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Sean Holly

Reconstructing the Voting Rights Act: Subnational Action and Voting Rights Post-1965

Honors Thesis

Colby College Government Department

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For my parents, Deb and George, who have been there through every step of this journey and are the reason I am able to be here at Colby.

Abstract:

The discussion of suffrage and the development of the U.S. electorate is misguidedly based solely around federal action; constitutional amendments and federal legislation are commonly revered as primary determinants of the right to vote. This tendency poses a specific problem with contemporary discussions of the Voting Rights Act of 1965. Specifically, discussions of the VRA ignores the ability of subnational actors to innovate politically and readjust their vehicles of political development in the wake of federal supposition of state powers. The Voting Rights Act did not destroy state authority regarding the right to vote; it merely disrupted their vehicles of development. This thesis describes the ways in which subnational actors responded to the VRA by either pushing forward or pulling back on federal initiatives regarding the expansion of suffrage prior to *Shelby*. Although they remain watershed moments in United States history, neither the Voting Rights Act nor *Shelby* act as the beginning and end of voting rights and federalism. Through the administrative, executive, and judicial action of state actors in Georgia, Massachusetts, Kansas, and Idaho, I conclude that federalism and the ability of subnational actors to affect suffrage were not destroyed by the Voting Rights Act. Changes in the demographic composition of states elicited suffrage-related responses from subnational actors that benefitted the actor's partisan interests; subnational officials responded to demographic change by covertly expanding or restricting the right to vote as a means of benefitting the majority party. This thesis concludes that the decentralization of authority regarding the right to vote is necessary.

Introduction:

The United States' political system revolves around elections. As such, determining who gets to vote and how they can do so are foundational components of American political development. Generally, the discussion of suffrage and the development of the U.S. electorate is based solely around federal action; constitutional amendments and federal legislation are commonly revered as primary determinants of the right to vote. This tendency to focus exclusively on the federal government ignores the role of subnational actors in determining the right to vote, thereby resulting in an incomplete understanding of the political development of suffrage in the United States. This misunderstanding results in misguided discussions of contemporary voting rights issues. Specifically, contemporary scholarship of the Voting Rights Act of 1965 revolves around its efficacy in increasing African American registration in the South directly after its passage, and the Supreme Court's holding in *Shelby County, Alabama v. Holder*, 570 U.S. (2013) that eviscerated the VRA's coverage formula and the ability of the federal government to use Section 5 of the VRA in recent years. This line of discussion ignores the ability of subnational actors to innovate politically and readjust their vehicles of political development in the wake of federal supposition of state powers. The Voting Rights Act did not destroy state authority regarding the right to vote; it merely disrupted their vehicles of development. Therefore, *Shelby* is not totally responsible for restoring state authority to determine who gets the right to vote. This thesis describes the ways in which subnational actors responded to the VRA by either pushing forward or pulling back on federal initiatives regarding the expansion of suffrage prior to *Shelby*. Although they remain watershed moments in United States history, neither the Voting Rights Act nor *Shelby* act as the beginning and end of voting rights and federalism. By understanding the efforts of subnational actors in the wake of the VRA, this thesis illuminates the long-term implementation of the act and guides readers to a better

understanding of the complexities of contemporary suffrage debates. Namely, it shows that although a case can be made for greater centralization of voting rights, the VRA's proliferation of covert subnational action evidences the need for further decentralization of voting rights as a means of enhancing the democratic accountability of state actors.

The complexity of voting rights issues in the United States results from the dual-natured development of suffrage in the country. The history of voting rights in the U.S. is not monotonic. Namely, civic entrepreneurship, class tension, and state electoral politics result in both the extension and the restriction of the right to vote through American political history. This expansion and contraction of the franchise is not only the result of federal action; state and subnational actors also contribute to the political development of suffrage. Considering the United States' composition as a federated system of governance, the states are entitled to significant control over this puzzle of enfranchisement. Specifically, Article I, Section 4, Clause 1 of the federal Constitution vests states with the authority to monitor the timing, place, and manners of elections. Empowered by both this clause and American federalism more generally, state actors have restricted and expanded the right to vote at various times depending on subnational interests. As subnational interests often conflict with national initiatives, state-level actors are driven to innovate within the bounds of U.S. federalism as a means of preserving their electoral power. Although tremendous change has occurred regarding the right to vote, the primacy of the states remains unaltered. The Voting Rights Act of 1965 is commonly referred to as a watershed moment in American political history because of its massive impacts on voter registration in the South and its destructive implications on federated voting authority and its redistribution of state prerogative regarding suffrage. However, I contend that subnational actors remained driving forces in the political development of the right to vote in the U.S. after the

passage of the act. The act did not destroy the major tenets of federalism and the authority of the states; it merely disrupted them. State actors across the U.S. continued to contribute to the right to vote by either pushing against federal voting initiatives or pulling the aims of the federal government forward. Even before *Shelby County v. Holder*'s evisceration of the "Preclearance" provision, subnational actors retained their power to extend or restrict suffrage based on demographic changes and the electoral composition of the states.

Furthermore, the importance of this study is exemplified by recent issues surrounding the right to vote in Georgia via HB531, and by H.R.1, the For the People Act of 2021, at the national level. In Georgia, House Bill 531 represents a clear effort to reverse the expansionist suffrage work of Stacey Abrams. Namely, HB531 repudiates Abrams' work with the New Georgia Project and Fair Fight network to expand voter registration by proposing changes that would limit minority voting rights and potentially strip many Georgians of access to the polls. Meanwhile, H.R.1 acts as a response to state efforts to limit voter turnout by restoring the Voting Rights Act, modernizing voter registration through automatic and online registration standards, and protecting against deceptive practices. Traditional scholarship suggests that national registration practices and the reaffirmation of the VRA strengthens American democracy by using federal power to protect the right to vote. However, this study proves that federalism and the right to vote in the United States is more nuanced than previous scholarship suggests. Although the Voting Rights Act increased voter registration in covered areas in the years immediately following its passage, its long-term efficacy remains questionable. Subnational actors retained their authority regarding suffrage. Specifically, administrative action, executive officials, and jurisprudence at the subnational level continued to both push against the VRA and push its spirit forward prior to *Shelby*. Therefore, considerable attention ought to be given to the

independent variables that drive subnational action regarding the VRA. I prove that demographic change and the change in competition in state legislatures directly correlate to subnational action regarding the spirit of the VRA. Thus, modern conversations of the VRA's reaffirmation should include debate on amending its coverage formula to include those variables. More importantly, the passage of the Voting Rights Act inspired subnational actors to innovate within their localized sphere of influence; subnational actors used their administrative, executive, and judicial capacities to expand or restrict the right to vote. These vehicles are often unaccounted for by the citizenry, meaning that subnational actors can influence the size of the electorate without public repudiation. Consequently, a strong argument can be made against the act's reaffirmation in favor of further decentralization of the right to vote.

Renewed investigation of suffrage in the United States is necessary. This study fills that void. By looking toward subnational action in the wake of the VRA, this thesis gains a more complete understanding of suffrage in federalized democracies by factoring in the ability of state actors to redirect American political development according to local interests. In the Literature Review, I determine why suffrage politics is so contentious and why it both expands and contracts the right to vote throughout American history. More specifically, I contend that voting rights and federalism are intricately linked; thereby meaning that although the Voting Rights Act increased voter registration by supposing federal agents onto state authority, it did not disrupt the institutional dependency on states to determine the right to vote and who gets it. Furthermore, I establish a method of investigating subnational action that either pushes against the VRA or pulls its initiatives forward. By correlating subnational repudiation or affirmation of the VRA's initiatives with changes in demographics and changes in the competition of state legislatures, I describe how states contribute to the political development of suffrage in the federal system of

the United States after 1965 and before *Shelby*. Additionally, I found the electoral and demographic conditions that elicit subnational cooperation or repudiation of the VRA. Through the administrative, executive, and judicial action of state actors in Georgia, Massachusetts, Kansas, and Idaho, I conclude that federalism and the ability of subnational actors to affect suffrage were not destroyed by the Voting Rights Act. Instead, these subnational actors showed a propensity to restrict and expand the right to vote according to localized, partisan interests. Changes in the demographic composition of states elicited suffrage-related responses from subnational actors that benefitted the actor's partisan interests; subnational officials responded to demographic change by covertly expanding or restricting the right to vote as a means of benefitting the majority party. With this finding, I conclude that the decentralization of authority regarding the right to vote is necessary.

Without the establishment of a constitutional right to vote, the expansion of national intervention in state election procedures represents the destruction of the United States' compound republic. Given the Constitution's imbuing of electoral authority to the states, the founders highlighted the importance of subnational actors in determining who can vote and how they can do. As the United States comprises a nation of distinct political communities, the preservation of subnational sovereignty is paramount. National subjugation of this authority disrupts the institutional division of political power in the U.S. This disruption produces several unwanted consequences. First, as exemplified by Georgia after 1965, it incentivizes subnational actors to innovate within their administrative, executive, and judicial capacities and rebel against the aggrandizement of federal authority. These innovations further empower subnational officials whose actions are not commonly perceptible by either the citizenry or national election regulatory agencies, thereby tearing at the fabric of centralization's primary aim: the

liberalization of the right to vote. Second, centralization further prevents subnational efforts to push forward pro-suffrage initiative. As Massachusetts illustrates, subnational actors also possess the ability to compliment national suffrage expansions with localized efforts and thereby liberalize the right to vote in ways that the federal government cannot replicate. To avoid the further development and political innovation of subnational actors regarding suffrage, subnational officials must be held accountable for their actions through the democratic process. Further centralization would either encourage subnational innovation and reinitiate the process of state innovation regarding the right to vote or diminish state abilities to push the issue of suffrage forward.

Literature Review:

Political scientists falsely characterize the Voting Rights Act of 1965 as a total evisceration of state authority regarding the right to vote. Although the provisions of the VRA did supplant state powers in the short term, they did not destroy federalism as a fundamental tenet of institutional government in the United States. Federalism and suffrage are bound together by the Constitution. The Constitution does not guarantee a fundamental right to vote; instead, it empowers the states with the authority to determine the timing, place, and manner of elections and links the voting requirements of the federal legislature with those of state legislatures. Consequently, the issue of suffrage is tied to state actors' ability to redirect American political development according to localized interests. Additionally, federalism in the U.S. is quite elastic. Although the expressed powers of federal and state governments shift over time, subnational governments are constantly contributing to the political development of the nation through various administrative, legislative, and judicial means. Therefore, the issue of suffrage is closely braided with an institutional dependency on states that allows subnational

actors to imprint their localized, partisan interests on national policy discussions. However, scholarship on the effects of the Voting Rights Act treat the legislation as if it fundamentally destroyed southern states' authority over the right to vote. The act is described as a watershed moment in American history in which the federal government was able to overcome discriminatory voting practices by erasing the authority of southern states and replacing it with federal supervision. This conclusion is misguided. Considering the interconnected nature of voting rights and federalism, scholars should not be so easily convinced that a single law fundamentally disrupts the institutional dependency of states and suffrage. Although the VRA disrupted the vehicles of subnational action regarding the right to vote, it did not totally erase state ability. State jurisprudence, administrative development, and state level politics retained the power to either restrict or expand the right of enfranchisement depending on the localized interests of subnational actors even after the passage of the VRA. By closely analyzing the critical juncture of the Voting Rights Act and its subsequent effects, this study illustrates how state constitutions add to national political development in a federated system. The Voting Rights Act of 1965 was not only a defining moment in the pursuit of suffrage, but also an open opportunity to assess the resiliency of federalism and the role of subnational actors in contemporary American politics.

Federalism and Suffrage in the United States

Suffrage in the United States is largely determined by subnational actors. The Constitution's deference to State Legislatures in the timing, place, and manner of elections combined with its abstention from formalizing a right to vote at the federal level leaves states with the authority to direct the franchise according to localized political interests. Furthermore, the elasticity of federalism in the United States allows state actors to endure partisan change at

the federal level and direct political development through their expressed subnational authorities. The many states act as areas of political experimentation, thereby implying that the subnational actors in control of the states control the direction of political entrepreneurship. Subnational actors can either push against federal action if they are averse to state and local interests, or they can pull federal action forward by furthering national policies that benefit state interests. Additionally, existing scholarship on suffrage in the U.S. establishes that the right to vote has been expanded and restricted throughout history. While scholars disagree on the independent variables that cause changes in enfranchisement, subnational actors remain important vessels of these changes. Therefore, additional research must be conducted regarding the effects of subnational actors on enfranchisement in the wake of the Voting Rights Act of 1965.

The Elasticity of Federalism in the United States

Federalism attributes to the multidirectional movement of the right to vote in the United States. Although the United States is exceptional in its designation as the first nation in the western world to lower explicit economic barriers to enter the voting population, it is not exceptional regarding the forces that fomented this expansion of suffrage. Rather, the history of suffrage in the U.S. is unique due to its experience of time periods in which access to the ballot box was subsequently more restrictive, instead of less; ultimately leading to the United States being among the last nations in the developed world to fully adopt universal suffrage. “This history of suffrage in the United States is a history of both expansion and contraction, of inclusion and exclusion, of shifts in direction and momentum at different places and at different times.”¹ This push and pull of suffrage expansion in the United States is the result of federalism. Specifically, the absence of an expressed right to vote in the U.S. Constitution endows states and

¹ Alexander Keyssar. *The Right to Vote: The Contested History of Democracy in the United States*. XX.

subnational actors with tremendous sovereignty in relation to the franchise. State actors are entrusted with establishing republican forms of government through the timing, place, and manner of elections. Therefore, state governments possess an ability to wield the power of suffrage as a political tool; subnational actors either expand or restrict the right to vote depending on localized, political interests. This conclusion contrasts with contemporary notions of the effects of the Voting Rights Act of 1965. Contemporary scholarship regards the VRA as a defining moment of federal supposition of state powers regarding suffrage. However, by observing the dual-natured composition of American government regarding the right to vote and tumultuous history of suffrage in the United States, subnational governments clearly remain an important arena of power for voting rights even after the passage of the VRA.

The United States Constitution is revered as one of the most enduring and admired blueprints of representative governments in modern history. However, the document does not explicitly grant any person the right to choose their representatives through the voting process. Rather, the actual discussions of the constitutional convention regarding suffrage were brief, and any mention of the franchise in the final product referred to the prerogatives of state governments in determining the right to vote. “Only section 2 of article 1 addressed the issue directly: it declared that in elections to the House of Representative ‘the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.’”² In doing so, the federal Constitution cemented state governments as final arbiters over voting rights. The subnational actors who determined the voting qualifications of state legislatures wielded the power of the federal suffrage expansion. Additionally, “section 1 of article 2 indicated that the legislature of each state had the right to determine the manner in

² Alexander Keyssar. *The Right to Vote: The Contested History of Democracy in the United States*. 4.

which presidential electors would be selected, while article 4 entrusted the federal government with a vague mandate” to guarantee a Republican Form of Government in every state.³ Through the timing, manner, and place of elections, state operatives established themselves as foundational arbiters of suffrage in the United States. The division of power between the federal government and the states combined with federal ambivalence over suffrage to establish a U.S. political environment that prioritized state authority regarding the right to vote. By establishing suffrage as a state issue, the federal constitution formally linked the right to vote in the U.S. with Federalism.

Federalism in the United States is a foundational component of American constitutional democracy. A single act, like the VRA, can neither destroy the dependency of the federal government on subnational actors nor can it erase state actors’ ability to influence local politics. Though the responsibilities of the federal government and the many states may shift over time, the existence of subnational power forever endures. In fact, subnational action illustrates the elasticity of Federalism in the United States. As states hold power over their own cultures, politics, and economies, they profit from the national government’s inability to possess the full arrangement of tools to direct political development. States wield substantial power over essential functions of government in the United States, and “all this power attracts conflict – and all these conflicts make federalism a dynamic battlefield for every major political fight over rights, opportunity, and advantage in American history.”⁴ These substantial powers include the right to a republican form of government, the right to equal representation in the U.S. Senate, the right to determine the manner and timing of elections, and the authority to ratify amendments to

³ Alexander Keyssar. *The Right to Vote: The Contested History of Democracy in the United States*. 4.

⁴ David Brian Robertson. *Federalism and the Making of America*. 1.

the Constitution.⁵ These powers place tremendous authority on the states, thus enabling subnational actors to propel the course of American political development according to varied state interests and political preferences. The states' ability to reshape the U.S. political environment can place them at odds with the federal government; if state interests are averse to federal initiatives, then subnational and national actors are either forced to compromise in the halls of Congress or innovate within their expressed powers. This applies directly to the issue of enfranchisement and the Voting Rights Act of 1965, as states were forced to either abide by federal mandates and subjugate previously expressed powers to the national government or use their knowledge of local governments and state courts to reject the expansion of suffrage.

United States federalism is unique in three ways. Firstly, it is unique in that "all of the states have equal legal standing and authority."⁶ The aim of American federalism is to bring smaller, geographic units together. Rather than holding together regions with deep cultural, religious, or ethnic ties, federalism in the United States brings together diverse groups of citizens with unique economic, political, and social prerogatives. Secondly, "in all other federal systems, the national government deliberately equalizes regional resources by distributing more financial aid to the poorest regions, [whereas] the United States is the only federal system that does not equalize state resources in this way."⁷ In this sense, U.S. federalism is a true battlefield for political and economic resources; state actors lobby, innovate, and restructure their governments for the expressed purpose of pursuing individual state prerogatives. Thirdly, "American federalism has proven extraordinarily elastic in comparison to federalism in other nations."⁸

Although the United States has changed in population, physical size, racially, economically, and

⁵ David Brian Robertson. *Federalism and the Making of America*. 2.

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ibid.*

culturally since the founding, the ties between state governments and the national government have held strong. Therefore, it is advantageous to investigate how state actors react to federal subjugation of state authority. As the Voting Rights Act changed the way the federal government can intercede on state affairs, it is important to properly examine how subnational actors responded and the effect of their responses on federalism in the United States.

State actors possess the tools necessary to innovate within their local jurisdiction and endure encroachments by the federal government. Being a compound republic, the founders “distributed the tools of everyday governing to the states, allocated the tools of sovereignty to the national, injected state interests into national politics and policymaking, and created a double political background in American politics.”⁹ Given this, states hold the power over American political development because they possess the initial arena of conflict. Their differing cultures and interests lead to differing political ideologies, which, in turn, redefines the rights of the citizenry according to local and regional preferences. Additionally, James Bryce stated that federalism “enables a people to try experiments which could not safely be tried in a large, centralized country.”¹⁰ States hold the power to act as trying grounds for policy initiatives, and, if successful, act as both a policy framework and as a supportive constituency for national policies. For instance, “antidiscrimination laws, business regulation, social welfare programs, and environmental protection all emerged in some states before they were adopted by the federal government.”¹¹ States were the first grounds for elections, therefore enabling them to establish varying voting rights and the precedence of voting discrimination. However, states are also biased experimental grounds. States are not insulated from the desire to hold a comparative

⁹ David Brian Robertson. *Federalism and the Making of America*. 36.

¹⁰ *Ibid*, 8.

¹¹ *Ibid*.

advantage over other states; subnational actors vie for economic superiority. Additionally, as suffrage restrictions indicate, some state experiments violate important social values and set the precedent of discrimination based on class, race, and gender. Federalism created multiple, hyperlocal areas for political competition. As states and local party organizations battle for the electoral share of diverse state and local constituencies, they concurrently act as laboratories for coalition-building tactics at the national level. Given that the United States' political foundation as a compound republic and the ability of states to innovate for local interests, it is vital for any analysis of enfranchisement and the Voting Rights Act of 1965 to include the varying responses of state and local actors, and their effects on American political development.

The Interconnection of Suffrage and Federalism

If federalism is elastic and the Constitution empowers the states with an authority to direct both elections and the size of the electorate, then suffrage politics is elastic as well. Since federalism enables state actors to govern according to localized interests, state actors have the power to redirect the right to vote according to local partisan concerns. Therefore, subnational actors possess an ability to redefine suffrage as a local issue, and then either restrict or expand the right to vote depending on the partisan interests of the subnational official. This multi-directional movement of the right to vote is reflected in recent scholarship. Scholars contend that the right to vote in the United States has either been extended or contracted based on partisan competition, class tension, and civic entrepreneurship. Importantly, race and partisan competition underlie these conclusions; increases in demographic diversity produce partisan competition to either expand or restrict the right to vote as a means of maintaining political power. The political officials in power respond to changes in the electorate by restricting or expanding the right to vote to those who contribute to the party's success at the ballot box. This means that the

interpretation of the VRA as monumental shift in federalism and suffrage politics is folly. The VRA did not change the Constitution. Instead, it disrupted the ability of subnational actors to influence suffrage politics. However, as federalism is defined by its elasticity and resiliency, state actors responded to the act by altering their vehicles of influence regarding suffrage.

Suffrage politics is unique its ability to redefine national and state-level issues. Although suffrage is a national issue, the vessel of changes in enfranchisement are state government officials and local political coalitions. This means that national policy agendas are reframed by the political leanings and policy preferences of subnational actors. “Suffrage politics has continuously mixed and remixed the *national* and *state-level* issue agendas, either when new voters came in or when existing voters were pushed out.”¹² As new constituents were added to the electorate, their policy preferences were added to existing public commentary, thus altering the perception of local party politicians. State-level politicians therefore had a vested interest in who could go to the voting polls. The early emergence of mass competitive party politics highlights the suffrage issue further. “Because mass political parties emerged alongside mass voting rights, a large class of professional politicians became early stakeholders in how the process evolved.”¹³ Federalism in the United States engrained subnational actors with extensive powers over elections, thereby permitting these actors to influence who is, or is not, included in the political community. EE Schattschneider reiterates this conclusion in *The Semisovereign People* by stating that, “The rise of the party system led to a competitive expansion of the market for politics [...] the parties [...] were entrepreneurs, took the initiative, and got the law of the franchise liberalized.”¹⁴ The liberalization of the law of the franchise not only widened the

¹² Richard Valelly. “How Suffrage Politics Made—and Makes—America.” *Oxford Handbooks Online*, 2015. <https://doi.org/10.1093/oxfordhb/9780199697915.013.34>. 449.

¹³ *Ibid*, 452.

¹⁴ Elmer E. Schattschneider. *The Semisovereign People*. Holt, R. & W., n.d.

suffrage to include more people, but also widened the scope of suffrage conflict to more state-level actors. Since enfranchisement changed local electorates, local officials and subnational political actors positioned themselves at the forefront of this debate and advocated for changes in suffrage based on how inclusionary or exclusionary actions would impact their political power. The Voting Rights Act is no different in this regard. Although the act was passed at the federal level, its ramifications were subsequently experienced at the local level. State politicians were forced to reconsider their agendas based on a rapidly changed public consensus. Consequently, this leads to the hypothesis that subnational actors would either support or deter the federal suffrage initiatives passed forth in the VRA depending on the cost/benefit analysis of subnational actors regarding their political power.

Additionally, the battle over suffrage in representative governments has proven to be a battle of electoral parties. In this battle, the interests of those in power are weighed against the moral and civil rights claims of those excluded from the political environment. This environment creates a power vacuum in which in-group members advocate for suffrage extension or retention based on personalized economic and social biases, while out-group members vie for access to the electorate through established institutions of government, like the judicial system and federal legislatures. As such, the electoral competition of a state or a nation influences the likelihood of conflict regarding suffrage; “For almost a century after representative institutions were first established, conflicts over suffrage were organized along lines.”¹⁵ Although these social and economic lines evaporated into the 19th and early 20th century as more groups entered the electorate, the pattern of conflict over suffrage remained. The re-established party lines sought to improve their electoral positions in pursuit of economic and social goals, often using suffrage as

¹⁵ Adam Przeworski. “Conquered or Granted? A History of Suffrage Extensions.” *British Journal of Political Science* 39, no. 2 (2009): 291–321. <https://doi.org/10.1017/s0007123408000434>. 319.

a bargaining chip. Namely, political parties in the United States treated “the issue of female suffrage as an instrument of electoral competition.”¹⁶ State party competition over suffrage has proven to be elastic. The inclusion of new groups to the electorate elicits a renewed pursuit of revised economic and social goals, wherein the expansion or restriction of suffrage remains an everlasting vessel for the enhancement of electoral positions and the procurement of party goals. Therefore, the link between electoral competition and suffrage has been well established in American political history.

There is also some evidence of local repudiation of federal suffrage initiatives in the 1950s and 1960s. These counteractions support the claim that subnational actors retained relevance in the post-VRA United States political landscape. Beginning in 1961 with the Kennedy administration’s ‘Voting Rights Pact,’ “renewed voter registration efforts in Deep South states triggered fierce backlash from state and local officials and judges.”¹⁷ These responses are significant for our study because, unlike the private violence against black Americans by white supremacist groups, they indicate the influence of formal political actors against federal authority. The anti-suffrage actions of local judges and officials ultimately rendered the ‘Voting Rights Pact’ ineffectual, thereby illustrating the effectiveness of subnational political actors to contradict federal suffrage initiatives. These officials in the deep south are partially responsible for the need for more aggressive federal action. Additionally, the Southern response to the *Brown* decision further illustrates the propensity for subnational actors to respond to federal encroachments on state authority. Specifically, “within five years, in fact, southern legislatures produced more than two hundred anti-desegregation statutes and resolutions of

¹⁶ Adam Przeworski. “Conquered or Granted? A History of Suffrage Extensions.” 319.

¹⁷ Richard M. Valelly. “The Two Reconstructions: The Struggle for Black Enfranchisement,” 174.

‘interposition,’ that is, declaration of noncompliance with *Brown*.’¹⁸ This state legislative fervor was accompanied by additional subnational action, namely:

“(1) the Southern Manifesto, a statement of defiance produced by 101 southern Democrats, (2) gubernatorial election campaigns, which brought ardent segregationists out of the southern Democratic parties’ woodwork, and (3) the rapid spread of a respectable middle- and upper-class resistance movement, the Citizens Councils.”¹⁹

These actions illustrate the propensity for subnational mobilization against the federal government. While state legislative statutes and resolutions display the legislature’s ability to push back against federal authority, gubernatorial and citizen mobilization show the cohesiveness of subnational action on the issue of suffrage. The legislative, judicial, administrative, and citizen response to the suffrage question during the Civil Rights Era is beyond questioning. Moreover, the federal government’s relinquishing of voter registration drives in the years following the passage of the VRA left the issue open to subnational interference. Although the federal workforce directly enrolled about 16 percent of the 930,000 black citizens enrolled in the South in the two years following the VRA’s passage, direct federal intervention seemingly ended with the Johnson administration.²⁰ “Federal examiners listed only 158,384 newly registered African Americans from 1965 to 1969 but only 1,974 from 1970 to 1975. Ninety-six percent of all those enrolled by federal examiners were enrolled within the first two years, three-quarters in the first year alone.”²¹ This massive decrease in federal registration action leads to several possible conclusions: (1) the federal government was satisfied with the initial fervor of their suffrage efforts and moved their limited resources to other issue agendas, or

¹⁸ Richard M. Valelly. “The Two Reconstructions: The Struggle for Black Enfranchisement,” 182.

¹⁹ *Ibid*, 181-182.

²⁰ *Ibid*, 205.

²¹ *Ibid*.

(2) the federal government was unable to overcome the swell of state opposition, and therefore abandoned their efforts as to avoid further damage to federal authority. In either case, it is paramount that further analysis of subnational impacts on federal suffrage initiatives is conducted.

As established, the extension of suffrage in the United States has not been a linear movement from a restricted voting population to a fully inclusive democracy. Although American history is framed as a succession of democratizing events, the extension of the right to vote for one group of people has often been coupled with the disenfranchisement of other socioeconomic or racial groups. This finding breathes life into my hypothesis that state and subnational actors possess a full arrangement of tools to either push back against or pull forward the federal policies of the VRA. Stemming from the divided nature of American government and the ambivalence of the founding fathers, local political coalitions and subnational actors fill the gaps that federal agencies cannot reach, thereby enabling these actors to redirect political development in ways that the federal government is not always able to mitigate. Alternative explanations for the variance of suffrage expansion and contraction in the U.S. exists. David Bateman supports one of such conclusions in his work, *Disenfranchising Democracy: Constructing the Electorate in the United States, the United Kingdom, and France*. Bateman offers “a new account, rooted in politics, institutions, and the ideological narratives that political actors construct in the pursuit of power [to] argue that the conjunction of democratization and disenfranchisement was neither inevitable nor unique to America.”²² Bateman frames suffrage politics as the result of deliberate actions by political coalitions in their pursuit of power.

Importantly, these actions often occur at a local level. For instance, Bateman notes that free black

²² David A. Bateman. *Disenfranchising Democracy: Constructing the Electorate in the United States, the United Kingdom, and France*. Cambridge: Cambridge University Press, 2018. 6.

men and their children were exempted from the right to vote in the decades following reconstruction after nearly thirty years of being able to do so; that “free black men in both Northern and Southern states had also been purged from the electorate during the Jackson ‘age of democracy;” that “women lost the suffrage on only two occasions – in New Jersey in 1807 and Utah in 1887 – but their exclusion was successfully defended against an extensive social movement for almost seventy year;” and “many of the country’s indigenous peoples were effectively denied the vote for decades after the extension of citizenship in 1924, while formal and informal language tests denied access to the polls for many non-English speakers into the mid-1970s.”²³ Bateman’s analysis points to a staggering conclusion: that democratization is not a simple process in which members of an established political group are enfranchised. Instead, democratization is a political project in which political, racial, and socioeconomic boundaries are redefined around the issue of suffrage in patterns of simultaneous inclusion and exclusion. Federalism fuels this ability to define democratization in the United States. Because state actors are empowered by both constitutional deference regarding the right to vote and partisan competition at a local level, democratization in the U.S. is defined by the pushing and pulling of subnational actors. Therefore, it stands to reason that the Voting Rights Act of 1965 is not an exceptional circumstance of the consistent extension of suffrage. Rather, the passage of the act is yet another example of racial lines being continually drawn and then erased. More analysis is required to assess the impacts of subnational actors on enfranchisement in the decades following the VRA’s passage, and the resiliency that federalism regarding suffrage initiatives at the federal level.

²³ David A. Bateman. *Disenfranchising Democracy: Constructing the Electorate in the United States, the United Kingdom, and France*. 3.

Inherent in this explanation of suffrage extension and restriction is the presence of demographic or racial tension resulting from increasing diversity in the United States; the addition of new segments to the electorate correlates with a tightening of voting rights for other ethnic, or social, groups. The case has been made that the expansion and contraction of suffrage in the U.S. is closely linked with the history of class tension and demographic diversity in America. Specifically, this ideology asserts “It is class – and its link to immigration – that shapes the periodization of the [suffrage] story. There were, in fact, four distinctive periods, or long swings, in the history of the right to vote in the United States.”²⁴ These four periods being: (1) the pre-industrial era prior to the Civil War in which the vote was expanded, (2) the 1850s through the first World War that was characterized by both a narrowing of voting rights and a universal determination of an enlarged middle and upper detest for voting expansion, (3) a stagnation period through the 1950s in which there was little change in the franchise, and (4) the success of civil rights efforts, particularly in the South, that saw the abolition of almost all restriction on voting rights. This ideology holds that class is commonly overlapped with race, ethnicity, and gender, as race and ethnicity are large determinants of class position in the United States. Therefore, these time periods are associated with varying degrees of racial and socioeconomic tension that resulted in a subnational effort to either restrict or expand the suffrage in accordance with the preferences of the ruling class. To illustrate, the interaction of class and racial tension remained one of the most influential impediments to the expansion of suffrage from the early 18th century all the through the 1960s. For example, the industrial working-class brought on by the U.S.’s growth in economic prowess during the 19th and early 20th century resulted in the creation of a free, black working class in the South that subsequently

²⁴ Alexander Keyssar. *The Right to Vote: The Contested History of Democracy in the United States*. XXII.

resulted in fervent opposition to suffrage's expansion.²⁵ Furthermore, in 1898, New Bedford, MA, rising class conflict resulted in striking textile workers being threatened with disenfranchisement "because their employers claimed that the strikers accepted public relief and consequently were 'paupers' who could not legally vote."²⁶ In both cases, subnational actors were responsible for the changes in suffrage. Therefore, even arguments for demographic upheaval as the basis of suffrage variance in the United States rests on state and local actors to propel the issue of suffrage forward. Federalism and the diffusion of the suffrage question to subnational actors necessitates that analysis of the expansion and contraction of the right to vote in the United States must be conducted with an eye towards both states and their changing demographic compositions.

This pushing and pulling of the suffrage issue does not just occur in the legislatures or the courts of the United States. Independent actors also contribute to the development of the right to vote through civic life. Whereas Bateman proposed that the variance in suffrage expansion among the many states results from subnational actors clinging to political power, other hypotheses point to civic engagement and nongovernmental coalition-building as a cause for suffrage expansion in the United States. Namely, Elizabeth Beaumont's *The Civic Constitution: Civic Visions and Struggles in the Path Toward Constitutional Democracy* focuses on citizens' and civic groups' constitutional views and participation in constitutional disputes. This viewpoint holds that the Constitution is shaped by the boundaries of citizenship and civic norms or relations; what she commonly terms citizens' "ways of life."²⁷ Civic founders differ from

²⁵ Alexander Keyssar. *The Right to Vote: The Contested History of Democracy in the United States*. XXI-XXII.

²⁶ *Ibid*, XXII.

²⁷ Elizabeth Beaumont. *Civic Constitution: Civic Visions and Struggles in the Path Toward Constitutional Democracy*. 3.

constitutional framers in their ability to reorganize thought around the fundamental rights and liberties of citizens; offering new insight into the “Constitution outside of the court” and the role of popular constitutionalism.²⁸ This attention to civic founders finds that not only was the debate at the Philadelphia Convention largely influenced by civic groups, but the modern Constitution has been concurrently influenced by suffragists and abolitionists. For our purposes, civic contributions to suffrage and the expansion of the right to vote prove that the subnational arena is, and has been, a viable arena of political development regarding the right to vote. Not only do federal actors influence the interpretation and development of the Constitution, but so too do subnational suffragists and voting restorationists.

The Voting Rights Act of 1965 in Context

Contemporary political scientists often view the VRA in a strict federalist lens. In this scholarship, the act is seen as a natural aggrandizement of federal authority to correct the discriminatory voting practices of the southern states. After several decades of unsuccessful federal efforts to increase voting equity in the South, these scholars contend that the Voting Rights Act succeeded in fulfilling the aims of the 15th Amendment by stripping power away from state officials and vesting it into the hands of the national government. The success of the VRA is thereby exemplified by increasing registration numbers in the South in the short term, the act’s subsequent renewals, and the following pieces of national legislation regarding voting rights and regulations. However, in doing so, these scholars neglect the tortured history of implementing the VRA, and thereby suffer from the fatal arrogance that legislative victory translates into enduring political change. The failures of voting rights legislation prior to the VRA evidence the perpetuity of subnational involvement in suffrage politics. Through partisan gridlock at the

²⁸ Elizabeth Beaumont. *Civic Constitution: Civic Visions and Struggles in the Path Toward Constitutional Democracy*. 4.

national level, subnational legislators in the South successfully initiated restrictive voting practices. Although many of these practices would soon be disallowed by the VRA, the fact remains that subnational actors contributed to the political development of suffrage prior to the act's passage. Thus, federalist scholars overestimate the VRA's contributions to the political development of the right to vote. Even though the provisions of the VRA subjected some state authority to restrict the right to vote, it did not erase all subnational capacity regarding suffrage. Subnational actors were disrupted by the VRA, but they did not entirely lose their power to restrict or expand the right to vote through administrative, executive, and judicial action. Since the VRA did not destroy the connection between federalism and suffrage, greater attention ought to be given to subnational actors and their ability to innovate in the decades following the VRA.

Federal Ineptitude Prior to the VRA

A seminal moment in American political development, the Voting Rights Act of 1965 remains an ultimate example of how social and political forces can change the landscape of both federal and state governments. Coming into existence almost a century after the ratification of the Fifteenth Amendment, the Voting Rights Act represented the federal government's first successful legislative effort to enforce the spirit of the Fifteenth Amendment. As previous federal efforts to expand southern suffrage in the 1950s and early 1960s failed, the Voting Rights Act of 1965 successfully placed former matters of state prerogative under federal supervision. By putting certain areas under federal investigation and banning discriminatory voting practices, the Voting Rights Act is revered as a successful federal encroachment on state powers over the right to vote. This legislative usurpation of state prerogative was bolstered by federal court rulings and expanded by subsequent federal renewals that enlarged the act's regulatory powers in the following decades. However, political science scholarship often fails to properly factor the

elasticity of federalism into its discussion of the Voting Rights Act. Many scholars investigate the act through a strict federal lens, thereby ignoring state and local actors' political innovations and underestimating the effects of state actors on American political development. To adequately assess the impacts of the VRA, political scientists must look to state actors and evaluate the subnational impacts that lead either to the expansion or restriction of suffrage.

Discussion of the Voting Rights Act often centers on difficulty of its passage and its subsequent deterioration of state authority over elections. Alexander Keyssar described the difficulties of the passage of the Voting Rights Act of 1965 in his book, *The Right to Vote: The Contested History of Democracy in the United States*. In this work, Keyssar explains that although the stars were metaphorically aligned for the expansion of enfranchisement in the 1950s and the early 1960s, significant political pressure prevented the fulfillment of the promises Fifteenth Amendment until 1965. Grassroots movements of African Americans in the South, the expansive dynamics of military mobilization and international competition brought on by both the Cold War and the War in Vietnam, and the Supreme Court's active promotion of the rights of the disadvantaged via expansions in national power created an environment conducive to the civil rights movement.²⁹ However, it was still apparent to civil rights leaders that suffrage could only be obtained through federal action and bipartisan political backing. The bond between federalism and suffrage was too strong for the civil rights movement of the 1950s to correct without direct, federal intervention. Regional organizations and local initiatives pushed forward for the expansion of enfranchisement in the South as a means of filling legislative halls "with men of good will."³⁰ But the 1950s was best characterized by the hardening of restrictive voting laws in seven southern states: Alabama, Georgia, Louisiana, Mississippi, North Carolina, South

²⁹ Alexander Keyssar. *The Right to Vote: The Contested History of Democracy in the United States*. 256.

³⁰ *Ibid*, 258.

Carolina, and Virginia.³¹ These states enacted strict literacy tests, new “understanding tests,” and poll tax regulations that refused to send tax bills to blacks.³² Meanwhile, federal voting legislation faced significant roadblocks. Liberal Democrats were confined to the wills of the southern democratic bloc, and Republicans hoped to “make inroads into the solid South by winning over the white southern voters” that opposed suffrage legislation.³³ As a result, President Eisenhower remained cautious through the majority of his first term. “Favoring gradual change, reliance on the judiciary, and a limited role for the federal government,” the early Eisenhower administration did little to expand the franchise in the south.³⁴ The hardening of discriminatory voting practices in the South during this period illustrates the connection between subnational actors and suffrage. Even though the social revolution of the early 1950s promoted the expansion of the right to vote, federalism allowed state officials to restrict suffrage for partisan gains.

Although Eisenhower’s deference to state authority ended in his second term, the federal government remained unable to effectively decrease the power of subnational actors regarding the right to vote. Namely, state jurisprudence in the South made it difficult for the federal government to institute its political authority. Ultimately, President Eisenhower was persuaded to openly support the suffrage cause by a worsening social climate in the south and the perseverance of Attorney General Herbert Brownell. In 1957, Brownell and Eisenhower supported a civil rights bill proposed by the Justice Department that “created a national Civil Rights Commission, elevated the Civil Rights section into a full-fledged division of the Justice Department, and authorized the attorney general to seek injunctions and file civil suits in voting

³¹ Alexander Keyssar. *The Right to Vote: The Contested History of Democracy in the United States*. 258.

³² *Ibid.*

³³ *Ibid*, 259.

³⁴ *Ibid.*

rights cases.”³⁵ However, partisan conflict in Congress resulted in the watering down of many of the Civil Rights Act of 1957’s provisions. Due to a southern filibuster, Vice President Nixon and the Senate Majority Leader were forced to defang many of the act’s contents, resulting in relatively ineffectual changes in southern state prerogatives and universal criticism from suffrage activists.³⁶ Attorney General Brownell hoped that the legislation would allow federal judges to utilize the Fifteenth Amendment in addressing existing voting laws, but the Justice Department was often slow to bring suits forward and routinely deferred to southern judiciary precedence.³⁷ With the “average elapsed time between the filing of a complaint and the beginning of a trial [being] 16.3 months [...] an average of 17.8 months elapse between the commencement of trial and the entry of judgement,” and the hostility faced by the Department of Justice on the part of southern judges, the DOJ’s independent commission on Civil Rights filed fewer than 10 voting rights lawsuits per year.³⁸ The act’s ineptitude to enact legitimate change is exemplified by meager increases in black enfranchisement, as only 200,000 additional blacks were registered to vote in the South between 1956 and 1960.³⁹ Nonetheless, the Civil Rights Act of 1957 opened the door for future liberalizations in enfranchisement in suffrage in the south.

Namely, the creation of the Civil Rights Commission, a bipartisan commission that reported biannually to Congress, pursued complaints, conducted field investigations, and held hearings on discriminatory state practices instigated the formal federal condemnation of southern voting tactics.⁴⁰ “Its report, issued in 1959, contained vivid, detailed confirmation of claims that

³⁵ Alexander Keyssar. *The Right to Vote: The Contested History of Democracy in the United States*. 260.

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ Allan J Litchman. *Embattled Vote in America: From the Founding to the Present*. Harvard University Press, 2020. 157-158.

³⁹ Alexander Keyssar. *The Right to Vote: The Contested History of Democracy in the United States*. 260.

⁴⁰ *Ibid.*

had been streaming forth from African Americans in the South.”⁴¹ The commission brought the issue of voting discrimination to the forefront of national political debate by asserting the necessity of broader federal measures that provided “that all citizens of the United States shall have a right to vote in Federal or State elections if they could meet reasonable age and residency requirements and had not been convicted of a felony.”⁴² This increasing political pressure from the Justice Department combined with intense grassroots mobilization efforts to propel the suffrage question to the heart of civil rights discussions in the early 1960s. As formal declarations of state discrimination rose, so too did public protest: sit-ins at segregated lunch counters in North Carolina, freedom riders in Birmingham, Alabama, and a mock gubernatorial election in Mississippi in 1963 pressed governmental activity to quicken.⁴³ Under this pressure, federal legislators soon accepted that a county-by-county approach was “too time consuming, expensive, and difficult” to end discriminatory voting practices.⁴⁴ This tense political and social climate made the passage of the Voting Rights Act of 1965 possible.

The Short-Term Efficacy of the VRA

The act itself reorganized the authority regarding the right to vote in the South. It supposed federal supervision onto previously independent subnational actors and initiated the registration of hundreds of thousands of African Americans. However, the VRA neither changed the Constitution nor did it completely erase subnational authority regarding suffrage. The act subjected southern governments to federal supervision and outlawed certain discriminatory practices, but it did not fundamentally alter the central tenet of federalism in the United States. Nonetheless, the study of the VRA’s provisions is necessary for a complete analysis of

⁴¹ Alexander Keyssar. *The Right to Vote: The Contested History of Democracy in the United States*. 260.

⁴² *Ibid*, 262.

⁴³ *Ibid*, 261.

⁴⁴ *Ibid*, 262.

subnational response and retention of authority regarding suffrage. To see how subnational actors cooperated with, or repudiated against, the spirit of the VRA, it is important to identify the ways in which the act altered state authority.

Following the assassination of President Kennedy and the passing of the Civil Rights Act of 1964, President Lyndon B. Johnson seized the opportunity to fulfill the aims of the 1957 Civil Rights Act. Specifically:

“the president [...] knew that the Democrats’ political balancing act was over: with the Civil Rights Act of 1964, the party had decisively tilted away from the white South and toward black voters, and now it was going to need as many black voters as possible to have a chance of winning southern states.”⁴⁵

President Johnson recognized that the politics of suffrage reform was nearing its end, and the antagonizing of a new bloc of voters could prove fatal to a political party’s future electoral chances. President Johnson’s pro-voting reform rhetoric swayed most of Congress, as 40 southern congressmen recognized the “inevitability of the bill’s triumph and the political wisdom of supporting it.”⁴⁶ The VRA itself contained several key provisions that struck at the heart of the state prerogatives regarding the establishment of the electorate and followed through on several demands by both civil rights activists and the Commission on Civil Rights.

Specifically, the Voting Rights Act of 1965 served several important functions in relation to our study of federalism and the ability of subnational actors to respond to federal supposition of state powers. Namely, the VRA restricted some established southern registration practices, subjected discriminatory areas to direct federal supervision, and subjugated state electoral procedures under the authority of the national government. The act’s proposed automatic trigger

⁴⁵ Alexander Keyssar. *The Right to Vote: The Contested History of Democracy in the United States*. 263.

⁴⁶ *Ibid*, 264.

in Section 2 “immediately suspended literacy tests and other “devices” (including so-called good character requirements and the need for prospective registrants to have someone vouch for them) in states and counties where fewer than 50 percent of all adults had gone to the polls in 1964.”⁴⁷ Additionally, the Voting Rights Act held that poll taxes in state elections reduced suffrage, and thereby “instructed the Justice Department to initiate litigation to test their constitutionality.”⁴⁸ These provisions explicitly restrict state practices and upset the balance of suffrage power that previously existed pre-1965. Whereas southern actors were once able to influence the electorate by prohibiting certain people from voting, the federal legislature subsumed that power through direct outlawing of these practices. Furthermore, by authorizing “the attorney general to send federal examiners into the South to enroll voters and observe registration practices,” the federal legislature prioritized the judgement of national actors over state officials. This provision made it more difficult for southern states to employ discriminatory registration practices, and in doing so, further entrenched national prerogative over a previously decentralized process. Lastly, section 5 of the VRA prevented the implementation of new discriminatory laws by prohibiting “the governments of all affected areas from changing their electoral procedures without the approval (or “preclearance”) of the civil rights division of the Justice Department.”⁴⁹ Preclearance formally subjugated state prerogative regarding enfranchisement. Through section 5, the federal government established themselves as the final arbiter of voting procedures; thereby asserting the Justice Department of the national government as the constitutional authority of suffrage in the United States. Through the direct outlawing southern voting practices, the implementing of federal registration officials in southern state elections, and the subjugation of state legislatures

⁴⁷ Alexander Keyssar. *The Right to Vote: The Contested History of Democracy in the United States*. 263.

⁴⁸ *Ibid*, 264.

⁴⁹ *Ibid*.

under the jurisdiction of the civil rights division of the Justice Department, the Voting Rights Act appeared to represent a seismic change in the division of power between the states and the national government.

Additionally, the VRA directly impacted voter registration in the South. Through direction intervention in southern registration drives and the elimination of discriminatory voting practices, “roughly a million new voters were registered within a few years after the bill became law, bringing African American registration to a record 62 percent.”⁵⁰ Scholars credit this massive increase in registration to the federal government’s direct intervention in southern voting practices and the willingness of local, southern registrars to abide by the VRA’s provisions:

“Within a few months after the bill’s passage, the Justice Department dispatched examiners to more than thirty counties in four states; scores of thousands of blacks were registered by the examiners, while many more were enrolled by local registrars who accepted the law’s dictates to avoid federal oversight.”⁵¹

Previous scholarship concludes that the quantifiable rewards of the VRA and the length of time for it took its provisions to pass a national legislature as a symbol of its significance. According to these political scientists, the federal government’s ability to overcome a deep resistance to racial equality and federal intervention in state authority evidence not only the importance of the act, but also the growing powers of the national government regarding suffrage. However, a single piece of legislation is not enough to alter centuries of political development. States and subnational actors were not stripped of all authority over the right to vote. Instead, their powers were disrupted.

Subsequent Voting Rights Legislation

⁵⁰ Alexander Keyssar. *The Right to Vote: The Contested History of Democracy in the United States*. 264.

⁵¹ *Ibid.*

By extension, the growing power of the federal government is further exemplified by the VRA's three subsequent renewals. Importantly, these renewals passed a national legislature during a decades-long conservative movement in the United States. First, the act was renewed in 1970 despite reluctance by both the Nixon administration and the national legislature; "the bill was renewed for five more years, while the ban on literacy tests was extended to all states."⁵² Thereafter, the VRA was extended in 1975 for another seven years; while subsequently enlarging federal authority to protect the voting rights of "language minorities," "including Hispanics, Native Americans, Alaskan Natives, and Asian Americans."⁵³ In essence, the federal government expanded the act's original interpretation to protect the voting rights of other, previously discriminated, ethnic groups. Lastly, the act's principal provisions were prolonged for another twenty-five years "despite the Reagan administration's anti-civil rights posture."⁵⁴ To contemporary scholars, these extensions serve an important purpose in the federal-centric interpretation of suffrage in America; they illustrate the federal government's ability to expand the authority of the national government regarding the franchise at the expense of subnational sovereignty.

This line of thinking was subsequently bolstered by three additional pieces of national legislation regarding voting registration. Namely, the Uniformed and Overseas Citizens Absentee Voting Act of 1986, the National Voter Registration Act of 1993, and the Help America Vote Act of 2002 follow the precedence of the Voting Rights Act by placing mandates on the states to expand suffrage nationally. The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) protects the voting rights of both military and overseas voters by requiring states to

⁵² Alexander Keyssar. *The Right to Vote: The Contested History of Democracy in the United States*. 265.

⁵³ *Ibid.*

⁵⁴ *Ibid.*

transfer absentee ballots to all applicable voters who request a ballot within the 45-day buffer from election day. UOCAVA permits the U.S. attorney general to monitor the overseas registration practices, required states to establish federally mandated absentee ballots for overseas voters, and established “a plan for states to remain in compliance with UOCAVA during runoff elections.”⁵⁵ Additionally, the National Voter Registration Act requires states to offer voter registration at various government offices, requires them “to treat driver’s license applications as voter registration applications and to offer voter registration opportunities at public assistance and disability services offices.”⁵⁶ Essentially, the NVRA made states responsible for local government noncompliance with nationally established registration requirements; furthering the evidence of federal subjugation of local voting prerogatives. Lastly, the Help America Vote Act aimed to provide national benchmarks for election administration through the imposition of specific requirements on state voting systems and the implementation of rules for provision ballots.⁵⁷ Although these statutes differ from the VRA in their race-neutral language and their creation of universal civil rights regarding election administration, they continue the Voting Rights Act’s precedence federal intervention into state elections. However, in doing so, these statutes expand on the VRA by enforcing liability onto states for local noncompliance of federally mandated election responsibilities. A federal-centric approach to enfranchisement in the United States would insinuate that these pieces of legislation further illustrate the effects of the Voting Rights Act on subnational actors.

According to these scholars, the passage of the Voting Rights Act represented a seismic shift in the relationship between the federal government and the southern states. The VRA

⁵⁵ Justin Weinstein-Tull. "ELECTION LAW FEDERALISM." *Michigan Law Review* 114, no. 5 (2016): 747-801. Accessed March 30, 2021. <http://www.jstor.org/stable/24770880>. 756-757.

⁵⁶ *Ibid*, 755.

⁵⁷ *Ibid*, 757-758.

supplanted state prerogative with federal supervision, and, in doing so, altered the balance of power in the battle for voting rights. This shift is highlighted by previous failures to restrict discriminatory voting practices in the South, and the subsequent plethora of federal action regarding suffrage in the following decades. However, ignoring the pliancy of American federalism devalues these conclusions. More attention should be given to subnational actors and their ability to either push against federal suffrage initiatives or pull the franchise forward. The Voting Rights Act of 1965 did not change the Constitution: it still refrains from expressing an explicit right to vote, and endows the states with controlling the timing, manner, and place of elections. Therefore, further analysis of subnational action regarding suffrage in the years must be conducted.

Federalism Post 1965

The contestation over suffrage did not end with the passage of the Voting Rights Act. Instead, political, and judicial, battles over enfranchisement have endured into contemporary American politics. Federalized contestation also occurred before *Shelby*. For instance, “since 2010, at least twenty-five states have taken actions whose effect has been to restrict or narrow access to voting and participation in state political processes that affect local, state, and federal elections.”⁵⁸ Even before *Shelby v. Holder* stripped the federal branch of its oversight capabilities, subnational actors possessed an ability to rebel against the VRA’s expansionist initiatives regarding suffrage.⁵⁹ This continued battle over suffrage stems from the stability of the U.S. Constitution. Although the VRA outlawed some discriminatory practices and subjected affected states to federal oversight, the articles of the federal Constitution remain unaffected

⁵⁸ David S. Louk. "Reconstructing the Congressional Guarantee of Republican Government." *Vanderbilt Law Review* 73, no. 3 (2020). 681.

⁵⁹ “*Shelby County v. Holder*, 570 U.S. 529 (2013).” Justia Law. Accessed March 30, 2021. <https://supreme.justia.com/cases/federal/us/570/529/>.

regarding suffrage and the authority of the states. Specifically, Article I, Section 2 of the Constitution still holds that the states control the requirements to vote for the federal House of Representatives, while Article II, Section 1 maintains that states control the timing, manner, and place of elections. Constitutionally, subnational prerogative over elections and suffrage after 1965 remains unaltered. The preservation of these constitutional provisions is due in large part to the rigidity of the U.S. constitutional amendment process. Namely, “the rigidity of the Article V amendment process ensures that amendments are enacted infrequently, such that deliberation about rights, at least at the federal level, takes place primarily in Supreme Court decisions and rarely through passage of constitutional amendments.”⁶⁰ Additionally, the case has been made that Article IV, Section 5, the Guarantee of Republican Government clause, justifies federal supposition of state authority regarding elections. However, that argument was defeated in *Rucho v. Common Cause*, wherein the Supreme Court established that the Guarantee of Republican Government clause is nonjusticiable and should instead be taken up by the political branches.⁶¹ Therefore, if the Constitution remains indifferent to the right to vote, another political mechanism must be responsible for the perseverance of the suffrage question: in the U.S.: federalism. As federalism continually defines the United States government, the division of powers among the states and the national government enables subnational actors to either push against federal initiatives or pull them forward, depending on the congruence of federal and local interests. State action post-1965 displays the innovative capacities of subnational actors. Specifically, state executors, subnational administrative branches, and state courts continue to contribute to the political development of the right to vote in the post-VRA era. Additionally, the

⁶⁰ John Dinan. "State constitutional amendments and individual rights in the twenty-first century." *Albany Law Review* 76, no. 4 (2013): 2105+. *Gale General OneFile* (accessed March 30, 2021). 2105.

⁶¹ David S. Louk. "Reconstructing the Congressional Guarantee of Republican Government." 678.

distinctive nature of suffrage politics illustrates the importance of federalism and the role of the states. Suffrage politics uniquely combines electoral competition to the issue of race, thereby allowing state government actors to alter the electorate based on partisan interests and changing demographic compositions. The Voting Rights Act of 1965 did not supplant state authority regarding suffrage; it merely disrupted it.

The Mechanisms of Federalism and Suffrage

As opposed to being subsidiary elements of American governance, subnational actors are driving forces of American political development. American political history is defined by its constant development and redevelopment of established principles; meaning political actors in one period of American history are not always constrained by the precedence set by their predecessors. Rather, federalism is “much like a piece of earth that is subject to constant redevelopment.”⁶² The language of constitutional provisions and legislative amendments can disturb federalism, but they cannot fundamentally erase the states as vehicles for political development. The relationship between state and federal governments can be totally rearranged yet still hold fundamental, elemental properties of federated powers. Subnational actors are both more closely linked to the citizenry and entitled to expressed constitutional powers and prerogatives, thereby enabling these actors with the authority to fill the gaps that the federal government and its administrative agencies cannot fill. Rather than supplicant their authority to the federal government and its agencies, state actors act as extensions of federal authority. For our purposes, it is worth noting that the language of enduring features and the principle of preclearance in the Voting Rights Act of 1965 disrupted the balance of power between the federal and state governments regarding voting. However, states maintained critical electoral,

⁶² Martha Derthick. *Keeping the Compound Republic: Essays on American Federalism*. 37.

administrative, and judicial means of political development, therefore enabling states to remain as principal sites of contestation and development. Specifically, state actors act as primary movers in American political development by either pushing back against encroaching federal supervision or pulling federal initiatives forward through state cooperation. Therefore, “it is not unusual for the change to go in contrary directions – centralizing and decentralizing – at once.”⁶³ The size and speed of American political development, with specific attention toward federalism, fluctuates from one era to another. It is the duty of political scholars to analyze these changes and avoid sweeping assertions that generalize federalism according to the transgressions of one political generation. American political development regarding suffrage is primarily driven by three vehicles: state jurisprudence, administrative development, and partisan rhetoric.

A. *State Jurisprudence*

Jurisprudence is more concisely defined by state constitutions and state court precedence post-1965. State court actors work within the confines of subnational constitutions to either push back or work alongside federal authorities. This assessment of state jurisprudence is vital to proper understandings of states’ abilities to adjudicate local electoral laws, thereby attributing to the larger conversation of national political development. Constitutions are “not just a form of ‘literary theory;’ [they are] a fundamental and independent part of politics.”⁶⁴ By understanding state court jurisprudence and state constitutions in context, scholars can make way for new arguments and interpretations of state law that were previously unattainable. Although policies “may fulfill the promise of a constitution in governmental practice, yet it does not extend the meaning of the constitution itself.”⁶⁵ State courts and state constitutions are independent vessels

⁶³ Martha Derthick. *Keeping the Compound Republic: Essays on American Federalism*. 154.

⁶⁴ Keith E. Whittington. *Constitutional Construction: Divided Powers and Constitutional Meaning*. Cambridge, MA: Harvard University Press, 1999. 9.

⁶⁵ *Ibid*, 4.

of American politics that establish judicial precedence. However, they also exist within the realm of politics, meaning that they are concurrently influenced by the partisan issues of the time. Therefore, the vehicle of state jurisprudence establishes precedence that both effects American political development while also being affected by American political development. For instance, the Michigan Constitution of 1963 acted as the start of a modern era of state constitution-making that is defined by policy provisions virtually absent from the U.S. Constitution. These obligations are a product of practitioners' determination that such provisions are a necessary and appropriate means of overcoming various deficiencies in the political process and thereby securing more effective governance. Whereas the consensus of the mid-19th century held that state constitutional provisions were inappropriate and inconsistent with traditional standards of policymaking, *Baker v. Carr* initiated a new trend of state political development.⁶⁶ These provisions cover a wide array of policy issues, such as fiscal provisions that limit taxing and spending, campaign finance, drug legalization, same-sex marriage, affirmative action, minimum wage rates, stem-cell research, and environmental protection.⁶⁷ Consequently, as economic and social relations became more complex with the advancement of industrial influences, the pressures on state legislative bodies yielded apparent weaknesses in efficacy and an aptitude to yield the liberties of the constituency. For instance, California's 1978 Proposition 13, Michigan's Provision in its 1963 Constitution, and Michigan's Headlee Amendment from 1978 all decreased the need for discretion to legislatures that could not find a consensus on the issue of imposing taxes and setting new tax rates.⁶⁸ These findings are important to our study of

⁶⁶ John Dinan. "Policy Provisions in State Constitutions: The Standards and Practice of State Constitution-Making in the Post-Baker v. Carr Era," *Wayne Law Review* 60, no. 1 (Spring 2014). 157.

⁶⁷ John Dinan. "Policy Provisions in State Constitutions: The Standards and Practice of State Constitution-Making in the Post-Baker v. Carr Era." 158.

⁶⁸ *Ibid*, 184-185.

the Voting Rights Act for several reasons. First, they prove that state constitutions are effective means of driving political development. Constitutional provisions produce tangible policy achievements and subvert the traditional mires of affect partisanship. Considering that voting qualifications and the question of suffrage are routinely curtailed by partisan strife; state constitutions act as viable avenue for both voting reform and response to federal intervention. Second, this analysis further proves the resilience of American federalism. Although the general trend post *Baker* is an aggrandizement of federal authority, state constitutions remain a legitimate means of policymaking at the state and local levels. Therefore, it is prudent for a study of enfranchisement and the Voting Rights Act to include analysis of both state jurisprudence and state constitutions following 1965.

B. Administrative Action

Additionally, administrative actors control the elections offices, statewide election organizations, and the electoral regulatory agencies within states that define the electorate and carry out subnational suffrage initiatives. These actors represent a vehicle for non-legislative policymaking; their exercise of administrative capacities highlights the bureaucratic objectives pushed forward by executive authorities within the state. These agencies carry out executive orders from state officials and alter federal provisions to fit local concerns. Since the United States “is too big, sprawling, and diverse for national administration,” subnational actors’ approach local issues with a more practical understanding of public policy implementation.⁶⁹ Regarding voting rights, administrative actors are responsible for the direct inclusion or exclusion of people to the ballot box. Administrative agents are forced to “serve multiple masters

⁶⁹ David Brian Robertson. *Federalism and the Making of America*. 7.

at once” by simultaneously engaging policy stakeholders and constituencies.⁷⁰ Subnational administrators balance the policy objectives of the legislators and executive agents at the state level with the needs of the electorate. Therefore, these administrative agents contribute to the political development of suffrage. However, contemporary political scholarship often focuses solely on the state and federal politicians that initiate legislation, rather than the ways in which the administrative agents implement those initiatives. Therefore, suffrage scholarship that centralizes itself around the legislative or judicial developments of the right to vote lacks a holistic understanding of how subnational actors influence political development. Put simply, “If politics and policy shape each other in a reciprocal relationship, and if administrative organizations are sites of political actions, then study of administration today is distorted by a one-sided focus.”⁷¹ The study of subnational administrative agencies is paramount to a complete understanding of federalism in the post-VRA era.

C. Partisan Rhetoric

Partisan rhetoric is defined as the subsequent rhetoric from state attorney generals, Governor’s addresses, and Secretaries of State. The language from these executive officials not only sets the tone for administrative agencies and legislative officials, but also seeks to indicate state confirmation or rejection of federal action regarding suffrage. Partisan rhetoric from state government executors helps fill the gaps that the federal government and its administrative agencies cannot fill. “This appeal to the states to talk back is not a call to defiance, but a call to engage federal officials in policy dialogue – and, having done so, to address those officials with language suitable to governments.”⁷² Subnational actors talk to the federal government in a way

⁷⁰ Donald P. Moynihan, and Joe Soss. “Policy Feedback and the Politics of Administration.” *Public Administration Review* 74, no. 3 (2014): 320–32. <https://doi.org/10.1111/puar.12200>. 322.

⁷¹ *Ibid*, 325.

⁷² Martha Derthick. *Keeping the Compound Republic: Essays on American Federalism*. 41.

that separates them from being a supplicant; they are an extension of federal agencies endowed with their own localized prerogatives. Considering the VRA's permission of federal oversight of state election authority and their outlawing of southern states' voting requirements, the Voting Rights Act began a pattern of federal supposition of subnational authority regarding voting. If subnational actors followed the VRA with subnational rhetoric that established the states as supplicants to federal authority, then it stands to reason that the following decades would have seen a total elimination of subnational authority over the right to vote. However, as evidenced by continued subnational repudiation of the expansion of the electorate in this past decade, this did not occur. Like the welfare reform legislation of 1988, subnational executors fashioned changes to national legislation "that would be both politically and administratively feasible."⁷³ Partisan rhetoric is a powerful vehicle of American political development, and ought to be included in the discussion of subnational responses to the Voting Rights Act.

Methods and Research Design:

In summary, the Voting Rights Act of 1965 is falsely marked as a fundamental shift in federalism and state authority. More specifically, some scholars assert that the preclearance provision in Section 5 of the act reduces state powers over elections. These political scientists argue that states' previously held power over the timing, manner, and placing of elections via Article I, Section 4, Clause 1 of the Constitution was disrupted by federal oversight; thereby diminishing the role of the states in establishing voting legislation and defining suffrage qualifications. However, I argue that states remain an important cog in the engine of American political development. Although the Voting Rights Act subjected states to federal supervision, it did not destroy the elastic principle of federalism or states' abilities to influence the right to vote

⁷³ Martha Derthick. *Keeping the Compound Republic: Essays on American Federalism*. 41.

Subnational actors use state judicial systems, local administrative organizations, and partisan rhetoric to carve their own niche of autonomy in an increasingly large, centralized government. This is evidenced in contemporary America by states' abilities to enact varying voter requirements: such as voter ID laws, felon disenfranchisement, and early registration stipulations. Additionally, after the holding in *Shelby*, states have continued to limit voting rights in a more draconian fashion. This confirms the narrative of subnational importance; the VRA limited state efficacy in the short-term, but it did not fundamentally abolish state authority over the right to vote. Consequently, the question is not "how has the federal government used the principles of the Voting Rights Act to alter federalism," but "how have states adapted to a changing suffrage politics environment and facilitated political development in a post-VRA world." Therefore, my research puzzle revolves around the central question:

1. How do states contribute to the political development of suffrage in the federal system of the United States post-1965?

The aim of this study is to evaluate the ways in which subnational actors influence suffrage politics after the Voting Rights Act. Contemporary state laws regarding voting rights prove that states remain an important vehicle in the expansion or restriction of the franchise, but a connection must be drawn between that conclusion and the spirit of the VRA. I hypothesize that subnational actors amended their vehicles of political contribution to the issue of suffrage.

Whereas southern legislatures formerly restricted voter access through overt discrimination, the VRA forced subnational actors to innovate politically and either restrict or expand the right to vote through covert actions. Still, additional questions are necessary for a complete analysis of this issue. Therefore, my research asks several supplemental questions:

2. How do state actors either push forward or pull back federal initiatives on suffrage?

3. And what roles do demographic change and electoral competition in state legislatures play in the development of suffrage in a constitutional democracy?

The expansion of suffrage is not linear; some ethnic and socioeconomic groups can be excluded from voting while others are simultaneously added to the electorate. Thus, a complete analysis of voting rights and American political development must include state actions that support the initiatives of the Voting Rights Act in addition to the various subnational actions that attempt to diminish the VRA's efficacy. Additionally, political scholarship hypothesizes that demographic change and electoral competition stimulate conflict in suffrage politics. Nonetheless, the magnitude and effects of this change have yet to be determined regarding the Voting Rights Act. With these questions in mind, I sought to conduct a thorough investigation of several case-study states to test my hypothesis. I hypothesize that subnational actors contribute to the political development of the right to vote through state jurisprudence, administrative development, and partisan rhetoric. Changes in the demographic composition and partisan competition of state legislatures should spur subnational action either against or in cooperation with the spirit of the VRA. As the demographic composition of states diversifies, subnational actors should be compelled to either restrict or expand the right to vote. The issue of suffrage does not exist in a vacuum; it is subject to manipulation by partisan politicians that originates from the power politics of state government. State officials are likely to restrict the right to vote if the inclusion of new voters threatens their chances of reelection; while on the contrary, state actors are likely to expand suffrage if it benefits in-power officials.

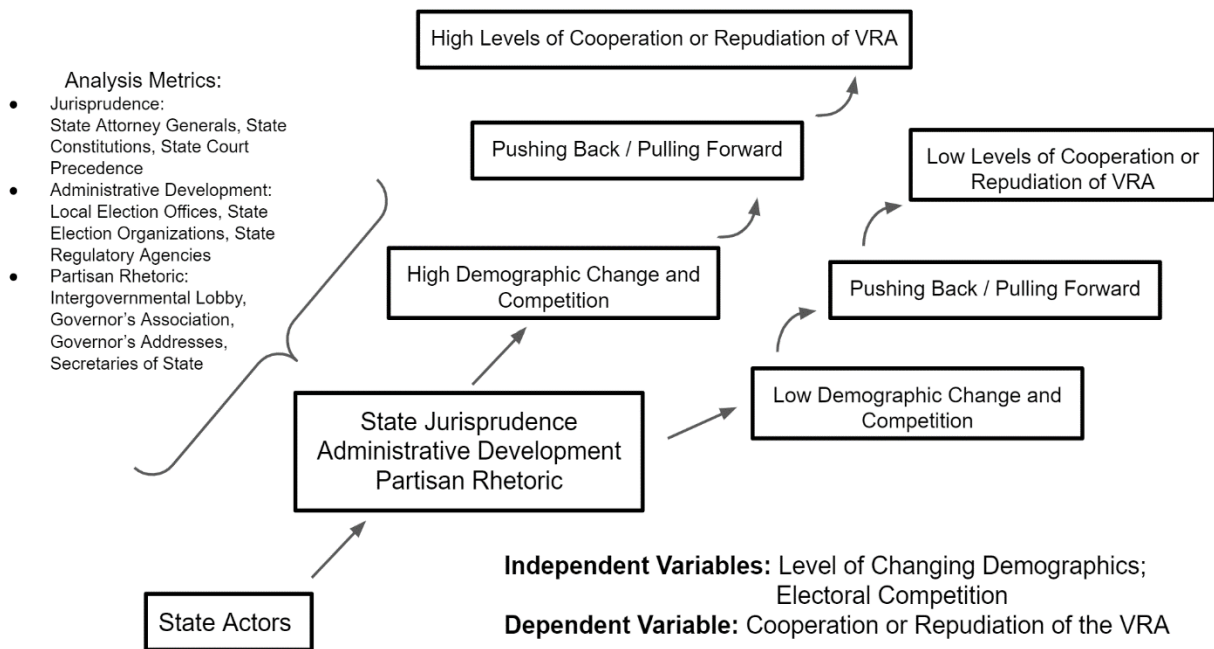


Figure 1. Graph of independent and dependent variables.

Independent and Dependent Variables:

As noted in the figure above, I operationalize my dependent variable as the jurisprudence, administrative development, and partisan rhetoric of subnational actors that cooperates with or repudiates against the spirit of the Voting Rights Act, and my independent variables as the level of demographic change and the electoral competition within the state Legislature; thereby linking state action to changes in suffrage in a bottom-up process. Instead of beginning with the larger, federal government, my analysis moves from state actors upward. As my research is centered around the reorganization of state authority in post-VRA America, I intend to evaluate the ways in which states either pull back or push forward the expansionist initiatives of the Voting Rights Act; this notation will then allow me to make a descriptive claim on how these actions effect enfranchisement within the states under direct investigation, and a normative claim on the direction of suffrage policy in the United States moving forward.

I separated state action regarding suffrage into three separate vehicles: state jurisprudence, administrative development, and partisan rhetoric. Jurisprudence is more concisely defined by state constitutions and state court precedence post-1965; administrative development is more precisely operationalized by the actions of local elections offices, statewide election organizations, and the electoral regulatory agencies within states; and partisan rhetoric is operationalized as the subsequent rhetoric from state attorney generals, Governor's addresses, and Secretaries of State. As referenced in the literature review, these mechanisms comprise the three primary ways which subnational actors contribute to political development. Therefore, by examining these mechanisms after 1965, this study creates a full understanding of how states responded to the Voting Rights Act and retained their authority to determine the right to vote according to localized, political interests.

The variance in the independent variables ought to produce differing levels of state response to the VRA. As depicted in the figure, high demographic change and high levels of competition in state legislatures should incentivize subnational action to either restrict or expand the right to vote. Conversely, low levels of demographic change and partisan competition should elicit small amounts of cooperation or repudiation of the principles of the VRA. The figure illustrates these differences by diverting the line of political development regarding suffrage, thereby depicting the difference in both the quantity and efficacy of subnational action to either combat or bolster the spirit of the VRA.

Case Selection:

Case study states were chosen to represent a different expected outcome of state action regarding suffrage. Each case study state was selected due to their variation in the established independent variables, therefore corresponding to the estimated dependent variable.

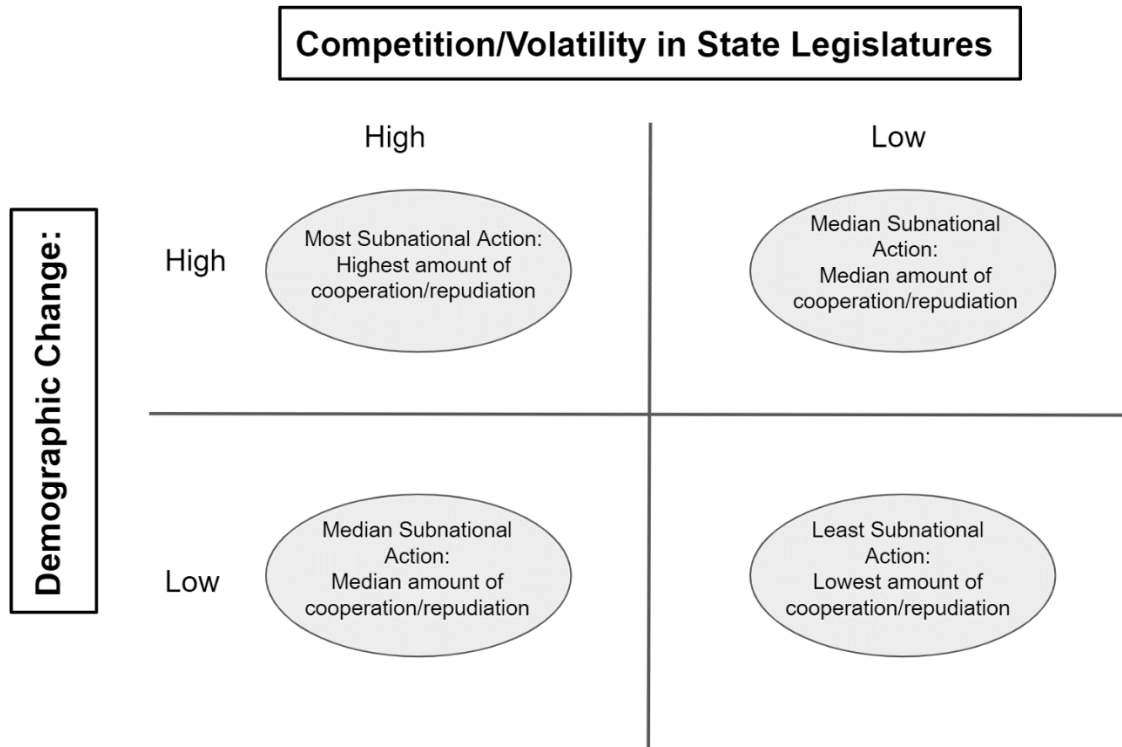


Figure 2. Quadrant demonstrating the estimated effect of Demographic Change and Partisan Competition on subnational action regarding the VRA.

As depicted in the figure above, I split the case-states into four quadrants with ‘Competition/Volatility in State Legislatures’ on one axis and ‘Demographic Change’ on the other. Considering previous findings on suffrage politics, both electoral competition and demographic change are driving forces in the disruption of suffrage politics; states with a changing demographic composition and high level of partisan turnover in the state house of representatives are likely to act regarding the expansion of the electorate, as it directly affects local politicians’ likelihood of holding office. Therefore, states with high demographic change and high partisan competition in state legislatures should see the largest amount of subnational action that either pushes against or pulls up the initiatives of the VRA. Likewise, states with low demographic change and low partisan competition in their state legislature are likely to see little response to the Voting Rights Act. Finally, states with middling rates of demographic change and

electoral volatility are estimated to produce middling levels of either cooperation with, or repudiation against, the VRA.

Using Social Explorer, a demographic database of census information for the United States, and a Harvard University database containing the partisan balance for state legislatures, I was able to compile a list of states according to demographic and electoral composition. I defined states with “low” levels of electoral competition as those states that had experienced a partisan shift in the state legislature of less than 10 percent between 1965 and 2010. This statistic is operationalized as the percentage of the state legislature that identified as being a Democrat. Similarly, I defined states with “high” levels of demographic change as those states that had experienced a change of ‘White Only’ populations of greater than 10 percent between the years 1970 and 2019. I chose these date parameters because they were the closest to either contemporary U.S. politics or the passage of the Voting Rights Act. By sifting through both lists, I was able to note four states that fit my statistical parameters. These states are depicted in the figure below.

State:	White Only '70	White Only 2019	Demographic Change	Dem. Prop. State Leg. 1	Dem. Prop. State Leg. 2	Change in State Leg.
Georgia	74%	58%	16%	96.6%	41.3%	55.3%
Mass.	96%	77%	19%	80.6%	89.9%	9.3%
Idaho	98%	89%	9%	46.8%	25.7%	21.1%
Kansas	94%	84%	10%	35.2%	36.8%	1.6%

Figure 3. Table of Independent Variables for Georgia, Massachusetts, Idaho, and Kansas.

As evidenced by the table, Georgia and Massachusetts exhibited “High” levels of demographic change, while Georgia and Idaho exhibited “High” levels of volatility in the state legislature.

Taking these findings into consideration, I refigured the four quadrants of my estimated subnational action chart according to the case study selections. Georgia, with high levels of

demographic change and partisan competition, is expected to have the highest level of subnational action regarding suffrage; Kansas, with low levels of both demographic change and partisan competition, is expected to have the lowest amount of subnational action; and Massachusetts and Idaho, with varying levels of either demographic change or partisan competition, is expected to have medial amounts of subnational change.

Data Collection

The research data was collected from a variety of sources. The central mode of collection was conducted through the amalgamation of primary source material: namely, newspaper articles, state court holdings, and constitutional materials or political conversations acquired from Thomson Reuters' Westlaw. These raw materials of suffrage history allowed the research to draw direct conclusions from subnational actors, thereby offering a comprehensive understanding of state action regarding the right to vote. Additionally, the research included secondary materials on the electoral politics of the case-study states. This political context supplemented the research when primary sources were scarce and enlightened the conclusions by establishing subnational context for state actions after 1965. Through these two data collection mechanisms, the acquired research paints a complete picture of the legislative, judicial, and administrative development of the suffrage question in the selected states.

Primary sources were mostly available through Thomas Reuters' Westlaw and the archives of the Boston Globe. Specifically, Westlaw allowed me to observe the various drafts of voting rights legislation in the case study states. These pieces of legislation were accompanied by state court cases that cited the legislation, thereby connecting partisan policymaking to state jurisprudence regarding voting rights. Additionally, the database showed administrative letters and correspondence from state attorney generals to either the Secretary of State or administrative

officials within the states under investigation. Through these pieces of legal correspondence, I was able to observe not only the efforts of executive actors, like Secretaries of State and Attorney generals, but also the administrative development of local election officials. Furthermore, scholarship on the electoral politics of Georgia, Massachusetts, Kansas, and Idaho allowed further analysis of subnational action. Although the interpretations from these works were more nuanced than the primary source material, studies of electoral politics within the states in question gave detailed accounts of how subnational actors used their capacities to manipulate the size of the electorate for partisan gain. Both the primary and secondary sources paint a complete picture of how subnational actors responded to the VRA in accordance with the independent variables.

Research Findings and Discussion

Through analysis of primary source material and the electoral politics of Georgia and Massachusetts, I found that subnational actors retained authority over enfranchisement in the post-VRA era. Although the direction of subnational action varies according to the electoral interests of the actor, these individuals maintained an ability to either expand or restrict the electorate. Georgia, a solidly Republican state with a long history of voter discrimination, limited the expansion of the franchise through innovative administrative, legislative, and judicial measures. Meanwhile, subnational actors in Massachusetts furthered the reach of the Voting Rights Act by applying its language to voting legislation in the state and expanding the electorate through executive, legislative, and judicial means. Both states reinforce my conclusion that state actors remain influential in the expansion, or restriction, of suffrage in the United States. Though the Voting Rights Act of 1965 vested some authority over elections away from the states, Georgia and Massachusetts prove that subnational actors retained their fundamental powers over

enfranchisement through political entrepreneurship. Furthermore, the dual-natured response of Kansan subnational actors further strengthens my claim. From the passage of the VRA until the 1990s, Kansas politics was defined by bipartisan moderation and limited electoral competition. Consequently, the VRA elicited limited responses from subnational actors. However, as the population diversified, the response of subnational actors increased. Executive officials pushed back against the spirit of the VRA through restrictive regulations. Kansan voting regulations in the new century highlight the correlation between federated action, and demographic diversity and electoral competition. In all case study states, the subnational response to the VRA correlated directly with the established independent variables.

Georgia and the Resiliency of Anti-Suffrage Efforts

The state of Georgia is a perfect example of subnational efforts to push against the VRA in response to demographic and partisan change. State actors in Georgia routinely responded to the expansionist suffrage agenda of the Voting Rights Act by using the mechanisms of federalism and federal reliance on state actors to reaffirm discriminatory voting practices. Specifically, subnational actors used legislative apportionment, the state court system, administrative dependence on local voting registrars, and the powers of the Secretary of State of Georgia to minimize the efficacy of African American voters in the state. Although these actions shed light on the ability of subnational actors to resist federal intervention, they also provide evidence for the connection between electoral politics and the expansion or restriction of suffrage. The state of Georgia has undergone tremendous demographic and partisan change between 1960 and 2020. Between that time, the state's white-only population has steadily decreased by about 15 percent. Alternatively, partisan competition in the state increased steadily over that same period. While the Democratic party held a wide majority in Georgia's House of

Representatives in 1960, the contemporary state House is far more competitive, as evidenced by the Republican party's 59 percent majority share. Therefore, Georgia established a connection between demographic and partisan change, and subnational opposition of the VRA.

As Georgia's white-only population and electoral balance changed, its subnational actors reacted by suppressing the expansion of the franchise. Whereas state authorities in Georgia once held a stranglehold on suffrage policies that solidified the authority of those in power, these same actors became vulnerable to electoral competition with the expansion of the electorate that stemmed from federal intervention via the Voting Rights Act. In response, these subnational actors resorted to political entrepreneurship against the spirit of the VRA to limit the efficacy of newly enfranchised black Georgians. By designing a system of legislative apportionment that benefitted the rural, white voter, suppressing voter registration efforts in predominantly African American communities, and promoting the partisan prerogatives of state executive officials, subnational actors in Georgia sought to hold onto their political power by revolting against the VRA and limiting suffrage to a controlled population. In doing so, these state actors used the mechanisms of federalism for partisan gain. Therefore, as Georgia's population and partisan balance diversified, the antithetical response of subnational actors to the VRA increased. Subsequently, these actors illustrated their ability to innovate within the confines of the federal system and influence the expansion of suffrage according to localized, partisan interests. Georgia perfectly illustrates how substantial changes in the dependent variables, partisan competition, and demographic change, induce dramatic amounts of subnational action against the Voting Rights Act.

Legislative Apportionment:

Subnational actors in the state of Georgia have routinely pushed against federal initiatives regarding suffrage. While the state remained active in its efforts to limit minority voting in the early and mid-20th century, that pattern of restriction held in the years following the Voting Rights Act of 1965. This continuation of subnational efficacy supports my hypothesis that state authority over suffrage was not destroyed by the VRA: it was merely unsettled. The stipulations of the VRA forced Georgian subnational actors to change the ways in which they suppressed the right to vote for African Americans. Whereas prior to 1965 the state of Georgia overtly limited black access to the polls, subnational actors were forced to innovate in the wake of federal supervision brought on by the act's passage. This political entrepreneurship on behalf of Georgian subnational actors shows that the Voting Rights Act did not permanently supplant state authority over suffrage, it merely disrupted it. Namely, the manner of legislative apportionment, the actions of local election officials and Chief Registrars, the work of Secretary of States and Attorney Generals, state constitution-making, and House Bills became vehicles of electoral manipulation. Subnational actors in Georgia act as prime evidence of the elasticity of federalism and the ability of state actors to push against federal suffrage initiatives.

The manner of representative apportionment sets Georgian subnational actors apart regarding their ability to counteract the spirit of the Voting Rights Act. The apportionment system's perpetuity after the passage of the VRA supports my claim that the VRA did not destroy all aspects of subnational authority and voting rights. Specifically, Georgia's County Unit System and Statewide Majority-Vote Rule allowed Georgian politicians to manipulate the number of elected officials who represent white voters' interests, thereby devaluing the votes of blacks in the state. Instituted in statutory form in 1917, this long-held county unit system applied to both primary elections for United States Senator and all state-wide offices. "This unique

system institutionalized malapportionment and also served to minimize black political power.”⁷⁴ Under this system, candidates who received the majority of votes in a given county were given all the votes for that county.⁷⁵ Similar to the egalitarian system of electing equal numbers of U.S. senators for every state, this system empowered less densely populated rural areas at the expense of urban voters. For Georgia, this meant the empowering of rural, white votes while discriminating against the urban, black voters that were already held under suspicion. It is also worth noting that the County Unit system was instituted after the Supreme Court ruled in *South Carolina v. Katzenbach* that Georgia’s Disenfranchisement Act of 1908 was “specifically designed to prevent Negroes from voting.”⁷⁶ Therefore, the County Unit System and Majority-Vote rules not only represented Georgian subnational efforts to diminish the value of black votes, but it also represented a conscious effort of these individuals to repudiate national judicial holdings. Georgian state legislators understood the precedence set by *Katzenbach*, and then designed a system of legislative apportionment to continue their process of electoral discrimination within judicial bounds. This revision of the discriminatory apportionment system provides important context for its post-VRA continuance; Georgian subnational actors recognized the federal government’s dissatisfaction and used the vehicles of federalism to avoid the displacement of state authority. Because the VRA did not alter the tenets of federalism in the Constitution, Georgian actors retained this ability to reject federal displacement through political entrepreneurship.

For more context, the federal district court for the District of Columbia specifically declared that the one of the primary purposes of the county unit system in Georgia was “to

⁷⁴ Chandler Davidson. *Quiet Revolution in the South*. Princeton Univ. Press, 1994. 72.

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*, 68.

destroy black voting strength.”⁷⁷ Namely, Justice William O. Douglas of the Supreme Court agreed with the decision of the federal court by holding that the county unit system “violated the concept of ‘one person, one vote,’ which was the first use of the phrase.”⁷⁸ Rather than cede to the wills of the federal judiciary branch, the Georgian legislature extended the coverage of these electoral procedures in 1963. The 1963 House Bill required a majority vote for election to all county, state, and federal offices. Whereas prior to 1963, “county officials – unlike statewide officeholders, who were selected under the county unit system – were nominated in primary elections conducted by their political parties,” these officials were now included in the discriminatory apportionment system.⁷⁹ Representative Groover of Georgia, a prior floor leader to segregationist governor Marvin Griffin, was quoted as saying “that the purpose of the majority-vote legislation was to again provide protection which ... was removed with the death of the county unit system and to thwart election controlled by Negroes and other minorities.”⁸⁰ Again, the state legislature of Georgia was moving adverse to the wills and intentions of the federal legislature. Whereas the Civil Rights Act of 1957 and the creation of the Civil Rights Commission signaled the federal branch’s intention of expanding the electorate and stopping discriminatory voting practices, the Georgian state legislature’s actions signaled their disapproval. These subnational actors moved to increase the number of state officials elected by white citizens, thereby limiting the representation of black Georgians. These actions are perfect illustrations of subnational actors’ abilities to push against federal initiatives.

More important to our study than this history of electoral discrimination is the handling of this apportionment system after the Voting Rights Act of 1965. Just as the pre-1965 revisions

⁷⁷ Chandler Davidson. *Quiet Revolution in the South*. 72.

⁷⁸ *Ibid*, 73.

⁷⁹ *Ibid*.

⁸⁰ *Ibid*.

to the apportionment system illustrate Georgian actors' ability to avoid the displacement of state authority, its post-VRA extensions reiterate the subnational ability to manipulate suffrage for partisan gain. In particular, the unit voting rule was extended to municipalities in 1968, so that even after the VRA's passage, the Georgian legislature's primary goal was to push against civil rights policies.⁸¹ After 1968, every aspect of civil life in Georgia was affected by this discriminatory system. Georgia's U.S. Senators, statewide legislators, and municipal officials were all elected under a system of apportionment that greatly favored white, rural voters. The 1968 extension stands as an explicit repudiation of the spirit of the VRA because while federal initiatives on voting attempted to expand the efficacy of black Americans, Georgian practices solidified their devaluation. Even further, while the federal legislature attempted to broaden the impacts of black Americans by increasing their registration in federal elections, the Georgian state legislature diminished their localized voting abilities. As has been previously stated, state officials handle almost every aspect of local interests, therefore, by including both state and local officials in the County Unit System, Georgian subnational actors attempted to disenfranchise black Americans from voting for the officials who will impact their daily lives.

This 1968 extension also survived two federal court challenges. "The first was dismissed in 1971 as too speculative and not ripe for adjudication," while "the second, an action to enforce Section 5 brought by the Department of Justice, was also dismissed when it was discovered that the Attorney General had in fact precleared the majority-vote rule."⁸² While these federal court challenges do not support the claim that the Georgian county-vote rule followed the spirit of the civil rights movement, they do support my claim that subnational actors are political entrepreneurs regarding their ability to push against federal action. This federated form of

⁸¹ Chandler Davidson. *Quiet Revolution in the South*. 73.

⁸² *Ibid*, 73-74.

legislative politicking withstood both the provisions of the VRA and subsequent judicial review. Georgian subnational actors recognized that overt voting discrimination was no longer permitted under the conditions of the VRA. But rather than see their authority displaced by federal supervision, state actors manipulated the legislative system to restrict voting access surreptitiously. Through electoral innovation, Georgian legislators were able to counteract the expansion of the electorate at the federal level by diminishing black voting efficacy at the local level.

Importantly, the context of changing electoral balance within the state during this apportionment extension displays the connection between partisan competition and state action against the VRA. Namely, the proportion of seats held in the state Legislature by Democrats declined by 11 percent between the years 1960 and 1970. This is the second largest change in the partisan composition of the Legislature in any ten-year period between 1960 and 2010. Beyond question, the Democrats in office would have looked to the changing partisan tide of the Legislature with alarm. Consequently, by extending the County-Unit System to affect statewide legislators and municipal officials, the in-power legislators actively manipulated the electoral system to benefit their chances of re-election. These officials further empowered their electoral base of white, rural voters thereby maximizing their chances of retaining legislative power and evidencing the authority of subnational actors to change local suffrage laws according to concentrated partisan interests.

Voter Registration and State Court Action:

Additionally, Georgia's electoral procedures regarding voter registration act as another instance of pushing back against the essence of the VRA in accordance with increasing partisan competition and demographic diversity. With needlessly complex procedures, the registration

process in Georgia places “the burden of registration on the voter and vest enormous discretion in local officials.”⁸³ To illustrate, registration can only be conducted at fixed sites that are designated by local registrars. While “segregationist politics drew strength from the county unit system,” local registrars often attempted to further tip the scales in favor of white voters.⁸⁴ These efforts are often evidenced by state and federal court holdings that challenge Georgian electoral procedures’ adherence to the Voting Rights Act. Although the rulings of these challenges vary, the actions under scrutiny in these cases shed light on the various ways in which local election officials pushed back against federal oversight by attempting to limit the registration of African Americans in the state. Specifically, the 1970s and 1980s marked a peak period in which Georgian officials attempted to repudiate the expansionist aims of the VRA’s registration policies. As judicial contestations follow policy implementation, the Georgian actors initially refuted the registration principles of the VRA in the 1970s. These covert registration practices were continued into the 1980s, at which point the judiciary branch illuminated the aims of Georgian officials. Considering that “the main work of voter registration has been done by civil rights organizations such as the Voter Education Project (VEP), the Southern Christian Leadership Conference (SCLU), NAACP, SNCC, CORE, and literally hundreds of local black clubs,” it is abundantly clear that Georgian election officials made a concerted effort to ignore the requirements of the VRA.⁸⁵ Georgian election officials were not deterred by the Voting Rights Act. Instead, these officials continued their pattern of complex registration requirements in an explicit effort to limit the expansion of suffrage to black Georgians. These officials offloaded registration efforts to civic groups; altogether washing their hands of the suffrage issue

⁸³ Chandler Davidson. *Quiet Revolution in the South*. 76.

⁸⁴ Kevin M. Kruse. *White Flight: Atlanta and the Making of Modern Conservatism*. Princeton, NJ: Princeton University Press, 2007. 25.

⁸⁵ Chandler Davidson. *Quiet Revolution in the South*. 76.

in the state. Namely, *Voter Education Project v. Cleland*, *NAACP, DeKalb County Chapter v. State of Georgia*, and *Fourth Street Baptist Church of Columbus v. Board of Registrars* show the lengths that local election officials have gone to complicate the registration process and limit suffrage expansion in Georgia.

NAACP DeKalb County Chapter v. Georgia, 494 F. Supp. 688 (N.D. GA 1980) represented a victory for suffrage activists in the state, but more important to our investigation, the case displayed local election officials' efforts to ignore the spirit of the VRA by limiting the number of satellite registration locations that increased black enfranchisement. The success of these subnational efforts is thereby evidenced by a decrease in partisan competition in the years immediately following this restriction of suffrage. The crux of the case revolved around "the implementation of a new policy of prohibiting registration drives in DeKalb County, where only 24 percent of the black eligible voters were registered, compared to 81 percent of eligible whites."⁸⁶ This meant that DeKalb county held the discriminatory distinction of holding the least number of permanent, satellite registration points than in any other county in the United States.⁸⁷ But, even more important to our study, is the evolution of assigning registration places in the years following the VRA's passage. Starting in 1965 with the VRA's passage, staff members of the DeKalb County Registrars Office were "deputized to register voters at locations other than the County Courthouse."⁸⁸ This proliferation of registration efforts also included the expansion of voter registration at other locations during the evening hours and weekends.⁸⁹

⁸⁶ Chandler Davidson. *Quiet Revolution in the South*. 76.

⁸⁷ District Judge. SHOOB. "NAACP, DeKalb County Chapter v. State of Georgia." Legal research tools from Casetext, June 11, 1980. <https://casetext.com/case/naacp-dekalb-cty-chapter-v-state-of-ga>.

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

In 1972, this practice was discontinued. In its stead, Chief Registrar Schmid instituted a policy “never to approve registration drives which individuals sought to conduct; individuals were told that, if they wished to be considered at all, they should apply as members of an organization.”⁹⁰ Even though registration for black Georgians in the county was historically low, Chief Registrar Schmid claimed that the number of registration locations were sufficiently spaced geographically and “that unless under very severe and unusual circumstances the Board will not deputize any deputy registrars except to replace one at the [existing] locations.”⁹¹ This oral process of refusing to deputize officials and expand registration locations in accordance with changing populations of black Georgians escaped the need for preclearance and federal oversight; since Chief Registrar Schmid refused to systematize registration in writing, it was difficult for community organizations to contest his discriminatory practices in federal court.

However, the federal judiciary recognized the duplicity of such action. The U.S. District Court judges found that “the decision by the Board, not to consider any future application by community groups to conduct neighborhood voter registration drives, is a covered enactment with respect to voting,” meaning that the continuance of Schmid’s discriminatory policies “would lead to a result tantamount to repeal of the [Voting Rights Act.]”⁹² Even though the federal district court sided with the community groups, DeKalb County’s pattern of discrimination after 1965 showed subnational actors’ abilities to innovate around federal supervision. While DeKalb County followed the initiatives of the VRA in the first few years after its passage, local election officials were still able to push against federal initiatives and limit black voter registration for nearly a decade. These registrars used non-official, oral arguments to

⁹⁰ District Judge. SHOOB. “NAACP, DeKalb County Chapter v. State of Georgia.” Legal research tools from Casetext, June 11, 1980. <https://casetext.com/case/naacp-dekalb-cty-chapter-v-state-of-ga>.

⁹¹ *Ibid.*

⁹² *Ibid.*

limit registration locations, thereby acting on their discontent with VRA requirements. Although the restrictive efforts of DeKalb County election officials cannot be directly correlated with changes in partisan competition, the partisan composition of the state House of Representatives indicates an association between the two variables. Namely, the democratic proportion in the House increased from 85.6 percent in 1970 to 87 percent in 1975. While this change is not entirely significant on its own, it carries weight when taking the previous increase in partisan competition between 1965 and 1970 into consideration. I contend that the electoral success of the in-power legislators is correlated with the increasing restriction of suffrage at the local level as evidence by *NAACP, DeKalb*.

Importantly, the state judiciary branch in Georgia did not follow federal jurisprudence regarding state authority and voting right. Instead, the state judiciary argued against the federal displacement of state prerogative in favor of subnational, partisan interests. A 1984 holding by the Georgia Supreme Court solidified state judicial interest in protecting subnational actors' right to push against the VRA. *Fourth Street Baptist Church of Columbus, GA v. Board of Registrars*, 253 GA 368 (1980) held that "the Board has discretion in designating registration sites, and that any attack upon such designations must be by way of mandamus, not declaratory judgement."⁹³ In this case, a community group, the Fourth Street Baptist Church, sought a declaratory judgement against the Columbus Board of Registrars refusal to designate the church as a satellite voter registration site. The group argued that the existing registration locations were insufficient for the black population. As the onus of registration efforts in the state of Georgia falls on community groups and civic organizations, the establishment of satellite locations in black

⁹³ "Fourth Street Baptist Church of Columbus v. Board of Registrars." Justia Law. Accessed March 16, 2021. <https://law.justia.com/cases/georgia/supreme-court/1984/41216-1.html>.

neighborhoods is paramount to increasing black voter registration percentages. However, the Board of Registrars for Columbus refused to designate the Baptist Church as a registration location, citing its policy of refusing all churches as voter registration sites.⁹⁴ This policy greatly harmed community organizations efforts to increase black registration in a county where 60 percent of eligible whites were registered compared to 48 percent of blacks.⁹⁵ Alarming, this percentage of black voter registration necessitated federal preclearance of election procedures under Section 5 of the Voting Rights Act. However, the Georgia Supreme Court sided with state subnational actors:

“Those plaintiffs who are unregistered voters face no uncertainty or insecurity with respect to their voting rights, not any risk stemming from undirected future action. There are twenty-six satellite voter registration sites in a county of 170,000 people, and any Muscogee citizen, on almost any day, can find a place to register.”⁹⁶

This holding placed the state Supreme Court solely on the side of the voter registration officials. The court raised the bar for punishable voter discrimination injustices, and in doing so, showed deference to state officials’ interests at the expense of the black community. Additionally, the timing of this holding carries significant weight. As this case was decided after *NAACP, DeKalb*, the state judiciary branch declined to follow the precedence set by the federal court several years earlier. Therefore, state judiciary officials displayed their ability to push against the VRA by ignoring federal jurisprudence and promoting deference to state, subnational actors.

Lastly, the 1984 case, *Voter Education Project v. Cleland*, highlights the ability of the Georgian Secretary of State to reject federal initiatives regarding suffrage expansion. Once again,

⁹⁴ “Fourth Street Baptist Church of Columbus v. Board of Registrars.”

⁹⁵ Chandler Davidson. *Quiet Revolution in the South*. 76.

⁹⁶ “Fourth Street Baptist Church of Columbus v. Board of Registrars.”

this case occurred at a time of increasing partisan competition in the state Legislature; further strengthening the argument that restrictive efforts against the VRA are associated with changing partisan strife. In the case, “a federal court dismissed a statewide challenge to Georgia’s registration system when the state agreed in the stipulation of dismissal that it would encourage registrars to appoint black deputy registrars and establish additional registration sites.”⁹⁷

Although the state agreed to these stipulations, the fact remains that the Secretary of State, Max Cleland, was continuing to decline black registrar applications and additional registration sites nearly two decades after the passage of the VRA.⁹⁸ Whereas *NAACP, DeKalb and Fourth Street Baptist Church of Columbus* illustrated the innovations of local registrars in their discriminatory practices, *VEP v. Cleland* highlighted the Secretary of State’s efforts to push against the VRA. Even in the 1980s, higher-ranking state officials were refusing to follow through with the federal government’s suffragist agenda and putting their political capabilities on full display. This rebuttal of the suffragist agenda is particularly illuminating considering the electoral circumstances of the 1980s. To elaborate, the Democratic share of House seats decreased by 3 percent between 1980 and 1985; making it the first five-year period of increasing partisan competition since 1970. Therefore, subnational officials in Georgia were incentivized to further increase their chances of reelection by restricting access to the ballot box.

Executive Rebuttal of the VRA:

The Attorney General for the state of Georgia has shown an ability to use prior case law to promote anti-suffrage policies. By reinterpreting the spirit of the Voting Rights Act and using discriminatory precedence as justification, the Attorney General for the state of Georgia follows

⁹⁷ Chandler Davidson. *Quiet Revolution in the South*. 76.

⁹⁸ “Voter Education Project v. Cleland: Civil Rights Litigation Clearinghouse.” Voter Education Project v. Cleland | Civil Rights Litigation Clearinghouse. Accessed March 16, 2021. <https://clearinghouse.net/detail.php?id=3049>.

in this trend of pushing against federal suffrage expansion efforts. Specifically, Attorney General Michael J. Bowers issued a letter to the Office of the Secretary of State in 1995 advocating for measures against including race on registration forms. While the inclusion of race in registration efforts was a foundational tenet of the Voting Rights Act, Attorney General Bowers stated that “federal law does not require the submission of racial information to the attorney general for the purposes of the Voting Rights Act.”⁹⁹ Instead, Bowers held that the burden of registration requirements falls solely on the judgement of the Secretary of State. He states this plainly by writing, “Georgia law no longer codifies an application form which includes race as a portion of the application, [...] opting instead for a form as specified by the Secretary of State.”¹⁰⁰ Rather than follow the precedence of the Voting Rights Act by placing the onus of power on the federal branch, Attorney General Bowers valued Georgian law and the wills of the Secretary of State as the primary determinant of registration constitutionality. Additionally, Bowers stated that “existing case law does permit states to reject a voter’s registration for failure to answer relevant questions needed to assist election officials in preventing fraud.”¹⁰¹ Ignoring the partisan implications of voter fraud, this statement carries weight for its reference to case law’s support of state powers and subnational discretion regarding voter registration. Just as James Bryce stated that federalism “enables a people to try experiments which could not safely be tried in a large, centralized country,” Attorney General Bowers is using federalism to experiment with the electorate.¹⁰² Bowers is manipulating case law for partisan gain; because states are biased

⁹⁹ Michael J. Bowers, and William M Droze. “RE: Registration to Vote May Not Be Conditioned upon an Applicant Supplying His Race on a Registration Application, through Race May Be Requested as an Optional Part of the Registration Process.,” August 4, 1995.

<https://1.next.westlaw.com/Document/I821fc5d11d6e11db8ebfade62ba3f9ed/>

¹⁰⁰ *Ibid.*

¹⁰¹ *Ibid.*

¹⁰² David Brian Robertson. *Federalism and the Making of America*. 8.

experimental grounds given inter-state partisan conflict, political actors are incentivized to use subnational prerogatives for partisan preservation.

Specifically, Bowers references two federal and state court cases to support this claim: *Kemp v. Tucker* and *Franklin v. Harper*. Lanier asserts that *Kemp*, a district court case, defers to state judgement in using skin color as a factor in the determination of voter fraud.¹⁰³ “*Kemp* did not undertake to define what is relevant for that purpose, nor did it attempt to narrow inquiry other than by general reference.”¹⁰⁴ Using *Kemp*, Bowers supports the conclusion that state officials are the final arbiters in determining voter registration requirements, altogether cutting federal oversight out of the electoral equation. Similarly, the Attorney General used a 1949 Georgian Supreme Court case, *Franklin v. Harper*, to declare voting requirements and voter registration as a local, partisan issue that is subject only to the interpretation of local officials. Referencing *Franklin* is telling of the Attorney General’s ability to push against the VRA for two reasons: (1) Bowers implies that the Voting Rights Act of 1965 is null and void as it contradicts state jurisprudence, and (2) it further entrenches suffrage and the expansion of the electorate as a local issue. Specifically, *Franklin* concludes that “the right of suffrage is a political right [and] in the absence of an express constitutional grant of suffrage, it is not a vested, absolute, or natural right.”¹⁰⁵ Bowers’ use of *Franklin* and *Kemp* indicates that state Attorney Generals possess the capacity to manipulate state and federal jurisprudence for local suffrage interests. More importantly, this manipulation coincides with a dramatic change in the demographic composition

¹⁰³ “*Kemp v. Tucker*.” Legal research tools from Casetext, May 19, 1975. <https://casetext.com/case/kemp-v-tucker>.

¹⁰⁴ Michael J. Bowers, and William M Droze. “RE: Registration to Vote May Not Be Conditioned upon an Applicant Supplying His Race on a Registration Application, though Race May Be Requested as an Optional Part of the Registration Process.”

¹⁰⁵ “*Franklin v. Harper*, 55 S.E.2d 221, 205 Ga. 779.” CourtListener. Accessed March 16, 2021. <https://www.courtlistener.com/opinion/3407617/franklin-v-harper/>.

of Georgia. Whereas the white-only population of Georgia in 1970 was 74 percent, it dropped almost ten percentage points to 65 percent by the year 2000. Therefore, the changing ethnic makeup of the population likely reignited the fervor of subnational actors to protect their political power by controlling the established electorate and restricting access through executive action and judicial interpretation.

Recent Restrictive Attempts:

Moreover, the Georgian state legislature has pushed back against federal election commissions on the grounds that federal election legislation contradicts state constitutional requirements. Just as John Dinan concluded that state constitutions remain legitimate forces of political development because of their ability to circumvent partisan strife in the national legislature, the Georgian state legislature advocated for changes to federal election commissions because of overlap with state constitutions. To illustrate, the United States Election Assistance Commission sought public comment “on whether to amend the State-specific instructions applicable” to Georgia.¹⁰⁶ In this request, the Election Assistance Commission cited that the National Voter Registration Act and the Help America Vote Act entrusted the Election Assistance Committee with developing a national mail voter registration form in consultation with election officers from the states.¹⁰⁷ However, Georgia submitted a request to the EAC in 2013 to amend their registration form in accordance with “the State’s passage in 2009 of amendments to its voter registration laws.”¹⁰⁸ Primarily, the state of Georgia sought to include proof of citizenship in the EAC’s national mail registration form. Georgia asserted that its

¹⁰⁶ Alice Miller. “Notice and Request for Public Comment on State Requests to Include Additional Proof-of-Citizenship Instructions on the National Mail Voter Registration Form,” December 13, 2013. <https://1.next.westlaw.com/Document/IC6EC83606C7111E3B4F78F4C798B55F5>.

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid.*

constitution enabled the Board of Registrars to use proof of citizenship as a prerequisite for vote-by-mail applications.¹⁰⁹ Thus, the state sought to use its constitution to alter the procedures of a federal election commission, thereby displaying the state's propensity to push against federal suffrage initiatives. Although this contest was not pushing against the Voting Rights Act explicitly, it follows in the pattern of past disputations by using an established political vehicle, in this case the state constitution, to refute the efforts of the federal government to expand suffrage on a national scale.

Subnational actors in Georgia proved that the Voting Rights Act of 1965 did not entirely displace state powers regarding the right to vote. Although certain discriminatory practices were disallowed and registration increased in the years immediately following the passage of the act, administrative, executive, and judicial actors in Georgia continued to push against the spirit of the VRA. More recently, the Georgian House of Representatives passed a bill which would contradict the entire spirit of the VRA. As stated in the introduction, HB531 calls for massive changes to the voting system in Georgia that have the potential to drastically limit voter turnout. HB531 also comes in the wake of the election of two democrats from Georgia to the U.S. Senate. Considering the connection between partisan competition and suffrage politics, it stands to reason that the GOP-led House in Georgia views this bill as a repudiation of the previous election. The bill would limit access to early voting and decrease the number of ballot drop-boxes; all measures which increase minority voting percentages.

Post-*Shelby* discussion of Georgia politics matters to our analysis of subnational action after the VRA. Georgian actors continued to influence voting rights after the passage of the VRA. Although *Shelby* permitted these manipulations to occur openly, the fact remains that state

¹⁰⁹ Alice Miller. "Notice and Request for Public Comment on State Requests to Include Additional Proof-of-Citizenship Instructions on the National Mail Voter Registration Form."

authority over suffrage endured after 1965. *Shelby* did not re-establish federalism and state prerogative over voting rights; it simply allowed voting rights restrictions to take more a more draconian form. Essentially, subnational actors in Georgia have been restricting the right to vote based on changing demographics and partisan competition long before 2013. Thus, the Georgian House of Representatives is following through on the conclusions of Richard Valelly and Adam Przeworski that the expansion or restriction of suffrage is often based on the interests of those in power. Since the Republican party in the state of Georgia senses the weakening of their legislative power, the Representatives are attempting to enact legislation that restricts suffrage and increases their chances of reelection. This bill is not the direct result of *Shelby*'s deference to state authority, it follows in the footsteps of decades of Georgian political precedence. Through state court action, representative apportionment manipulation, state constitution-making, deference to local election officials, and now state House of Representative legislation, subnational actors within the state of Georgia have repeatedly shown a propensity to push against the essence of the Voting Rights Act by opposing federal action.

Massachusetts and Subnational Support of the VRA

Although Massachusetts is not directly referenced in previous discussions of the Voting Rights Act, its subnational actors follow through on the spirit of the act by pushing forward its principles of suffrage expansion and equal access to voting. The Voting Rights Act did not only affect the South. The act and its subsequent renewals inspired states, like Massachusetts, to use their federalized authority to expand and restrict the right to vote in accordance with the partisan interests of state officeholders. While the VRA specifically targeted southern states through its coverage formula, it also set a precedent of federal expansion of suffrage. Therefore, it was in the interest of Massachusetts to expand the right to vote through subnational vehicles of federalism.

Through executive action, constitutional referendum, legislative bills, and state court cases, subnational actors in Massachusetts routinely expand the right to vote according to local, partisan interests. As a solidly democratic state, subnational actors in Massachusetts are incentivized to expand the electorate as a means of further entrenching the Democratic party's electoral dominance in the state. As such, the periods before and after 1965 are characterized by actions that broaden the right to vote and lessen the burdens of voter registration. These findings support that claim that subnational actors retained powers over enfranchisement in the post-VRA era.

The consistency of partisan competition in Massachusetts coupled with its increasing demographic diversity further support a connection between the independent and dependent variables. Compared to the post-VRA suffrage history of Georgia, subnational actors in Massachusetts cooperated with the principles of the Voting Rights Act to a lesser degree. Although Massachusetts state actors did expand the electorate in accordance with VRA precedence, the examples of such action were more infrequent than in Georgia. This is largely due to the stability of partisan competition in the state of Massachusetts in the post-VRA years. While Georgia saw tremendous political and demographic upheaval, Massachusetts experienced only demographic change on a statistically significant level. Specifically, the proportion of State House of Representative seats held by Democrats changed by only 9 percent between 1975 and 2010, while the white-only population of Massachusetts decreased by 18 percent over a similar timeline. The subnational actors of Massachusetts were incentivized to cooperate with the spirit of the VRA as a means of increasing their partisan share of the electorate, not as a means of political survival from the rise of an opposing party. Therefore, the moderate number of legislative affirmations of policies that expand the right to vote, constitutional amendments to lower voting requirements, and state court cases that expand the electorate provide further

evidence for the positive correlation between demographic change and either cooperation or repudiation of the Voting Rights Act by subnational actors.

Legislative Affirmations of the VRA:

Whereas subnational actors in Georgia showed their capacity to push against federal action, state-level politicians in Massachusetts support the claim that non-federal actors produce legitimate change to suffrage politics at the local level. In the years immediately before the passage of the VRA, subnational actors in Massachusetts preempted the act by supporting the expansionist suffrage initiatives of the civil rights movement. Like Georgia, this continuance of subnational attributions to the political development of suffrage shows that the Voting Rights Act did not wholly eradicate state prerogative. Massachusetts actors were able to use their state authority to expand the right to vote both before, and after the passage of the VRA. Importantly, the motivations of Massachusetts actions regarding suffrage were not altogether altruistic; the proposed actions often benefitted the majority Democratic party's stronghold on Massachusetts politics. To illustrate, the Democratic-controlled state legislature initiated nineteen election law changes in the period between 1959 and 1961; all of which favored the Democratic party.

Among these was the 1961 McGlue Bill, a bill sponsored by former head of the state ballot law commission Charles H. McGlue to permit straight party voting in state elections.¹¹⁰ Endorsed by the state election law committee, "the bill [allowed] a voter to make just one cross on his ballot for all candidates bearing either the Democratic, Republican, or any other party."¹¹¹ Though the bill did not infringe upon the right of a voter to split their ticket, McGlue stated that it would reduce split ticket voting by anywhere from 10 to 20 percent, thus benefitting the Democratic

¹¹⁰ S. J. Micciche. "Straight-Party Vote Aim of McGlue Bill." *Boston Globe (1960-1989)*, Feb 13, 1961. <https://colby.idm.oclc.org/login?url=https://www.proquest.com/historical-newspapers/straight-party-vote-aim-mcglue-bill/docview/605403057/se-2?accountid=10198>.

¹¹¹ *Ibid.*

party.¹¹² Although the McGlue Bill did not impact the initiatives of the suffrage movement directly, it does provide evidence of state actors' abilities to influence state-level voting policy for partisan gain.

Several House Bills in Massachusetts in the years after the McGlue Bill show subnational dedication to the suffrage initiatives of the civil rights movement. Even before 1965, these legislative proposals depict state-level actors' commitment to the expansion of the franchise, and, more importantly, illustrate that state actors in Massachusetts were effectively enacting legislation both before and after the passage of the VRA. This indicates that sweeping federal legislation designed to depreciate the value of state action regarding suffrage merely disrupted the methods of subnational change. Namely, the Finnegan-White Bill, House Bill 3938, and executive action of Lieutenant Governor Francis X. Bellotti demonstrate pre-1965 subnational efficacy in supporting the expansion of the franchise. The 1961 Finnegan-White Bill, or HB 1507, sought to expand suffrage by lowering residency requirements for presidential elections. Siting that nearly "eight million qualified persons were denied voting privileges in last year's presidential election because they had moved from one state to another," Rep. William H. Finnegan and Democratic Whip Kevin H. White enacted legislation to broaden suffrage for recently transient citizens of Massachusetts.¹¹³ Although statutes at the time mandated residence of one year in the state and six months in the community before election day, "the Finnegan-White Bill would trim the residence requirement to just the 32-day period set aside for voter registration preceding the ballot."¹¹⁴ As HB 1507 was proposed by the Democratic Whip for the

¹¹² S. J. Micciche. "Straight-Party Vote Aim of McGlue Bill."

¹¹³ S. J. Micciche. "Newcomers in State to Get Ballot if Bill to Cut Residence Passes." *Boston Globe* (1960-1989), Dec 18, 1961. <https://colby.idm.oclc.org/login?url=https://www.proquest.com/historical-newspapers/newcomers-state-get-ballot-if-bill-cut-residence/docview/276098425/se-2?accountid=10198>.

¹¹⁴ *Ibid.*

state, it is safe to assume that these added voters would benefit the democratic party. However, the fact remains that Massachusetts legislators-initiated proposals to expand the electorate before the Voting Rights Act. Furthermore, the state's executive branch joined in the pro-suffrage movement by eliminating the state poll tax prior to 1965. In 1963, Lieutenant Governor Francis X. Bellotti heeded former President Kennedy's call to state governors by eliminating the \$2 poll tax, which had previously been in effect for 187 years in Massachusetts.¹¹⁵ It is worth noting that President Kennedy was forced to use the executive branches of the states to eliminate the tax, highlighting both the importance of these subnational actors and the inability of the federal executive branch to broaden suffrage at the national level. Moreover, though Bellotti was following the rhetorical encouragement of the federal executive branch, he framed the repeal of the tax as an inspiration for state-level action. "Bellotti termed it 'something that should be followed by the South, where the poll tax is used to deny voting rights.'"¹¹⁶ In this statement, Bellotti admits that states hold the power over enfranchisement; state actors, specifically governors, are responsible for voting regulations that either expand or restrict the electorate. Lastly, the 1964 House Bill 3938 altered the voter registration of Boston to eliminate the "checking out" process.¹¹⁷ As Election Commission Chairman George H. Greene explained, the 'check-out' process unfairly strikes voters from the voting rolls after their ballot is cast.¹¹⁸ Even though this bill was proven to add more democrats to the electorate, it remains another instance of a Massachusetts election official's effort to broaden the electorate before the principles of the

¹¹⁵ "Poll Tax Out After this Year." *Boston Globe (1960-1989)*, Mar 23, 1963.

<https://colby.idm.oclc.org/login?url=https://www.proquest.com/historical-newspapers/poll-tax-out-after-this-year/docview/276400392/se-2?accountid=10198>.

¹¹⁶ *Ibid.*

¹¹⁷ "No Check-Out at Hub Polls." *Boston Globe (1960-1989)*, Sep 11, 1964.

<https://colby.idm.oclc.org/login?url=https://www.proquest.com/historical-newspapers/no-check-out-at-hub-polls/docview/275995430/se-2?accountid=10198>.

¹¹⁸ *Ibid.*

Voting Rights Act were formerly established by Congress. These instances show that subnational actors in Massachusetts were effectively expanding suffrage before the VRA set a precedence for doing so.

Constitution-Making as a Vehicle for Suffrage Expansion:

The work of subnational actors in Massachusetts after the passage of the Voting Rights Act of 1965 illustrates both the ability of state-level actors to push suffrage expansion forward and the ability of these individuals to innovate within the realm of state politics. A 1972 amendment to the Massachusetts state constitution exemplifies this ability perfectly. The amendment's primary aim was to remove voting restrictions based on economic class; specifically, the amendment removed paupers from the list of ineligible voters.¹¹⁹ Although the amendment received widespread public support in 1972, it took over a decade to finally become law after its initial proposal in the 1960s.¹²⁰ The proposal for expansion of the vote to "Paupers" was initially brought forth and approved by the Legislative Committee on Constitutional Law in 1960. "The reports, after being read into the House and Senate, were filed under a convention of the Legislature or popularly-elected delegates is called to consider constitutional changes."¹²¹ However, the amendment did not gain the necessary public support to be put into law. Although the amendment was supported by Committee Chairman Senator Richard R. Caples, the delegates adhered to the precedence of the Supreme Judicial Court that anyone "who receives aid and

¹¹⁹ John Averill. "Senate Approves Vote at Age 18: Would Add 10 Million Lo Electorate, but Bill Faces Stiff Fight in House." *Boston Globe* (1960-1989), Mar 13, 1970.

<https://colby.idm.oclc.org/login?url=https://www.proquest.com/historical-newspapers/senate-approves-vote-at-age-18/docview/375472760/se-2?accountid=10198>.

¹²⁰ *Ibid.*

¹²¹ "AT THE STATE HOUSE: APPROVE 9 AMENDMENTS TO STATE CONSTITUTION." *Daily Boston Globe* (1928-1960), Feb 16, 1960.

<https://colby.idm.oclc.org/login?url=https://www.proquest.com/historical-newspapers/at-state-house/docview/250897015/se-2?accountid=10198>.

assistance from the public” is a pauper and is therefore ineligible to vote; making Massachusetts one of the last twelve states to disqualify paupers from voting on account of economic standing.¹²² But 1972 proved to be a turning point. At this point, an amendment to change Article twenty-eight of the Massachusetts constitution by striking out the words “being a pauper” from the list of disqualifications for voting passed by a measure of 79 percent approving to 21 percent against.¹²³ This amendment not only supported the federal government’s initiatives to expand the electorate, but it also supports the claim that state actors possessed the ability to do so after the passage of the VRA. Even though the Voting Rights Act did not address Massachusetts or affect any counties in the state to preclearance, it did set a precedence of federal supervision over suffrage expansion. Therefore, Massachusetts constitutional amendments that support this initiative of electoral inclusion display the propensity for subnational actors to support the federal government, thereby retaining powers over the franchise.

Similarly, a 1970 Massachusetts referendum to allow voting at 18 further strengthens this argument. As previously stated, state constitution-making is a powerful tool for subnational actors to enact legitimate change at the local level. Hence, the state of Massachusetts not only separated itself by being among the first nine states to approve youth voting, but it also engrained itself as a model for the federal government to follow. This conclusion is exemplified by Senator Edward Kennedy’s speech to the Senate Subcommittee on Constitutional Amendments in the wake of the referendum’s passage. Senator Kennedy stated:

¹²² John Harris. "Pauper! with \$10,000 can't Vote in Boston." *Daily Boston Globe (1928-1960)*, Feb 25, 1960. <https://colby.idm.oclc.org/login?url=https://www.proquest.com/historical-newspapers/pauper-with-10-000-cant-vote-boston/docview/504755896/se-2?accountid=10198>.

¹²³ “Massachusetts Paupers to Vote, Question 3 (1972).” Ballotpedia. Accessed March 16, 2021. [https://ballotpedia.org/Massachusetts_Paupers_to_Vote,_Question_3_\(1972\)](https://ballotpedia.org/Massachusetts_Paupers_to_Vote,_Question_3_(1972)).

“The right to vote is the fundamental political right in our Constitutional system. It is the cornerstone of all our other basic rights. It guarantees that our democracy will be government of the people and by the people, not just for the people. By securing the right to vote, we help to insure, in the historic words of the Massachusetts Bill of Rights, that our government ‘may be a government of laws, and not of men.’ [...] In the past, I have leaned toward placing the initiative on the States in this important area, and I have strongly supported the efforts currently being made in many states, including Massachusetts, to lower the voting age by amending the state constitution.”¹²⁴

In his speech, Senator Kennedy references both the Massachusetts Bill of Rights and the 1970 referendum in Massachusetts. This rhetoric solidifies state constitutions as legitimate vessels of suffrage expansion. By revering the words of state bills of rights and encouraging the expansion of the electorate at the local effort, national actors support the claim that state-level actors retained their importance regarding suffrage after the VRA.

Cooperation in the State Executive Branch:

The actions of the Secretaries of Commonwealth in Massachusetts further support this conclusion through legislative action that includes language from the Voting Rights Act. By mimicking the rhetoric of the act, subnational actors, in this case the Secretary of the Commonwealth, show reverence to the aims of the VRA and the capacity to further its coverage beyond the South. Namely, the 1984 Massachusetts State Senate Bill 0120 proposed by the Secretary of the Commonwealth used language from Section 5 of the VRA to allow registration

¹²⁴ “Lowering the National Voting Age to 18.” Edward M. Kennedy Institute for the United States Senate. Accessed March 16, 2021. <https://www.emkinstitute.org/resources/lowering-the-national-voting-age-to-18>.

by mail in the state.¹²⁵ Beyond the obvious interpretation that the bill broadened suffrage in the state, the Secretary of the Commonwealth appeared to base the expansion of registrar appointments on a mathematical formula. Specifically, Secretary Michael J. Connolly used voting quotas in similar language to the Voting Right Act:

“In addition, the local registrars or commissioners of each city or town required by paragraph (1) to designate precincts, shall utilize whatever means are necessary to bring the ratio of all registered voters to eligible voters up to the statewide ration by the conclusion of the registration for the second biennial state election.”¹²⁶

Connolly’s use of a registered voters to eligible voters’ ratio hearkens back to the formula of the Voting Rights Act pertaining to African American registration in the South. Although this reference did not call for federal intervention, it did enable the county registrars to “appoint special assistant registrars or deputies as needed.”¹²⁷ So, while Bill 0120 did not enable the Voting Rights Act to apply to northern states directly, it did expand the VRA’s impact by enabling a wide variety of states to use registration formulas as a means of expanding the electorate. Therefore, the Secretary of the Commonwealth proved that subnational actors in northern states still possess the ability to support the initiatives of the VRA and broaden suffrage across the United States.

Massachusetts State Courts and the Expansion of the Franchise:

The judiciary branch in the state of Massachusetts repeatedly expanded suffrage through its holdings regarding both students and the incarcerated. Specifically, *Evers v. Davoren*, a

¹²⁵ Ann S. Parlagreco. "Bill Allowing Voter Registration by Mail is Flawed." *Boston Globe* (1960-1989), Mar 27, 1985. <https://colby.idm.oclc.org/login?url=https://www.proquest.com/historical-newspapers/bill-allowing-voter-registration-mail-is-flawed/docview/1813303237/se-2?accountid=10198>.

¹²⁶ <https://archives.lib.state.ma.us/bitstream/handle/2452/527885/ocm39986874-1985-SB-0120.pdf?sequence=1&isAllowed=y>

¹²⁷ *Ibid*,

hearing won by students from Cambridge, MA, and *Cepulonis v. Secretary of the Commonwealth* expanded access to the ballot box without the need for federal intervention or further appeals to federal courts. These cases show that the judiciary branch of Massachusetts remained effectual in expanding suffrage regardless of federal action or outside jurisprudence to the contrary. Firstly, in *Evers v. Davoren* (1974), the Massachusetts Supreme Judicial Court ruled that incarcerated citizens in Massachusetts were entitled to vote via absentee ballot.¹²⁸ The court denied the Department of Correction's argument that incarcerated citizens "could only exercise [the right to vote] while on furlough and able to enter voting booths in person."¹²⁹ Instead, the court held that the legislature must give prisoners equal access to ballots. In this case, the Massachusetts Supreme Court made an affirmative judgement in favor of widespread, egalitarian voting principles. Furthermore, the State Supreme Judicial Court overruled a California case, *Richardson v. Ramirez*, in its affirmation that inmates have the right to vote in *Cepulonis v. Secretary of the Commonwealth*.¹³⁰ Additionally, a Middlesex County Superior court ruled in favor of four college students from MIT and Harvard in 1974 regarding their efforts to vote in federal elections.¹³¹ Though the judge did not make a claim on voting rights for students or temporary residents, they did enable future arguments in favor of expanded voting rights for college students. With several successes in Massachusetts state court, pro-suffrage litigation for college students proliferated in the state. These claims regularly predicated

¹²⁸ "Timeline of Massachusetts Incarcerated Voting Rights." Emancipation Initiative, March 10, 2019. <https://emancipationinitiative.org/ballots-over-bars/returning-the-right-to-vote/>.

¹²⁹ *Ibid.*

¹³⁰ A. A. Michelson. "Prisoners and Right to Vote." *Boston Globe* (1960-1989), Aug 27, 1983. <https://colby.idm.oclc.org/login?url=https://www.proquest.com/historical-newspapers/prisoners-right-vote/docview/1637295205/se-2?accountid=10198>.

¹³¹ "Hearing Won for Students on Cambridge Voting Rights." *Boston Globe* (1960-1989), Nov 03, 1972. <https://colby.idm.oclc.org/login?url=https://www.proquest.com/historical-newspapers/hearing-won-students-on-cambridge-voting-rights/docview/506205734/se-2?accountid=10198>.

themselves upon Due Process and equal standing arguments. For instance, Harvey M. Burg, a Massachusetts Civil Liberties Union Attorney used a 1972 case to assert that the Board of Election Commissioner does not have the right to impose special burdens and hearings on students” unless they ask the same questions of everyone, and to clarify if it makes “any difference to registration if a potential registrant is financially dependent upon people outside of the state.”¹³² The weight of these cases regarding our point of study is not their normative claims on voting rights, but instead their substantive implications on the abilities of state courts to adjudicate voting rights without the need for intervention from federal courts. Through either continued litigation in subsequent state court cases or by directly expanding the electorate, the holdings of Massachusetts state courts fostered electoral change.

Contemporary Massachusetts:

Concurrently, this pattern of subnational action in relation to the expansion of suffrage is evident in contemporary Massachusetts politics. Whereas the state of Georgia responded to the 2020 election with skepticism and requests for increased voting restrictions, the subnational actors of Massachusetts used the Coronavirus pandemic as a cause for continued expansion of the electorate. In particular, the “Secretary of the Commonwealth William Galvin and several Beacon Hill lawmakers [wanted] to make the sweeping vote-by-mail system adopted during the pandemic a permanent fixture in Massachusetts.”¹³³ Secretary Galvin viewed the implementation of no-excuse mail balloting during the pandemic as an electoral success, citing that nearly 42 percent of the ballots cast in the November 2020 election were sent by mail.¹³⁴ Additionally,

¹³² “Students Ready Court Battle To Win Local Voting Rights.” *The Harvard Crimson*. July 14, 1972.

¹³³ Lisa Kashinsky. “William Galvin, Lawmakers Propose Making Expanded Vote-by-Mail Permanent in Massachusetts.” *Boston Herald*. Boston Herald, February 9, 2021.

<https://www.bostonherald.com/2021/02/09/galvin-proposes-making-expanded-vote-by-mail-permanent/>.

¹³⁴ *Ibid*.

another 23 percent of voters “cast their ballots during expanded early in-person voting.”¹³⁵

However, Galvin’s proposal furthers the emergency measures by including local elections in his bill. The Fostering Voting Opportunities, Trust, Equity, and Security (VOTES) Bill would not only codify no-excuse mail balloting and an expanded in-person voting for federal elections; “it would also allow municipalities to offer early voting for local elections.”¹³⁶ Once again, subnational actors in Massachusetts are using their capacities as state officials to expand the power of local authorities regarding suffrage in the United States. Secretary Galvin, like the subnational actors that preceded him, is using his capacity as Secretary of the Commonwealth to enable local officials to expand the electorate without yielding to national authorities or petitioning the federal government for assistance. Although the 2020 Fostering VOTES Bill does not directly hearken back to the Voting Rights Act, it does depict subnational actors’ abilities to maneuver within the federalized voting system of the United States. State-level actors in Massachusetts have adjusted to a post-VRA political climate that increasingly regards the federal government as the final arbiter of suffrage issues. In doing so, these individuals have carved a sphere of autonomy, allowing them to use political entrepreneurship to expand suffrage according to local interests.

Kansas’s Dual-Natured Response

Politics in the state of Kansas has long been defined by the lack of ethnic diversity in its electorate and the longstanding strength of the Republican party. In the 20th century after the passage of the VRA, subnational actors had little incentive for responding to the issue of suffrage; with a white-only population stagnating at 90 percent and continual domination of

¹³⁵ Lisa Kashinsky. “William Galvin, Lawmakers Propose Making Expanded Vote-by-Mail Permanent in Massachusetts.”

¹³⁶ *Ibid.*

Republican legislators, subnational actors had little to fear regarding the expansion of the right to vote. As such, the constitutional amendments, and the administrative actions between 1960 and 1990 reflected a moderate commitment to supporting the aims of the VRA. During this time, the citizen-legislature reapportioned legislative seats and expanded the right to vote for women and minorities while administrative actors pushed for continued expansion of the voting population. However, the infrequency of such actions supports the established hypothesis: low levels of electoral competition and small changes in demographics elicit moderate responses to the VRA. This changed in the 21st century. With an increase in population diversity, Kansan subnational actors used executive actions to restrict voting rights in accordance with partisan power-politics. Republican state officials used their capacities as subnational actors to increase registration requirements and place undue burdens on traditional Democratic voters. Therefore, both eras in Kansan political history illustrate the correlation between subnational action, and electoral competition and demographic change.

State Constitution-Making post-VRA

Although contemporary Kansas is characterized as overtly conservative, that was not always the case. In fact, the postwar period through the end of the 20th century in Kansas is marked by “a sedately moderate approach to functional, efficient government.”¹³⁷ During this time, bipartisanship and moderate legislation defined the state’s political history. This characterization is astounding considering the Republican stranglehold over Kansas politics over the last century; not only is the Kansas Senate one of “two legislative chambers in the United States that has been under the continuous control of a single party for at least one hundred years,” but “Republicans have also controlled the Kansas House for ninety-eight of those

¹³⁷ Ben Merriman. *Conservative Innovators: How States Are Challenging Federal Power*. Chicago: The University of Chicago Press, 2019. 123

years.”¹³⁸ Even though Kansan voters routinely sent Republican legislators to the state house, they developed weak party attachments in the several decades following the Second World War.¹³⁹ In fact, the electorate was swept into the progressive resurgence of the 1970s that drew power away from state representatives and into the hands of the voters. Namely, “the good government revisions of the 1970s restructured the state’s constitution by modernizing it and eliminating statutory, or legislative sections.”¹⁴⁰ It was this constitutional amendment process that spawned most voting reforms throughout the 1960s and 1970s. This period in Kansan political history is defined by minimal subnational responses to the Voting Rights Act. Instead, subnational actors displayed a moderate fervor to expand the electorate and level the representative playing field through bipartisan cooperation.

With minimal amounts of demographic change and electoral competition in the state Legislature, there was no incentive for state representatives and official subnational actors to push the suffrage issue after the passage of the VRA. The white-only population in Kansas decreased by a meager 4.5 percent from 1970 to 1990, and still comprised over 90 percent of the electorate at the end of that period. Additionally, the proportion of Kansas House seats held by Democrats increased by a minimal 5 percent over a similar period. With little incentive for official subnational actors to change the rules of the game, the progressive reform era of the 1960s and 1970s resulted in the citizenry seizing the initiative process to increase fairness in state elections. Primarily, Kansans sought to address the growing malapportionment of the legislature and expansion of suffrage rights to women, minorities, and immigrants.

Reapportionment of the legislature was a primary goal of urban communities in the 1960s. “Until

¹³⁸ Ben Merriman. *Conservative Innovators: How States Are Challenging Federal Power*. 123.

¹³⁹ Edward H. Flentje, and Joseph A. Aistrup. *Kansas Politics and Government: The Clash of Political Cultures*. Lincoln: Univ. of Nebraska Press, 2010. 51.

¹⁴⁰ *Ibid.*

the mid-1960s, the malapportionment of the legislature to favor rural constituencies and legislators was a major stumbling block to constitutional change.”¹⁴¹ However, *Baker*’s establishment of the ‘one person, one vote’ doctrine spurred civic engagement that ultimately forced bipartisan cooperation to upset the status quo. Therefore, both chambers of the Kansas state Legislature reapportioned districts in 1966 “to meet the requirements of the Supreme Court’s rulings.”¹⁴² These reapportionment efforts display the ambivalence of official subnational actors to the VRA. Neither the executive, legislative, nor administrative branches of Kansan government spurred this expansion of suffrage. Instead, the Kansan electorate favored voting reform as a means of leveling the legislative playing field. Furthermore, voters ratified a 1974 amendment to require the reapportioning of legislative seats every ten years.¹⁴³ Moreover, the reapportionment amendment was not the only expansive initiative regarding the right to vote during this time. Kansan voters also passed an amendment in 1974 that eliminated antiquated provisions regarding suffrage of women, minorities, and immigrants.¹⁴⁴ Passing by a wide 68-32 margin, the voters amended several sections of Kansan suffrage law to establish “that voters must be at least 18 years of age and reside in the voting area, in which they seek to vote.”¹⁴⁵ It is worth noting that this expansion of suffrage occurred prior to the 1975 VRA renewal, thereby preceding the federal government’s protection of “language minorities.” These amendments do not indicate that Kansas subnational actors were committed to pushing the spirit

¹⁴¹ Edward H. Flentje, and Joseph A. Aistrup. *Kansas Politics and Government: The Clash of Political Cultures*. 151.

¹⁴² *Ibid*, 36.

¹⁴³ *Ibid*, 39.

¹⁴⁴ *Ibid*, 38.

¹⁴⁵ “Kansas Right to Vote, Amendment 3 (1974).” Ballotpedia. Accessed April 2, 2021. [https://ballotpedia.org/Kansas_Right_to_Vote,_Amendment_3_\(1974\)](https://ballotpedia.org/Kansas_Right_to_Vote,_Amendment_3_(1974)).

of the VRA forward, but they do suggest that the decades following the act's passage were characterized by civic commitment to suffrage expansion.

Administrative Action in the 1980s and 1990s

Alternatively, administrative actors in Kansas participated in marginal efforts to expand the right to vote in the decades immediately following the passage of the VRA. Specifically, the 1980s and the 1990s featured sparse instances in which subnational actors used their administrative capabilities to expand the right of suffrage for immigrants and increase political participation on an aggregate level. An instance of the administrative push for immigrant suffrage is illustrated in former Kansan Attorney General Robert T. Stephan's letter to the Shawnee County commissioner of elections, Mary Hope. In the official document, Attorney General Stephan asserts that there is no legal basis for permitting the registration of individuals who were naturalized within twenty days of the election. As justification, Stephan cited an 1884 Kansan state court case, *State of Kansas v. Butts*, 31 Kan. 537 (1884), to claim the state legislature's total authority over registration dates. Stephan goes as far to quote *Butts*, claiming that "If the legislature has the right to require proof of a man's qualification, it has a right to say when such proof shall be furnished, and before what tribunal; and unless this power is abused the courts may not interfere."¹⁴⁶ Although the official document excludes state executors and state jurisprudence from aiding in Hope's efforts, the subject of the request for judicial clarification is telling. Hope sought "formal opinion on this question, so that, if [the office of the Attorney General] concurs in [the] county counselor's opinion, 'the legislature will be able to consider legislation to cover such a situation in future elections."¹⁴⁷ Therefore, Hope's request represents

¹⁴⁶ Robert T Stephan, and W. Robert Alderson. "Re: Elections—Registration of Voters—Registration by Naturalized Citizens," December 22, 1980.

¹⁴⁷ *Ibid.*

an active effort to include recently naturalized citizens into the electorate. The request for legal clarification was not a last resort, but merely a part of the process of liberalizing election law. The Shawnee election commissioner sought legal clarification on the issue as a preliminary to legislative advocacy. In doing so, Hope indicates that Kansan subnational actors also used their administrative capacities to expand the right to vote, thereby pushing the spirit of the VRA forward and supporting the state's 1974 constitutional amendments regarding suffrage expansion.

The early 1990s evidenced the propensity of subnational actors to use their administrative capacities in favor of suffrage expansion. Namely, the state's involvement in Kids Voting USA illustrated the willingness of local politicians and community administrators to increase voter turnout. Kids Voting USA is a nonpartisan, grassroots voter education program that teaches children the importance of voting through school curricula, mock elections, and family activities.¹⁴⁸ The program seeks to "socialize children to political affairs early and broadly" while also promoting the electoral participation of parents through joint family activity.¹⁴⁹ Importantly, Kansas was a major participator of the program in the 1990s. They had the second largest program in the country that featured the enrollment of 165,000 students in 1996.¹⁵⁰ For our study, the administrative organization of this program is more important than the quantity of students enrolled. Kids Voting USA requires the participation of teachers, corporate sponsors, community volunteers, and administrative advocates. This coalition of subnational actors has an "important secondary effect of increasing the political awareness and participation of adults"

¹⁴⁸ Brad Danler. ABOUT US. Accessed April 2, 2021. <https://kidsvotingusa.org/about-us>.

¹⁴⁹ Amy Linimon, and Mark R. Joslyn. "Trickle up Political Socialization: The Impact of Kids Voting USA on Voter Turnout in Kansas." *State Politics & Policy Quarterly* 2, no. 1 (2002): 24-36. Accessed March 18, 2021. <http://www.jstor.org/stable/40421446>. 25.

¹⁵⁰ *Ibid*, 26.

involved in the program.¹⁵¹ Additionally, several studies on this grassroots socialization process indicate that these effects are particularly potent “among those of low economic status.”¹⁵² Thus, though Kids Voting USA did not change suffrage law in Kansas, its administrative organization network did support the fundamental principles of the VRA. Its participants and organizers expanded the electorate through socialization and education, thereby evidencing the subnational impact of pro-suffrage administrative work in Kansas during the 1980s and 1990s. The scarcity of such efforts supports the hypothesis that demographic change and electoral competition correlate with increased cooperation or repudiation of the VRA. Considering Kansas’ stagnant demographics and low levels of competition for state Legislature seats, subnational actors had little incentive for altering voting laws or changing the size of the electorate. Consequently, the efforts of administrative actors in relation to expanding the electorate reflects this ambivalence to the question of suffrage.

Executive Repudiation in the New Century

However, the 21st century marked a distinct shift in subnational action regarding the right to vote in Kansas. Whereas the several decades immediately following the passage of the VRA were defined by bipartisan support of expansionist suffrage initiatives, the small government conservatism of contemporary Kansas displays the correlation between demographic change and VRA repudiation. While the white-only population of Kansas decreased by only 4.5 percent between 1970 and 1990, demographic change has accelerated in recent years; in 2019, the white-only population dropped below 85 percent, to 83 percent, for the first time in the state’s history. This increase in demographic change coupled with a growing conservatism movement to

¹⁵¹ Amy Linimon, and Mark R. Joslyn. "Trickle up Political Socialization: The Impact of Kids Voting USA on Voter Turnout in Kansas." 26.

¹⁵² *Ibid*, 25.

accelerate the restriction of the right to vote. Namely, the Interstate Voter Registration Crosscheck Program, documentary proof of citizenship requirement, and strict voter photo identification laws pushed back on the pro-suffrage provisions of the VRA by placing excessive burdens on minorities and low-income voters. “The Interstate Voter Registration Crosscheck Program (Crosscheck) is an interstate record-sharing agreement organized by the Kansas secretary of state” that strongly illustrates the role of state administrative actors in limiting the right to vote.¹⁵³ In the program, participant states submit their electronic voter rolls to Kansas secretary of state, who then “makes state-by-state comparisons of individual enrollments in search of duplicate registration records.”¹⁵⁴ Although Kansas officials argue that this constitutes a routine process of voter roll maintenance justified under the Help America Vote Act, the process creates vast numbers of surplus matches. For example, in Kansas in 2010, “more than 10 percent of all voter registrations were called into question” because of Crosscheck. Additionally, the surplus matches are disproportionately prone to affect African American voters: “The finding is consistent with the view that matches are more likely to arise between individuals from the same racial group and that the distribution of surnames makes such matches more likely to arise among black than white voters.”¹⁵⁵ Thus, the program’s justification of voter roll maintenance routinely burdens African Americans with increased registration responsibilities. Furthermore, this program, like the voter registration laws currently in place in Kansas, were instigated by executive actors within Kansas state government.

Important for our study is the mechanisms of subnational government that propel such repudiation of Voting Rights Act principles. While previous eras of Kansas government

¹⁵³ Ben Merriman. *Conservative Innovators: How States Are Challenging Federal Power*. 108.

¹⁵⁴ *Ibid.*

¹⁵⁵ *Ibid.*, 112-113.

displayed administrative support of the expansion of the electorate, the Crosscheck Program and the voter registration laws of the 21st century display the restrictive propensities of executive actors in Kansas state government. Importantly, these restrictive efforts occurred before and after *Shelby*. Even though *Shelby* gutted the constitutionality of preclearance, Kansas actors were able to institute policies that restricted the right to vote before the Supreme Court made its decision. This proves that neither the Voting Rights Act nor *Shelby* completely altered the institutional structure of federalism regarding voting rights. Before *Shelby*, subnational actors were forced to innovate and use a diverse range of political vehicles to manipulate the electorate for partisan gain. Specifically, the Crosscheck Program showed the ability of executive officeholders to circumvent the legislature and institute restrictive suffrage policies unilaterally. To elaborate, “In distinction to laws that may be burdensome on individual registrants and whose enactment is often visible and divisive, no legislative authorization is necessary for state election officials to join Crosscheck.”¹⁵⁶ This legislative circumvention allowed executive actors to manipulate suffrage for partisan gain. Whereas restrictive legislation often draws the ire of the effected citizenry, executive actions restrict the right to vote without the need for public deliberation. Kansas Secretary of State Kris Kobach further illustrates this ability through several recent voting regulations. First, “the Kansas Secure and Fair Elections (SAFE) Act of 2011 requires Kansas registrants to go above and beyond the federal requirements” by forcing registrants “to show proof-of-citizenship in the form of birth certificates, passports, driver’s licenses, naturalization documents, or hospital records of birth.”¹⁵⁷ These requirements push back against federal requirements that merely require voter registrants check a box to indicate U.S.

¹⁵⁶ Ben Merriman. *Conservative Innovators: How States Are Challenging Federal Power*. 108.

¹⁵⁷ Julie W. Sims. "In Purgatory: The Unconstitutionality of the Kansas Voting System." *The Urban Lawyer* 49, no. 1 (2017): 149-73. Accessed March 18, 2021. <http://www.jstor.org/stable/44648026>. 149-150.

citizenship. Additionally, Kobach's 2015 voting regulation "allows applicants that are labeled incomplete to be cancelled from the State suspense list of applicants" if they do not provide the necessary proof-of-citizenship in ninety days from their initial registration request."¹⁵⁸ This restrictive regulation placed 36,674 registrants in "voter purgatory" in 2015.¹⁵⁹ Thus, Secretary Kobach influences the composition of the electorate through executive action that diminishes citizens' right to vote. This manipulation is also directly associated with restricting the rights of specific voting demographics; as "most on the purgatory list are young first-time voters, the poor, and minorities," Kobach is restricting ballot access for traditional Democratic voters, thereby benefitting the Republican party of Kansas.¹⁶⁰ In the 21st century, subnational actors in Kansas show the correlation between demographic change and rejection of the VRA. As the population of Kansas diversified in the new century, subnational actors responded by instituting executive actions that decreased democratic voter registration. Although these regulations occurred several decades after the VRA's passage, they illustrate subnational actors' continued ability to influence the electorate for partisan gain.

Idaho's Inaction

Through their relative inaction, state actors in Idaho further illustrate the correlation between subnational action regarding the VRA and changes in demographic diversity, and partisan competition in state legislatures. The Voting Rights Act of 1965 has been shown to dramatically impact subnational action in Georgia, Massachusetts, and Kansas. Each of these states illustrated that changes in the partisan competition of state legislatures and the demographic composition of the electorate elicits subnational action that either pushes against

¹⁵⁸ Julie W. Sims. "In Purgatory: The Unconstitutionality of the Kansas Voting System." 150.

¹⁵⁹ *Ibid*, 149.

¹⁶⁰ *Ibid*, 152.

the spirit of the VRA or pulls its initiatives forward. However, Idaho does not follow this trend. Rather than enact a wide array of policies which extend or restrict the franchise, Idahoan subnational actors remained quiet on the issue of suffrage for a long period after the passage of the VRA. This is because Idaho lacked the necessary demographic change to elicit a subnational response. While Idaho has maintained consistent levels of demographic diversity since the passage of the VRA, its state Legislature has grown increasingly conservative. The white-only population of Idaho decreased by less than 10 percent from 1970 to 2019; meanwhile, the proportion of Democrats in the Idaho House of Representatives decreased by 13 percent over a twenty-year span. According to the hypothesis and the political development of the other case study states, the increased presence of Republicans in the state House of Representatives should correlate with increased subnational action regarding the initiatives of the VRA. Specifically, 1970-1990 should be marked with consistent subnational refutation of the act. However, such action did not occur. A lack of primary and secondary source materials on voting reforms during that period suggests that subnational actors did not believe the VRA's provisions affected Idaho state politics. Because of the stagnation of demographic diversity in Idaho, subnational actors had little incentive to push against or pull forward the VRA. The issue of suffrage was largely a citizen-initiated process in the state, meaning that officeholders withdrew from the process altogether from 1970-2000. Therefore, the inaction of subnational actors in Idaho illustrates that increasing demographic diversity is a driving force for voting rights policymaking. However, the 21st century marked a change in this pattern. The influx of demographic diversity in the state resulted in nominal amendments to the legislative reapportionment process, specifically through the legislative apportionment process. Nonetheless, the fact remains that subnational actors in Idaho have altogether excluded themselves from the issue of suffrage.

Executive Inaction

Subnational actors in Idaho have generally ignored the implications of the Voting Rights Act on federalism and state authority over elections. The scarcity of suffrage information in the period between 1970 and 2000 suggests that subnational actors sought other means of attributing to American political development. Nonetheless, some subnational activity regarding the right to vote did occur in the post-VRA period; namely, the Idaho Secretary of State attempted to influence registration practices in the 1970s, and the citizenry instituted an independent legislative reapportionment commission in the new century. As depicted by the consistent affirmation and refutation of Massachusetts and Georgia respectively, the period directly after the passage of the VRA is often characterized by a flurry of subnational action that either restricts or expands the right to vote. Idaho did not follow that trend. Instead, its executive actors and subnational legislators remained relatively silent on the issue. An Idaho Supreme Court case from 1975 illustrates this relative inaction. *Cenarrusa v. Peterson*, 95 Idaho 395 (1975) acts as the only window into the issue. The centered on the Idaho Secretary of State's request for a writ of mandate "to require the county clerk to mail out 'registered' electors standard voter registration cards."¹⁶¹ Although the Idaho Supreme Court dismissed the appeal, the request suggests that executive actors in the state were not completely immune to the issue of suffrage. Rather, the Secretary of State was aware of the partisan implications of expanding enfranchisement in the state; by expanding suffrage in a state with consistent partisan leanings, the Republican party increased its chances of reelection by extending suffrage to a consistently conservative voting population. But the shortage of this subnational action is revealing. Subnational actors in Idaho were aware of the suffrage question but chose to legislate elsewhere.

¹⁶¹ McFadden, J. "Cenarrusa v. Peterson, 95 Idaho 395, 1975," May 16, 1973.

Therefore, Idaho officials refrained from attributing to the political development of suffrage for the majority of the post-VRA period.

Administrative Reapportionment

The 21st century represented a small shift in subnational attention to the issue of suffrage in Idaho. Nevertheless, this shift remains marginal in comparison to the other states under analysis. As of the 2010 census, “only 10 percent of Idaho’s eligible voters [were] minorities, with Hispanics accounting for 6 percentage points.”¹⁶² Additionally, “the GOP’s statewide margin in the 1988 election (26 points) was virtually identical to that in 2008 (25 points).”¹⁶³ Therefore, Idaho maintained similar demographic and partisan compositions since the passage of the VRA; meaning that there was little incentive for subnational actors to ‘change the rules’ of suffrage for partisan gain. Nevertheless, the 2001 and 2011 legislative redistricting process sheds light on some subnational action that diminishes the role of democratic voters in the state. Importantly, these processes occurred before *Shelby*, meaning that even nominal changes in demographic composition provoke subnational repudiation of the VRA. Approved by voters in 1994, the reapportionment and redistricting process in Idaho features a commission consisting of six members; “four are chose by party leaders of the Idaho legislature, and one member is chosen by each of the state chairs for the Democratic and Republican parties.”¹⁶⁴ Although labeled an independent commission, the redistricting committee heavily favors the Republican party; since the state legislature is dominated by the GOP, they hold sole possession over the authority to

¹⁶² Ruy A. Teixeira, and William H Frey. “America’s New Swing Region: The Political Demography and Geography of the Mountain West.” Essay. In *America’s New Swing Region: Changing Politics and Demographics in the Mountain West*. Washington, D.C.: Brookings Institution Press, 2012. 38.

¹⁶³ *Ibid*, 39.

¹⁶⁴ Ruy A. Teixeira, and David F Damore. “Reapportionment and Redistricting in the Mountain West.” Essay. In *America’s New Swing Region: Changing Politics and Demographics in the Mountain West*. Washington, D.C.: Brookings Institution Press, 2012. 161.

install conservative members to the commission. Therefore, “at the time of the 2001 redistricting, all four members of the state’s congressional delegation were Republicans.”¹⁶⁵ The commission’s partisan reapportionment resulted in the dilution of votes in the Boise area. Furthermore, the 2011 redistricting plan also “unsurprisingly benefit the GOP while being somewhat more urban oriented.”¹⁶⁶ The reapportionment process in Idaho illustrates the importance of subnational, administrative actors. Even though the commission is appointed independently, Republican dominance of the state Legislature enabled the GOP to install partisan commissioners. These commissioners were subsequently able to enact plans that diminish the role of urban voters and suppress the growing population of Idaho’s cities. Though the subnational impacts on suffrage are not as pronounced as the other case study states, the administrative action of Idaho’s Citizen Commission for Reapportionment demonstrates the moderate correlation between changes in demographics and subnational action regarding suffrage.

Conclusion

Although the Voting Rights Act of 1965 addressed a dire need for voting rights reform in the United States, it did not fundamentally eliminate the institutional tenet of federalism nor state authority over suffrage. Subnational actors in Georgia, Massachusetts, Kansas, and Idaho illustrate that state actors not only retained the ability to either restrict or expand the right to vote, but also that their action is dependent upon changes in demographic diversity and partisan competition in state legislatures. Through “preclearance” and its coverage formula, the act reorganized federal prerogative regarding voting rights and held discriminatory states as

¹⁶⁵ Ruy A. Teixeira, and David F Damore. “Reapportionment and Redistricting in the Mountain West. 161.

¹⁶⁶ *Ibid*, 175.

supplicants to the Department of Justice. Still, the VRA did not amend the Constitution: states continued to hold powers both over the timing, place, and manner of elections and the basic qualifications for voting for the House of Representatives. This is not to say that the VRA was unsuccessful. Its provisions resulted in mass registration in the South and was then bolstered by subsequent renewals and extensions throughout the following decades. But to claim the success of the VRA in registering voters and prohibiting certain voting practices as evidence of its enduring political change is folly. Federalism in the United States is elastic. State governments adapt to the reorganization of power at the federal level to retain their spheres of influence over local politics. However, contemporary scholars fall into the trap of overestimating the importance of federal legislation. Scholarship falsely characterizes the VRA as an instance of federal legislation destroying state powers, therefore *Shelby* is erroneously empowered with the restoration of state authorities over voting rights. This is wholly inaccurate. Subnational actors pushed against the VRA to restrict voting rights and pushed its initiatives forward long before the Supreme Court made its decision in 2013. Consequently, contemporary discussions of voting rights legislation and the reaffirmation of the VRA is misguided.

The states of Georgia, Massachusetts, Kansas, and Idaho all prove that subnational action regarding the expansion and restriction of the right to vote correlates directly with changes in ethnic diversity and levels of partisan competition in state legislatures. Specifically, states with high levels of both ethnic diversity and electoral competition yield the largest amounts of subnational repudiation or enhancement of the Voting Rights Act. For instance, Georgia experienced a large change in both partisan representation in the state legislature and the ethnic composition of the citizenry. Subnational actors responded by using several vehicles of federalism to restrict ballot access and voting efficacy for black Georgians. Namely, the

legislative apportionment system was used to sway legislative power into the hands of rural, white constituents, the state courts used their authority to limit the extension of voter registration drives in minority areas, and executive officials manipulated the registration process for partisan gain. Furthermore, subnational actors in Massachusetts cooperated with the VRA and expanded its reach after 1965. The difference in the direction of this subnational action relates directly to the changing ethnic diversity of the state. Although the Democratic party has long controlled the state legislature in Massachusetts, the ethnic diversity of the citizenry increased dramatically after 1965. Therefore, state actors in Massachusetts altered suffrage laws to expand the right to vote and further solidify their partisan strength. Through constitutional referendum, legislative bills, and judicial precedence, subnational actors in Massachusetts illustrated the importance of demographic change on subnational action regarding suffrage laws. Kansas further demonstrated the connection between the independent and dependent variables in this study. However, the variance in subnational action between Kansas and Massachusetts or Georgia is descriptive. While Georgian subnational rebuttal of the VRA is evident throughout the state's history and Massachusetts' subnational cooperation echoes this fervor, Kansas' moderate political history between 1965 and 2000 suggests that subnational actors in the state were not compelled to react harshly to the federal aggrandizement of state prerogative. During this time, the demographic composition of the electorate did not change dramatically. Consequently, subnational actors had no incentive to change the rules of the game. In fact, most of the responses to the VRA came in the form of citizen-led constitutional initiatives. But the new century changed Kansan subnational responses to the issue of suffrage. In the new millennium, the proportion of white-only constituents dropped at an increased rate; this resulted in Kansan subnational officials instituting suffrage policies that benefitted the majority, Republican party in the state at the

expense of potential Democratic voters. Therefore, Kansas subnational action pre-*Shelby* showed that demographic change instigates subnational action. Lastly, Idahoan inaction solidifies the correlation between the independent and dependent variables. With little change in its demographic diversity, state officials in Idaho had little incentive to either repudiate or cooperate with the VRA. Republican dominance was firmly established in its state legislature, thereby explaining the ambivalence of Idaho's officials to the issue of suffrage for most of the post-VRA period. Subnational actors are not propelled to refute or bolster the spirit of the Voting Rights Act based on partisan competition alone. Instead, demographic change elicits subnational responses that benefit the majority party in the state. In tandem, demographic change and partisan competition propel subnational actors to either restrict or extend the right to vote based on localized, partisan interests.

This finding has important implications for contemporary discussions over the efficacy and reaffirmation of the Voting Rights Act. On one level, the proliferation of restrictive voting rights legislation in the post-*Shelby* period suggests that reaffirmation of the VRA is necessary. This line of discussion proposes that a return to federal "preclearance" would result in the eradication of discriminatory voting practices. However, that assumption is misguided. Even with the VRA's institution of "preclearance" and the extension of the act's provisions to states outside of the South, subnational actors' political innovations resulted in their retention of federalized authority. Federal aggrandizement of state suffrage powers may prove effective in the short term, but subnational actors remain resilient and entrepreneurially in their retention of authority over a longer timeline. I suggest that the Department of Justice is not equipped to handle the political ingenuity of subnational actors. Although the DOJ is qualified to assess the quality of legislative amendments regarding the right to vote, they are unable to evaluate the full

range of subnational action. Namely, administrative, executive, and judicial action at the state level has proven to evade the purviews of the Department of Justice, thereby allowing subnational actors to influence the right to vote in the post-VRA period. Therefore, future federal legislation on the right to vote should use a multi-dimensional approach; the DOJ cannot be the only federal agency responsible for monitoring the diverse vehicles of federalism. Additionally, federal action that seeks to prevent the restriction of the right to vote must be based on changes in the demographic composition of the state's citizenry. The principle of coverage is intricately linked to one of the variables in this study: demographic change. As Georgia, Massachusetts, Kansas, and Idaho suggest, subnational action is dependent upon changes in the electorate. Therefore, widening variance in the ethnic diversity of states now acts as a precursor to future subnational innovation regarding suffrage. Whether they expand or restrict, subnational actors are likely to respond to localized shifts in ethnic diversity by enacting voting legislation, regulations, and procedures that benefit the majority party in the state. As a result, for federal legislation to remain effective, it must be based on a coverage formula that includes changes in demographic diversity and partisan competition. By understanding the resiliency of subnational actors and the influence of demographic change and partisan competition, contemporary scholars and elected officials will be better equipped to address the issue of suffrage in the United States.

However, this tendency to lean on further federalization as a means of correcting the failures of previous federal legislation neglects to address the central issue of suffrage in the U.S.: federalism. I suggest that decentralization is a more appropriate means of quelling subnational innovation regarding the restriction of the right to vote. The debate over voting rights in the United States never ends because there is no expressed right to vote in the Constitution. Consequently, federal legislation regarding suffrage that stops short of establishing such a right

will never displace state authority or the capacities of subnational actors; it will merely disrupt subnational abilities in the short-term. Further centralization through the reaffirmation of the VRA would be tantamount to a repudiation of the ideals of the framers regarding suffrage policy and the division of authority between the national and state governments. The Constitution endowed electoral authority to state governments. Therefore, calls for decentralization do not represent a call for total state autonomy, but, rather, call for the reaffirmation of the founders' reverence to the state sovereignty. State governments are engrained into the fabric of American political development through their command of distinct political communities. Federal aggrandizement of authority over enfranchisement removes subnational authority from this issue, and thereby removes subnational officials' constitutional right to reciprocally influence the expansion of the electorate.

Through the study of the long-term implementation of the VRA, it becomes clear that subnational actors retained their ability to either restrict or expand the right to vote. Although these efforts are not as pronounced as voting rights legislation in the post-*Shelby* period, it remains that the act did not wholly destroy state authority. Notably, I conclude that the Voting Rights Act harmed democratic theory in the United States by either driving subnational actors to repudiate the spirit of the VRA through problematic means or removing subnational ability to further expand the right to vote. The VRA drove subnational actors to restrict voting rights in ways that are not publicly perceptible. Namely, state jurisprudence, executive action, and state constitution-making all undermine the initiatives of the federal government regarding voting rights by contributing to the political development of the right to vote without the threat of public recourse. As evidenced by *Fourth Street Baptist Church of Columbus, GA v. Board of Registrars*, state jurisprudence can solidify the rights of subnational actors to push against

federal, voting rights initiatives. These holdings are not always reflective of public opinion, and the judges that produce suffrage jurisprudence are insulated from public scrutiny through the election process. Additionally, executive action brings forth the problem of interpretability; the citizenry may not know that executive actors are making changes to restrict voting and are thereby unable to hold them accountable. For instance, the Crosscheck Program bypassed legislative approval and allowed Kansan executive actors to directly influence the size of the electorate. Lastly, state constitution-making can directly undermine the federal government and the spirit of the VRA. Conversely, subnational actors in Massachusetts displayed the ability to compliment pro-suffrage policies at the national level with state jurisprudence, referendums, and executive actions that further liberalize the franchise. By subtracting state officials from the equation, the United States loses a powerful ally in its pursuit of universal democracy. I argue that the Voting Rights Act may have benefitted marginalized groups in the short-term, but its long-term implementation encouraged the proliferation of covert voting discrimination and the upheaval of responsible democratic theory. Decentralization of voting rights would clear the fog of diversified subnational action. It would encourage the passing of voting rights legislation through state legislatures, thereby permitting the citizenry to assess the equity of such action and hold state politicians accountable for their transgressions. Though the Voting Rights Act aided in the short-term movement towards a more universal democracy, a different, more decentralized, path is necessary to continue its spirit.

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