.

The *Shelby* ruling did not just ease the path to implement discriminatory laws, but also influenced the use of federal observers to monitor elections and report on them. As the Department of Justice notes on its website: "the Voting Rights Act provides for the appointment of federal observers by order of a federal court pursuant to Section 3(a), or, (prior to the Shelby County decision) with regard to political subdivisions covered under Section 4 of the Voting Rights Act" (About Federal Observers And Election Monitoring). It thus relied heavily on Section 4 to determine where to deploy observers. In Alabama 22 counties were certified by the Attorney General for federal observers prior to *Shelby*. Now that is no longer the case, the Justice Department relies more heavily on "local groups and individuals to alert us to potentially unlawful acts, since jurisdictions no longer have to self-report" (Lynch par. 8). In Alabama there are numerous organizations and initiatives that have the purpose of ensuring proper elections and combating voter injustice and disenfranchisement.

The Alabama Voting Rights Project and Campaign Legal Center are two non-profit organizations that have spread awareness about the Definition of Moral Turpitude Act (Sheets 2018), which Secretary of State Merrill refused to spend state money on. To promote voter participation for the elections of 2022 The Southern Poverty Law Center "will be investing $30 million into voter outreach organizations in five southern states (Alabama, Florida, Georgia, Louisiana and Mississippi) to increase voter registration and fight voter suppression" (Beck 2020). Seth Levi, SPLC's chief strategy officer, told *The Alabama Daily News* that "one of our goals is to help empower communities of color, which traditionally face the brunt of voter suppression efforts, and our activities here are non-partisan" and that "we're not doing this to win elections, we're doing this to help increase turnout amongst those communities so that their voice is heard as loud as anybody else" (Qtd. in Beck 2020). The overarching issue of combating voter suppression tactics was that voter activists had to respond to already implemented legislation. With Section 5 rendered useless, states could adopt legislation at will and had to be addressed through the courts, but the laws would still be in effect for a period of time, in which harm could be inflicted.

Stage 2 of Cycle Three – Voting Rights Advancement Act

The previous chapters have dealt with the history of voter suppression that lead to the Voting Rights Act of 1965, the ruling in *Shelby* and how both the VRA and *Shelby* influenced voter

suppression on the ground in the state of Alabama. Alabama clearly shows that voter suppression and the targeted disenfranchisement of African American people is not something of the past but is still present. Numerous non-profit organizations and civil right groups advocate for voter equality and battle the injustices that voters face. The trend of voter disenfranchisement occurring in Alabama and other predominantly southern states when a state has the autonomy over its electoral process has been described. The same goes for the process of re-enfranchisement when the federal government is involved. In lieu with that trend, it is now up to the federal government to fight for re-enfranchisement and voting equality once again. Tomas Lopez, head of the civil rights group Democracy North Carolina stated that "restoring preclearance in states like North Carolina is the only solution" for "otherwise, you'll still have this cat-and-mouse game that's been going on. Shelby happens; North Carolina passes its voter-ID law; then you've got three years of litigation and it's declared unconstitutional. Then you have voters pass an amendment, as they did in 2018, and now we're all back in court. You have ID in place; you don't have ID in place; maybe you have ID in place" (Qtd. in Moser 2019). Indeed, "Without a federal solution, the endless round of new restrictions, followed by equally endless rounds of court battles—then followed by newly worded laws or amendments after one voter restriction gets struck down—will continue in the states" (Moser 2019). The federal government is working on a solution. The House Administration Subcommittee on Elections has held hearings to gather testimony about which obstacles voters face when they cast their ballot country-wide. At such a hearing, *Birmingham News* reported that in Birmingham Chair of the Alabama State Advisory Committee to the U.S. Commission on Civil Rights Jenny Carroll remarked on the state of voting rights here in the state: "The days of a sheriff standing in the doorway of the polling place may be a thing of the past, but current voting regulations may produce the same effect on minority and poor populations in our state" She went on: "If you are poor, if you are a person of color in the state of Alabama, "it is a longer, harder road to the ballot box. Even today, and I would say increasingly so. We need a comprehensive, federal law that will deal with this" (Qtd. in Sewell 2). Alabama played a massive role in the shaping and the end of the Voting Rights Act of 1965. Interestingly, it is also the place of origin of what may be the VRA's successor, the Voting Rights Advancement Act, introduced by United States Representative for Alabama's 7th Congressional district Terri Sewell in June 2017.

The reason that a new Voting Rights Act is possible is because the Supreme Court left the door open for a new coverage formula. In his majority opinion Chief Justice Roberts stated that: "Congress may draft another formula based on current conditions. Such a formula is an

initial prerequisite to a determination that exceptional conditions still exist justifying such an extraordinary departure from the traditional course of relations between the States and the Federal Government" (24). In 2016 Attorney General Loretta E. Lynch at the League of United Latin American Citizens National Convention held a speech in which she stated: "I have repeatedly urged Congress to embrace this opportunity. And today, once again, I call upon the people's branch to stand up for the people's voice. In a nation of the people, by the people and for the people, no eligible citizen should be denied the right to vote, no matter who they are or where they live" (Par. 9). Representative Marcia Fudge took up the arduous challenge of gathering voter suppression data for the House Administration Subcommittee on Elections. "What the courts said to us is that they could not continue to enforce Section 4 because they did not have a contemporaneous record," Fudge stated. "We are doing these hearings to create a contemporaneous record, so that we can go back to them and say, 'Not only did we have these problems in 1968, but we had these problems in 2018." (Moser par. 13). The United States Commission on Civil Rights issued a report in 2018 that "examine[d] minority voting rights access through the lens of the federal government's enforcement of the Voting Rights Act (VRA) of 1965 since the 2006 reauthorization of its special provisions" (7). One of its recommendations was crystal clear: "Congress should amend the VRA to restore and/or expand protections against voting discrimination that are more streamlined and efficient than Section 2 of the VRA" (13). The Voting Rights Advancement Act is such an attempt. It "creates a new coverage formula to determine which states will be subject to the VRA's preclearance requirement that is based on current evidence of voting discrimination in response to the Supreme Court's holding that the previous formula was outdated" (H.R. 4 at 11).

The VRAA had crafted a new coverage formula. The criteria of the VRA's coverage formula has been amended. a state will be subject to the coverage formula if ''(i) 15 or more voting rights violations occurred in the State during the previous 25 calendar years; or ''(ii) 10 or more voting rights violations occurred in the State during the previous 25 calendar years, at least one of which was committed by the State itself, or (iii) a political subdivision if "3 or more voting rights violations occurred in the subdivision during the previous 25 calendar years" (H.R. 4 at 2). It is thus no longer based on a low turnout percentage, which "is a positive development, as basing coverage on such a proxy — which is neither a constitutional nor a statutory violation — would have opened up the coverage formula to challenge" (Crum par. 5). There is an abundance of data available to determine which states would be subject to the VRAA's coverage formula, both from the reports Congress used to extend the VRA in 2006 and the 2018 report by the United States Commission on Civil Rights. Alabama would be subject once more

to the coverage formula, as would most southern states be that were also subject to the coverage formula of the Voting Rights Act of 1965.

The Voting Rights Advancement Act was introduced in the House of Representatives on February 26, 2019 and passed by a vote of 228-187. In the Senate it was introduced on the same day, but there has not been a vote yet. Although all the Voting Rights Act reauthorizations were realized with full bipartisan support, the latest in 2006 being no exception, it is unlikely that the VRAA will be adopted this year. The Republicans have the majority in the Senate and since the VRAA would result in easing the voting process for African Americans, who tend to vote predominantly Democrat, it would politically be unwise for a Republican to vote in favor of the VRAA, albeit the just choice. Since many states are now also in the hands of the GOP, the VRAA would severely harm republican seats on all levels of government. The *Shelby* ruling resulted in a smaller government. This in turn, made possible that party loyalty has trumped the democratic concepts of citizen equality and one person, one vote. Republican legislators adopted laws that would be detrimental for the voter participation and turnout of their opposing party's constituency, which are, in general, minorities, including African Americans. This shows that the Judiciary has tremendous power and influence regarding the concept of federalism and who is put in control over civil right issues.

Conclusion

This thesis investigated the scope of racial voter suppression historically, the implications and effects of the Voting Rights Act of 1965, depicted the current state of African American voter suppression in Alabama, and touched upon the potential remedy of voter suppression, the Voting Rights Advancement Act. The central question was if a pattern could be established regarding under whose authority African American voter suppression occurs and if so, how that has manifested itself in Alabama from 1965 up to today. Additionally, the questions of the scope of African American voter suppression in Alabama and what the role of the Supreme Court is regarding federalism, have been raised. Five conclusions can be drawn.

First, a pattern exists regarding the disenfranchisement of African Americans. If a state has the ability to act on its sovereignty regarding the intricacies of its electoral process, African American disenfranchisement is more likely to occur, especially in southern, former Confederate states. If the federal government is infringing on a state's sovereignty and intervenes in the electoral process, African American disenfranchisement is far more unlikely to occur and African American voter registration and turnout increase. This thesis has pointed out that there have been two full cycles, each containing two stages. Stage 1 is one of disenfranchisement under state rule, stage 2 is one of re-enfranchisement under federal intervention. We are currently in stage 1 of cycle three. The different stages of Alabama being in charge versus the federal government regarding the electoral process has been completed twice, and we are currently in the third cycle. The disenfranchisement of African Americans through slavery, followed by the Reconstruction Amendments and federal troops enforcing those was the first cycle. When the federal troops left as a result of the Compromise of 1877, the second cycle started with the disenfranchisement of African Americans through Jim Crow legislation and ended with the Civil Rights decade of the 1960s, which, in turn, led to the adoption of the Voting Rights Act of 1965. This second stage of federal intervention lasted for nearly 50 years and was characterized by major progress concerning African American voter registration and turnout. The cycle ended with the ruling in *Shelby*, which deemed the coverage formula of the Voting Rights Act of 1965 unconstitutional, for it infringed on both the concept of state sovereignty and state equality. As discussed in chapter 4, the federal government is attempting to regain influence through new legislation.

Second, the Voting Rights Act of 1965 was effective and there was sufficient evidence to deem the ruling by Chief Justice Roberts in *Shelby* questionable. In all states and separate jurisdictions subject to the coverage formula of the VRA, African American voter registration and turnout increased. Chief Justice Roberts opined that this indicated that times had changed,

and that the coverage formula was based on data that was no longer relevant. The VRA could thus no longer be justified. The dissenting opinion stated that "throwing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet" (33). The investigation of the voter suppression tactics in Alabama post-*Shelby* proved that the dissenting opinion was well-founded and that it is still very much storming in Alabama. Although it has not been investigated in detail in this thesis, the same can be concluded for numerous other southern states such as Texas and Florida.

Third, the GOP attempts to adopt legislation that provides it with an electoral advantage. The effect of this is the disenfranchisement of minorities, who tend to vote Democratic. It should not be concluded that the GOP intends to discriminate against African Americans because they are African Americans, but rather because of African American's general political allegiance. Indeed, "these election reforms are designed to raise the costs of minority participation, because minorities do not support the GOP, not because Republicans simply have it out for minorities" (McKee 307). However, as McKee also notes, if "these laws single out minority groups or have a racially disparate effect on minority participation, then who cares whether the nub of GOP maneuvering is electoral competition and not racial discrimination?" (307). As ruled in *City of Mobile*, the effect of legislation must be taken into consideration by courts. The effect of newly adopted Republican electoral legislation is that African American are disproportionately disenfranchised.

Fourth, new federal legislation is needed. Regarding the early fight for voter equality, Justice Ginsberg, in her dissenting opinion in *Shelby* stated that "early attempts to cope with this vile infection resembled battling the Hydra. Whenever one form of voting discrimination was identified and prohibited, others sprang up in its place" (2). Section 2 of the VRA, which prohibits voting practices or procedures that discriminate on the basis of race, color, or membership in one of the language minority groups identified, is still in effect. However, with preclearance Section 5 no longer being in effect, the burden of proof has shifted from the political jurisdictions to the plaintiffs. This is costly in both resources and time for the plaintiff. Especially the amount of time it takes to prove that existing legislation is discriminatory in effect is problematic, for irreparable damage may have been inflicted in the time the law was in effect. The resistance towards discriminatory voter laws through court cases and activism has proven effective, but predominantly occurs after the implementation of such laws. A new coverage formula, such as in the Voting Rights Advancement Act, can prevent the implementation of laws and potential harm.

Fifth and final, the Supreme Court has tremendous influence over who oversees a state's electoral process and has, historically, shifted between favoring state sovereignty and an increased federal government. Additionally, it has marked the transition of stage 1 to stage 2 with its ruling in *Shelby*. The current conservative, small government-favoring climate of the Court resembles the late 19th century, which marked the end of cycle one. On both instances it argued that the federal government had acted sufficiently regarding the equality of its citizens and could thus take a step back. In line with history, it is then conceivable that in the, perhaps near, future the Supreme Court will side with the federal government again, if it completes the herculean task of crafting a new coverage formula that can count on bipartisan support.

The 2016 election clearly showed the results of the *Shelby* ruling in the percentages of voter turnout. Pew Research Center showed that in the 2016 election African American voter turnout fell from a historical high of 66.6% in 2012 to 59.6% in 2016 (Krogstadt and Lopez par. 1). The fact that Obama was no longer in the race for office has undoubtedly contributed to this decrease in turnout. Yet, the mentioned tactics deployed by Republicans have had their impact as well, as the case study of Alabama has shown. The 2020 election will then be interesting. Eight years of discriminatory voter laws may have a profound lasting effect on voter turnout, yet it could also be the case that extensive lobbying and court cases have mitigated the problem. Stacey Hawkins, a resident of Georgia, was purged from the rolls in 2016 through a "postcard trick". The purged voters had not voted in the 2014 and 2016 election and failed to return a postcard. Assuming these people had moved, then Secretary of State Brian Kemp changed the status from inactive to canceled. When Hawkins was interviewed she held up the plain white card that was sent to her "so people can see how innocent they look," Hawkins explained what it took to regain her right to cast a ballot — namely, a bundle of determination, a lot of wasted time, and lawyers from the ACLU. "In my wildest dreams," Hawkins said, "I never imagined that I would be here in 2019 fighting the same issues my ancestors have waged since arriving on these shores in 1619. I am asking Congress to intervene in what was fought for and, many of us thought, won" (Moser 2019). This thesis has demonstrated that voter suppression of African Americans is not merely a dark page in the history books of the United States of America, but an ongoing issue that has had profound effects in the past, and may have profound effects in the upcoming election of 2020.

Work Cited

Literature

"About Federal Observers and Election Monitoring." *The United States Department of Justice*, The United States Department of Justice, 11 Mar. 2020, www.justice.gov/crt/about-federal-observers-and-election-monitoring.

ACLUAlabama. "Crimes of Moral Turpitude." *ACLU of Alabama*, 13 July 2018, www.aclualabama.org/en/crimes-moral-turpitude.

Alexander, Michelle. *The New Jim Crow – Mass Incarceration in the Age of Colorblindness*. New Press, 2012.

Anderson, Carol. *One Person, No Vote: How Voter Suppression Is Destroying Our Democracy*. Bloomsbury Publishing, 2019.

Astor, Maggie. "Seven Ways Alabama Has Made It Harder to Vote." *The New York Times*, The New York Times, 23 June 2018, www.nytimes.com/2018/06/23/us/politics/voting-rights-alabama.html.

Barnes, Robert. "Supreme Court Upholds 1965 Voting Rights Act but Hints at Change." *The Washington Post*, WP Company, 23 June 2009, www.washingtonpost.com/wp-dyn/content/article/2009/06/22/AR2009062200771.html.

Bazelon, Emily. "Will Americans Lose Their Right to Vote in the Pandemic?" *The New York Times*, The New York Times, 5 May 2020, www.nytimes.com/2020/05/05/magazine/voting-by-mail-2020-covid.html.

Beck, Grace Chung. "Determination Letter." Received by Mr. Head, *Justice.gov*, 25 Aug. 2008, www.justice.gov/sites/default/files/crt/legacy/2014/05/30/l_080825.pdf.

Beck, Caroline. "SPLC to Invest $30M into Voter Outreach Programs." *Times Daily*, 18 June 2020, infoweb.newsbank.com/apps/news/document-view?p=AMNEWS&docref=news/17BADB9A6C880A28.

Bergman, Elizabeth, et al. "Voter Identification." *Electoral Integrity in America: Securing Democracy*, by Pippa Norris et al., Oxford University Press, 2019, pp. 100–114.

Bowman, Bridget. "'A Game-Changer': Pandemic Forces Shift in Black Voter Outreach." *Roll Call*, Roll Call, 21 May 2020, www.rollcall.com/2020/05/21/a-game-changer-pandemic-forces-shift-in-black-voter-outreach/.

Brater, Jonathan. Brennan Center for Justice at NYU Law, 2018, *Voter Purges: the Risks in 2018*, www.brennancenter.org/our-work/research-reports/voter-purges-risks-2018.

Brennan Center for Justice at NYU Law, 2019, *New Voting Restrictions in America*, www.brennancenter.org/sites/default/files/2019-11/New%20Voting%20Restrictions.pdf.

Bump, Philip. "Analysis | Trump Sides with Deranged Conspiracy Theories over Black Lives Matter Protesters." *The Washington Post*, WP Company, 9 June 2020, www.washingtonpost.com/politics/2020/06/09/trump-sides-with-deranged-conspiracy-theories-over-black-lives-matter-protesters/.

Cason, Mike. "Alabama's Photo Voter ID Law Declared a Success; Not Everyone Agrees." *AL*, Advance Local Media, 25 Nov. 2014, www.al.com/news/2014/11/alabamas_new_photo_voter_id_la.html.

Chardwell, David. "Voter Dilution and the Standard of Proof: Committee on Public Election Law." *The Urban Lawyer*, vol. 14, no. 4, 1982, pp. 863–864., www.jstor.org/stable/27893155.

Coleman, Kevin J. Congressional Research Service, 2015, *The Voting Rights Act of 1965: Background and Overview*.

Cook, Foster. 2014, pp. 1–44, *The Burden of Criminal Justice Debt in Alabama*.

"Criminal Justice Fact Sheet." *NAACP*, www.naacp.org/criminal-justice-fact-sheet/.

Crum, Travis. "The Voting Rights Advancement Act of 2019." *Take Care*, 1 Mar. 2019, takecareblog.com/blog/the-voting-rights-advancement-act-of-2019.

Davidson, Chandler, and George Korbel. "At-Large Elections and Minority-Group Representation: A Re-Examination of Historical and Contemporary Evidence." *The Journal of Politics*, vol. 43, no. 4, 1981, pp. 982–1005., doi:10.2307/2130184.

Davidson, Chandler. "The Voting Rights Act: A Brief History." *Controversies in Minority Voting: The Voting Rights Act in Perspective*, by Bernard Grofman and Chandler Davidson, Brookings Institution, 1992, pp. 14–17.

Davidson, Chandler, and Bernard Grofman. *Quiet Revolution in the South: The Impact of the Voting Rights Act, 1965-1990: Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Texas, Virginia*. Inter-University Consortium for Political and Social Research, 1996.

Dunphy, Peter. "When It Comes to Voter Suppression, Don't Forget About Alabama." *Brennan Center for Justice*, Brennan Center for Justice at NYU Law, 5 Nov. 2018, www.brennancenter.org/our-work/analysis-opinion/when-it-comes-voter-suppression-dont-forget-about-alabama.

Edmond, Charlotte. "5 Charts Reveal Key Racial Inequality Gaps in the US." *World Economic Forum*, World Economic Forum, 2 June 2020, www.weforum.org/agenda/2020/06/us-race-economy-education-inequality/.

Edmondson, Catie. "Trump's Response to Protests Draws Bipartisan Rebuke in Congress." *The New York Times*, The New York Times, 2 June 2020, www.nytimes.com/2020/06/02/us/politics/trump-congress-protesters-tear-gas.html.

Engstrom, Richard L., and Michael D. Mcdonald. "The Election of Blacks to City Councils: Clarifying the Impact of Electoral Arrangements on the Seats/Population Relationship." *American Political Science Review*, vol. 75, no. 2, 1981, pp. 344–354., doi:10.2307/1961369.

Faulk, Kent. "Federal Prosecutor Critical of State Closing DMV Sites." *AL*, Advance Local Media, 21 Oct. 2015, www.al.com/news/birmingham/2015/10/federal_prosecutor_on_dmv_clos.html.

Faulk, Kent. "Group: More than 100k Alabama Voters Can't Cast Ballots." *AL*, Advance Local Media, 4 Mar. 2017, www.al.com/news/birmingham/2017/03/naacp_legal_defense_fund_more.html.

Fausset, Richard, et al. "'I Refuse Not to Be Heard': Georgia in Uproar Over Voting Meltdown." *The New York Times*, The New York Times, 9 June 2020, www.nytimes.com/2020/06/09/us/politics/atlanta-voting-georgia-primary.html.

"Feds: Alabama to Expand License Office Hours after Probe." *Al*, 29 Dec. 2016, www.al.com/news/montgomery/2016/12/feds_alabama_to_expand_drivers.html.

Garrow, David J. *Protest at Selma: Martin Luther King, Jr., and the Voting Rights Act of 1965*. Yale University Press, 2015.

Garrow, David J. "The Voting Rights Act in Historical Perspective." *The Georgia Historical Quarterly*, vol. 74, no. 3, 1990, pp. 377–398.

Goel, Sharad, et al. "One Person, One Vote: Estimating the Prevalence of Double Voting in U.S. Presidential Elections." *American Political Science Review*, vol. 114, no. 2, 2020, pp. 456–469., doi:10.1017/s000305541900087x.

Goldstone, Corey. "CLC Seeks to Extend Expansion of Voting Rights from Florida to Alabama." *Campaign Legal Center*, Campaign Legal Center, 27 May 2020, campaignlegal.org/update/clc-seeks-extend-expansion-voting-rights-florida-alabama.

Gramlich, John. "Black Imprisonment Rate in the U.S. Has Fallen by a Third since 2006." *Pew Research Center*, Pew Research Center, 6 May 2020, www.pewresearch.org/fact-tank/2020/05/06/black-imprisonment-rate-in-the-u-s-has-fallen-by-a-third-since-2006/.

Grofman, Bernard, and Lisa Handley. “The Impact of the Voting Rights Act on Black Representation in Southern State Legislatures.” *Legislative Studies Quarterly*, vol. 16, no. 1, 1991, p. 111., doi:10.2307/439970.

Harriot, Michael. “Millions of Black Voters Are Being Purged from Voter Rolls, Often Illegally: Report.” *The Root*, The Root, 24 July 2018, www.theroot.com/millions-of-black-voters-are-being-purged-from-voter-ro-1827808612.

Harris, Richard L. *Electoral Integrity in America: Securing Democracy*, by Pippa Norris et al., Oxford University Press, 2019, pp. 30–44.

Hasen, Richard L. “Constitutional Avoidance and Anti-Avoidance by the Roberts Court.” *The Supreme Court Review*, vol. 2009, no. 1, 2009, pp. 181–223., doi:10.1086/653648.

Heller, Lauren R., et al. “Voter ID Laws and Voter Turnout.” *Atlantic Economic Journal*, vol. 47, no. 2, 2019, pp. 147–157., doi:10.1007/s11293-019-09623-8.

Ho, Dale. “The Voter Fraud Lie We Can't Shake.” *The New York Times*, The New York Times, 3 Nov. 2016, www.nytimes.com/2016/11/04/opinion/the-strange-career-of-the-voter-fraud-myth.html.

Horowitz, Juliana Menasce. “Most Americans Say the Legacy of Slavery Still Affects Black People in the U.S. Today.” *Pew Research Center*, Pew Research Center, 17 June 2019, www.pewresearch.org/fact-tank/2019/06/17/most-americans-say-the-legacy-of-slavery-still-affects-black-people-in-the-u-s-today/.

Hurley, Lawrence. “Kennedy's Departure Puts Abortion, Gay Rights in Play at High Court.” *Reuters*, Thomson Reuters, 28 June 2018, www.reuters.com/article/us-usa-court-kennedy-cases-idUSKBN1JN3AF.

Iceland, John. “Racial and Ethnic Inequality.” *A Portrait of America: The Demographic Perspective*, University of California Press, 2014, pp. 138–163.

Jealous, Ben, and Ryan P. Haygood. *The Battle to Protect the Vote - Naacpldf.org*. Center for American Progress, Nov. 2014, www.naacpldf.org/wp-content/uploads/The-Battle-to-Protect-the-Vote.pdf.

Johnson, Walter. “Slavery.” *Keywords for American Cultural Studies*, edited by Bruce Burgett and Glenn Hendler, New York University Press, 2014, pp. 224–227.

Jones, Clinton B. “The Impact of Local Election Systems on Black Political Representation.” *Urban Affairs Quarterly*, vol. 11, no. 3, 1976, pp. 345–356., doi:10.1177/107808747601100305.

Karnig, Albert K. “Black Representation on City Councils.” *Urban Affairs Quarterly*, vol. 12, no. 2, 1976, pp. 223–242., doi:10.1177/107808747601200204.

Katz, Ellen D, et al. "Documenting Discrimination in Voting: Judicial Findings Under Section 2 of the Voting Rights Act Since 1982." *Journal of Law Reform*, vol. 39, no. 4, 2006, pp. 643–772.

Keyssar, Alexander. *The Right to Vote: The Contested History of Democracy in the United States*. Basic Books, 2000.

Klarman, Michael J. *From Jim Crow to Civil Rights the Supreme Court and the Struggle for Racial Equality*. Oxford Univ. Press, 2006, *Google Books*, books.google.nl/books?id=LH88DwAAQBAJ&pg=PA189&lpg=PA189&dq=Once+Negroes+start+voting+in+large+numbers+the+Jim+Crow+laws+will+be+endangered&source=bl&ots=JU-ND6WrXM&sig=ACfU3U0dI5hyDQiab7843TQspyYjDdBl5Q&hl=nl&sa=X&ved=2ahUKEwjW_7OfqonpAhWLM-wKHaqkDG4Q6AEwAHoECAcQAQ#v=onepage&q=Once%20Negroes%20start%20voting%20in%20large%20numbers%20the%20Jim%20Crow%20laws%20will%20be%20endangered&f=false.

Krogstad, Jens Manuel, and Mark Hugo Lopez. "Black Voter Turnout Fell in 2016 US Election." *Pew Research Center*, Pew Research Center, 12 May 2017, www.pewresearch.org/fact-tank/2017/05/12/black-voter-turnout-fell-in-2016-even-as-a-record-number-of-americans-cast-ballots/.

Lachman, Samantha. "Alabama Risks Making It Much Harder To Get Required Voter ID." *HuffPost*, HuffPost, 4 Jan. 2017, www.huffpost.com/entry/alabama-voter-id_n_55ddcda1e4b04ae497052873?guccounter=2.

Latimer, Margaret K. "Black Political Representation in Southern Cities." *Urban Affairs Quarterly*, vol. 15, no. 1, 1979, pp. 65–86., doi:10.1177/107808747901500104.

Lerner, Kira. "Massive Security Risks Discovered in Kris Kobach's Voter Registration Database." *ThinkProgress*, ThinkProgress, 23 Oct. 2017, thinkprogress.org/security-crosscheck-program-86f889b5e6e4/.

Levine, Sam. "Alabama Won't Help Disenfranchised Citizens Understand If They Can Now Vote." *HuffPost*, HuffPost, 21 June 2017, www.huffpost.com/entry/alabama-moral-turpitude_n_594a8335e4b0177d0b8af45f?guccounter=1.

Liptak, Adam. "Justices Retain Oversight by U.S. on Voting." *The New York Times*, The New York Times, 22 June 2009, www.nytimes.com/2009/06/23/us/23scotus.html.

Litt, David. "Before Telling Protesters for George Floyd to Vote, Remember Not All of Them Are Allowed To." *NBCNews.com*, NBCUniversal News Group, 4 June 2020,

www.nbcnews.com/think/opinion/telling-protesters-george-floyd-vote-remember-not-all-them-are-ncna1224011.

Luhby, Tami. “US Black-White Inequality in 6 Stark Charts.” *CNN*, Cable News Network, 3 June 2020, edition.cnn.com/2020/06/03/politics/black-white-us-financial-inequality/index.html.

Lyman, Brian. “12 Alabama Legislative Districts Ruled Unconstitutional.” *The Montgomery Advertiser*, Montgomery Advertiser, 25 Jan. 2017, eu.montgomeryadvertiser.com/story/news/politics/southunionstreet/2017/01/20/12-alabama-legislative-districts-ruled-unconstitutional/96830710/.

Lynch, Loretta E. “Attorney General Loretta E. Lynch Delivers Remarks at the League of United Latin American Citizens National Convention.” *The United States Department of Justice*, The United States Department of Justice, 29 Sept. 2016, www.justice.gov/opa/speech/attorney-general-loretta-e-lynch-delivers-remarks-league-united-latin-american-citizens.

Manheim, Lisa Marshall, and Elizabeth G. Porter. “The Elephant in the Room: Intentional Voter Suppression.” *The Supreme Court Review*, vol. 2018, 2019, pp. 213–255., doi:10.1086/702577.

Mauer, Marc. “Felon Voting Disenfranchisement: A Growing Collateral Consequence of Mass Incarceration.” *Federal Sentencing Reporter*, vol. 12, no. 5, 2000, pp. 248–251., doi:10.2307/20640279.

May, Gary. *Bending toward Justice: The Voting Rights Act and the Transformation of American Democracy*. Duke University Press, 2013, *Internet Archive*, archive.org/details/bendingtowardjus0000mayg.

McCrary, Peyton, et al. “Alabama.” *Quiet Revolution in the South: the Impact of the Voting Rights Act, 1965-1990: Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Texas, Virginia*, by Chandler Davidson and Bernard Grofman, Inter-University Consortium for Political and Social Research, 1996, pp. 38–66.

McKee, Seth Charles. *The Dynamics of Southern Politics: Causes and Consequences*. CQ Press, an Imprint of SAGE Publications, Inc., 2019.

Meredith, Marc, and Michael Morse. “Discretionary Disenfranchisement: The Case of Legal Financial Obligations.” *The Journal of Legal Studies*, vol. 46, no. 2, 2017, pp. 309–338., doi:10.1086/694323.

Morris, Kevin. “Voter Purge Rates Remain High, Analysis Finds.” *Brennan Center for Justice*, Brennan Center for Justice at NYU Law, 25 June 2020, www.brennancenter.org/our-work/analysis-opinion/voter-purge-rates-remain-high-analysis-finds.

Morris, Kevin. “Voter Purge Rates Remain High, Analysis Finds.” *Brennan Center for Justice*, 1 Aug. 2019, www.brennancenter.org/our-work/analysis-opinion/voter-purge-rates-remain-high-analysis-finds.

Morris, Kevin, et al. Brennan Center for Justice at NYU Law, 2018, *Purges: A Growing Threat to the Right to Vote*, www.brennancenter.org/our-work/research-reports/purges-growing-threat-right-vote.

Moser, Bob. “The Voter Suppression Chronicles.” *The American Prospect*, The American Prospect, 20 June 2019, prospect.org/power/voter-suppression-chronicles/.

Newkirk II, Vann R. “How a Pivotal Voting Rights Act Case Broke America.” *The Atlantic*, Atlantic Media Company, 16 June 2020, www.theatlantic.com/politics/archive/2018/07/how-shelby-county-broke-america/564707/.

Norris, Pippa, et al. *Electoral Integrity in America: Securing Democracy*. Oxford University Press, 2019.

Norton, Mary Beth., et al. *A People and a Nation: History of the United States*. 10th ed., Cengage Learning, 2015.

Palast, Greg. “The GOP's Stealth War Against Voters.” *Rolling Stone*, Rolling Stone, 25 June 2018, www.rollingstone.com/politics/politics-features/the-gops-stealth-war-against-voters-247905/.

Patterson, Orlando. *Slavery and Social Death: A Comparative Study*. Harvard University Press, 1982. https://hdl-handle-net.ru.idm.oclc.org/2027/heb.03237

Pettit, Becky, and Bryan L. Sykes. “Civil Rights Legislation and Legalized Exclusion: Mass Incarceration and the Masking of Inequality.” *Sociological Forum*, vol. 30, 2015, pp. 589–611., doi:10.1111/socf.12179.

Pildes, Richard H. “Democracy, Anti-Democracy, and the Canon.” *SSRN Electronic Journal*, vol. 17, 13 July 2000, pp. 295–319., doi:10.2139/ssrn.224731.

“Population of the United States: 1970 and 1960.” *1970 Census of Population,* United States Department of Commerce, 1971, https://www.census.gov/library/publications/1971/dec/pc-v1.html.

Pruitt, Sarah. "When Did African Americans Actually Get the Right to Vote?" *History.com*, A&E Television Networks, 29 Jan. 2020, www.history.com/news/african-american-voting-right-15th-amendment.

Root, Danielle, et al. "In Expanding Vote by Mail, States Must Maintain In-Person Voting Options During the Coronavirus Pandemic." *Center for American Progress*, 12 May 2020, www.americanprogress.org/issues/democracy/news/2020/04/20/483438/expanding-vote-mail-states-must-maintain-person-voting-options-coronavirus-pandemic/.

Rusk, Jerrold G. *A Statistical History of the American Electorate*. CQ Press, 2001.

Sagan, Carl. *One Voice in the Cosmic Fugue*. *Cosmos: A Personal Voyage*, 1980.

Samuels, Albert L. "Shelby County v. Holder: Nullification, Racial Entitlement, and the Civil Rights Counterrevolution." *Ralph Bunche Journal of Public Affairs*, vol. 4, 2015, pp. 188–210.

Savage, David G. "Supreme Court Narrows but Preserves Voting Rights Act." *Los Angeles Times*, Los Angeles Times, 23 June 2009, www.latimes.com/archives/la-xpm-2009-jun-23-na-court-voting23-story.html.

Schumacher, Michael. "George Wallace Politics of Race." *The Contest: The 1968 Election and the War for America's Soul*, University of Minnesota Press, 2018, pp. 122–151.

"Section 5 Declaratory Judgement Action." *The United States Department of Justice*, www.justice.gov/crt/page/file/1015581/download.

Sewell, Terri. "Fighting for Our Democracy: Shelby v. Holder Six Years Later." *Birmingham News: Web Edition Articles*, 25 June 2019, infoweb.newsbank.com/apps/news/document-view?p=AMNEWS&docref=news/1744AFA25612D160.

Shapiro, Andrew L. "Challenging Criminal Disenfranchisement under the Voting Rights Act: A New Strategy." *The Yale Law Journal*, vol. 103, no. 2, 1993, pp. 537–566., doi:10.2307/797104.

Sheets, Connor. "New initiative aims to help Alabama felons restore their right to vote." *Press-Register: Web Edition Articles,* 18 Oct. 2018, infoweb.newsbank.com/apps/news/document-view?p=AMNEWS&docref=news/16F24B3112F31AD0.

Solomon, Danyelle, et al. "In Expanding Vote by Mail, States Must Maintain In-Person Voting Options During the Coronavirus Pandemic." *Center for American Progress*, Center for American Progress, 12 May 2020,

www.americanprogress.org/issues/democracy/news/2020/04/20/483438/expanding-vote-mail-states-must-maintain-person-voting-options-coronavirus-pandemic/.

Southern Poverty Law Center. Southern Poverty Law Center, 2020, *Alive and Well - Voter Suppression and Mismanagement in Alabama*, www.splcenter.org/sites/default/files/splc_voter_suppression_in_alabama_report.pdf.

"State-by-State Data." *The Sentencing Project*, The Sentencing Project, www.sentencingproject.org/the-facts/.

Strong, Stephanie. "Voter Suppression Spells Doom for Alabama's Electorate." *Birmingham News: Web Edition Articles*, 24 Feb. 2020, infoweb.newsbank.com/apps/news/document-view? p=AMNEWS&docref=news/17952278155E61F8.

Tamkin, Emily. *How Will the US Protests Affect Donald Trump's Re-Election Bid?*, NS Media Group, 10 June 2020, www.newstatesman.com/world/north-america/2020/06/how-will-us-protests-affect-donald-trump-s-re-election-bid.

"The Effects of Shelby County v. Holder." *Brennan Center for Justice*, Brennan Center for Justice at NYU Law, 6 Aug. 2018, www.brennancenter.org/our-work/policy-solutions/effects-shelby-county-v-holder.

The National Commission on the Voting Rights Act, 2006, *Protecting Minority Voters*, lawyerscommittee.org/wp-content/uploads/2015/07/0023.pdf.

Thernstrom, Abigail M. *Whose Votes Count?: Affirmative Action and Minority Voting Rights*. Harvard University Press, 1987.

"Title 52 - Voting and Elections - Subtitle 1- Voting Rights -Chapter 103- Enforcement of Voting Rights." *The United States Department of Justice*, 8 May 2017, www.justice.gov/crt/title-52-voting-and-elections-subtitle-1-voting-rights-chapter-103-enforcement-voting-rights.

Uggen, Christopher, et al. "6 Million Lost Voters: State-Level Estimates of Felony Disenfranchisement, 2016." *The Sentencing Project*, 6 Oct. 2016, www.sentencingproject.org/publications/6-million-lost-voters-state-level-estimates-felony-disenfranchisement-2016/.

United States, Congress, *Voting Rights Advancement Act of 2019*. 2019.

United States, Congress, House, Committee on the Judiciary. *Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006*. Congress.gov, 2006. 109th Congress, 2nd session, House Report 478, https://www.congress.gov/bill/109th-congress/house-bill/9.

United States, Congress, House, Committee on the Judiciary. *Voting Rights Advancement Act of 2019*. Congress.gov, 2019. 116th Congress, 1st session, House Report 317, https://www.congress.gov/bill/116th-congress/house-bill/4.

U.S. Constitution. Amend. XIV

U.S. Constitution. Amend. XV

United States Commission on Civil Rights. *An Assessment of Minority Voting Rights Access in the United States*. U.S. Commission on Civil Rights, 2018. https://www.usccr.gov/pubs/2018/Minority_Voting_Access_2018.pdf.

Villa, Lissandra. "Donald Trump Is Waging War on Vote-By-Mail. The Facts Don't Support It." *Time*, Time, 29 May 2020, time.com/5843978/donald-trump-vote-by-mail/.

Vollers, Anna Claire. "Alabama Is 6th Poorest State; Poverty Rate 40 Percent in Some Counties." *AL*, Advance Local Media, 3 July 2017, www.al.com/news/2017/07/alabama_is_6th_poorest_state_i.html.

Vollers, Anna Claire. "Alabama Law Blocks 1 in 13 Adults from Voting." *AL*, 26 Oct. 2016, www.al.com/news/2016/10/alabama_law_blocks_1_in_13_adu.html.

Voting Rights Act of 1965, Pub. L. 89-110, 79 Stat. 437.

"Voting Rights Act: Objections and Observers," *Lawyer's Committee for Civil Right Under Law*. 21 March 2015, www.lawyerscommittee.org/projects/section_5/.

"Voting Rights Act of 1965." *Duke Law Journal*, no. 2, 1996, pp. 463–483.

Wakeley, Dev. "The New Poll Tax: Court Debt and Voting Rights in Alabama." *Alabama Arise*, Alabama Arise, 21 Jan. 2020, www.alarise.org/resources/the-new-poll-tax-court-debt-and-voting-rights-in-alabama/.

Wand, Jonathan N., et al. "The Butterfly Did It: The Aberrant Vote for Buchanan in Palm Beach County, Florida." *American Political Science Review*, vol. 95, no. 4, 2001, pp. 793–810., doi:10.1017/s000305540040002x.

Walton, Hanes. *Black Politics: A Theoretical and Structural Analysis*. J. B. Lippincott, 1972.

"Wide Gender Gap, Growing Educational Divide in Voters' Party Identification." *Pew Research Center - U.S. Politics & Policy*, 30 May 2020, www.people-press.org/2018/03/20/1-trends-in-party-affiliation-among-demographic-groups/.

Yawn, Andrew J. "Felony Voting Rights Restored for Some in Alabama, but Many More 'Do Not Know They Can Vote'." *The Montgomery Advertiser*, Montgomery Advertiser, 28 Mar. 2019, eu.montgomeryadvertiser.com/story/news/2019/03/27/felony-voting-rights-restored-some-alabama-but-many-more-do-not-know-they-can-vote/3289050002/.

Court Cases

The Civil Rights Cases, 109 U.S. 3 (1883)

Guinn v. United States, 238 U.S. 347 (1915)

Myers v. Anderson, 238 US 368 (1915)

Smith v. Allwright, 321, VS 649 (1944)

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

Wesberry v. Sanders, 376, VS 1 (1964)

South Carolina v. Katzenbach, 383 US 301 (1966)

Katzenbach v. Morgan, 384, VS 641 (1966)

Smith v. Paris, 257 F. Supp. 901 (M.D. Ala. 1966)

United States v. Democratic Executive Committee, 288 F. Supp. 943 (M.D. Ala. 1968)

Allen v. State Bd. of Elections, 393 U.S. 544 (1969)

Gaston County v. United States, 395 U.S. 285 (1969)

Oregon v. Mitchell, 400 U.S. 112 (1970)

Mobile v. Bolden, 446, VS 55 (1980)

Dillard v. City of Calera 2:87cv1167-MHT (1980)

City of Rome v. United States, 446 U.S. 156 (1980)

Rogers v. Lodge, 458 US 613 (1982)

Harris v. Graddick, 593 F. Supp. 128 (M.D. Ala. 1984)

Thornburg v. Gingles, 478 U.S. 30 (1986)

Shaw v. Reno, 509 U.S. 630 (1993)

Miller v. Johnson, 515 U.S. 900 (1995)

Bush v. Vera, 517 U.S. 952 (1996)

Gratz v. Bollinger 539 U.S. 244 (2003)

Northwest Austin Municipal Utility District No. 1 v. Holder, 557 US 193 (2009)

Texas v. Holder No. 12-1028 (2012)

Alabama Legislative Black Caucus v. Alabama, 135 S. 1257 (2015)

Shelby County v. Holder, 570 U.S. 529 (2013)

Schuette v. Coalition to Defend Affirmative Action, 572 U.S. 291 (2014)

Alabama Legislative Black Caucus v. Alabama, 135 S. Ct. 1257 (2015)

Thompson v. Alabama 2:16-cv-00783-WKW-CSC (M.D. Ala. 2016)

Cooper v. Harris, No. 15-1262, 581 U.S. 137 S. Ct. 1455 (2017)

Husted v. A. Philip Randolph Institute, nr. 16-980, 584 U.S (2018)