

THE VOTING RIGHTS ACT & SHELBY COUNTY V. HOLDER:

WHY STATES ARE CHANGING THEIR VOTING LAWS

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Introduction

Shelby County v. Holder (2013), a U.S. Supreme Court decision, has redefined what voting looks like in the 21st century. By invalidating the Section 4(b) of the Voting Rights Act of 1965, Shelby County v. Holder gutted the Voting Rights Act, prompting a renewed and intense debate about the role the Voting Rights Act will play in the upcoming years. Nearly immediately after the Shelby County decision, multiple states put into effect stricter voting laws which brought force intense criticism from some of the most prominent advocacy groups such as the ACLU, NAACP Legal Defense Fund, and the Brennan Center. Much of the debate since the landmark decision has been centered around the potentially discriminatory effects that the Shelby County decision would have on minority groups, especially in states with clear histories of discrimination and racial animus in the voting booth. What is often lost in these debates and discussions however, are inquiries into why states would pass more restrictive voting legislation in the first place? This paper seeks to explore this question and determine specifically what factors increase the likelihood that a state makes its voting laws more restrictive post Shelby County.

The concept of voting rights has evolved over the length of U.S. history. Slowly but surely, different disenfranchised groups gained the right to vote. The culmination of this journey was the passage of the Voting Right Act of 1965. This landmark piece of legislation effectively cemented unabridged universal suffrage for all groups, especially for black and minority voters. The enforcing power behind this act resided in two specific sections: Section 4(b) and Section 5. Section 4(b) also known as the “Coverage Formula” placed strict regulations on states that engaged in discriminatory or disenfranchising voting practices during the time

period of 1965 to 1972. Additionally, states that had less than half of its eligible voter population registered to vote or turnout in the 1964, 1968, or 1972 elections would also be subject to these strict voting regulations. Section 5, or the “Preclearance Requirement” then forced states under the coverage formula to seek approval, or preclearance, from the U.S. Attorney General or U.S. District Court for D.C. before enacting changes in voting laws. These two provisions protected minorities from illegal and discriminatory voting practices in states with long histories abuse and oppression aimed at minority groups. Nearly 50 years later, all of this was rolled back due to *Shelby County v. Holder* (2013).

Shelby County is a county in Alabama that sued the Attorney General for a permanent injunction against the application of Sections 4(b) and 5 of the Voting Rights Act. The petitioner, Shelby County, argued that both of these provisions within the Voting Right Act were unconstitutional because they were based on outdated guidelines that did not apply to Shelby County in 2013. The case was decided on a 5-4 split along ideological lines in favor of Shelby County. However, in the decision authored by Chief Justice John Roberts, only Section 4(b) was struck down due to its dated guideline and in applicability to modern day state and counties. This decision effectively removed the enforcement powers of Voting Rights Act, because without Section 4(b), no state could be forced by law to seek preclearance defined by Section 5. The result of this decision prompted outrage amongst different advocacy groups that felt the decision would turn back nearly 50 years of progress made by the Voting Rights Act.

The *Shelby County v. Holder* decision and the subsequent voting law changes implemented afterwards have made discussions of the voting rights, voter turnout, and voting laws popular and mainstream recently. However, topics concerning voter turnout, voting rights,

and voting laws have been of much interest to social scientists over the past few decades. In fact, much of the research regarding affects voter turnout was pioneered by the political scientists Wolfinger & Rosenstone. These two political scientists developed some of the first studies on voter turnout theory and estimated what factors have the greatest effect on turnout (Wolfinger & Rosenstone, 1980). Many of the control variables used in quantitative studies on voter turnout such as race, institutional and administrative laws, and voter registration laws are all based off of the early work of Wolfinger & Rosenstone (1985). Additional work by Benjamin Radcliff, (1994), G. Powell (1986) and Franklin Gilliam (1985) build off of the foundation work of Wolfinger & Rosenstone by exploring additional variables that have an effect on voter turnout in U.S. elections.

This study diverges from the literature on voting, voter turnout and elections by measuring the likelihood of a law change rather than attempting to measure the effect a law has on a measure such as turnout. This study will attempt to answer the following research question: What factors can predict whether or not a state implemented restrictive voting law changes after the Shelby County v. Holder decision (2013)? Three hypotheses based on the literature and current discussion regarding the Shelby County v. Holder are as follows: 1. States previously covered by Section 4(b) of the Voting Rights Act and forced to seek preclearance prior to Shelby County v. Holder will be more likely to have changed their voting laws after the Supreme court decision. 2. States that are under strong Republican control (Republicans control legislature and governorship) are more likely to change their voting laws than states that are under Democratic control or split party. 3. States with lower proportions of whites (higher proportion of minorities) are more likely to change their voting laws than states that have

higher proportions of whites (lower proportion of minorities). The following three hypotheses will be tested using quantitative statistical techniques in order to obtain specific estimates for the likelihood that a state changes its voting laws.

Methods

Data

The statistics collected for this study can be described as cross sectional data of all 50 U.S. States and the District of Columbia. This cross sectional data set consists of the most up to date figures on a mix of demographic and categorical data for each state. The data set is a compilation of data from multiple sources which include: The United States Census Bureau, the United States Elections Project, and the Federal Bureau of Investigation Uniform Crime Reporting Program.

The United States Census Bureau collects national and state demographic data via the decennial U.S. census. For the purposes of this study, demographic characteristics such as median age and race were collected for each state. The most recent data from the U.S. Census Bureau is currently from the 2010 U.S. Census. Therefore, estimates using the 2010 U.S. Census data will not accurately reflect any demographic changes that may have occurred over the past 6 or 7 years. It is important to also note that demographic data such as race and median age tend to change at relatively slow rates. Any potential errors that would occur as a result of using the 2010 U.S. census data would ultimately be marginal.

The United States Election Project collects both state and national data on different measures of voter turnout. The United States Election Project data set is a time series of national voter turnout measurements from 1787-2016, and state voter turnout measurements from 1980-2016. The United States Election Project calculates voter turnout using three distinct measures: Voting Age Population turnout rates for the highest office (VAP), Voting Eligible Population turnout rates for the highest office (VEP), and Voting Eligible Population turnout rates for all ballots cast (VEP-total). VEP-total is considered the most accurate measure for voter turnout because it only uses the eligible voter population and it includes all ballots cast statewide in its measure. VEP is similar in that it only uses the eligible voter population in its estimate, but it differs by only counting votes for the highest office, instead of total statewide votes. VAP on the other hand, is a measure that counts the ballots cast for the highest office, but uses the voting age population for its measure instead. Voting age populations include ineligible voters such as resident aliens. For the purpose of this study, VEP was used as the measure for voter turnout in the 2016 U.S. elections. VEP-total was not measured for all 50 states in the 2016 elections, therefore its use would have forced the removal of a few observations. VAP would have made it difficult to accurately compare turnout rates between states with high alien populations such as Texas and California, and possibly bias any estimates using voter turnout as a result.

Crime statistics were collected from the FBI Uniform Crime Reporting Program. The FBI Uniform Crime Reporting Program database has national and state crime statistics from 1995-2016. The crime statistics are arranged in various formats and often categorized by the nature of the crime. Categories included: violent crime, murder and non-negligent manslaughter, rape

(both revised and legacy definitions), robbery, aggravated assault, property crime, burglary, larceny, and motor theft. State violent crime rates in 2015 was chosen as the measure for crime in this study. This choice is motivated by the fact that the violent crime rate is the one of most commonly reported crime statistics and it encompasses crimes from other categories such as: murder, manslaughter, or rape. Additionally, crime rates in other categories seem to follow the trends seen in the violent crime rate measure.

Data Analysis

Due to the nature of the data and the research question, a logistic regression was the statistical method of choice. A logistic regression can model the statistical relationship between a qualitative dependent variable and quantitative/qualitative independent variables. Logistic regressions utilize assumptions based on maximum likelihood estimation (MLE) instead of the classical linear regression model (CLRM), which allow for unbiased, efficient, and consistent estimation of the log-likelihoods of the dependent variable given the explanatory variables. The log-likelihood coefficient estimates received from the logistic regression were then converted into odds ratios by the exponentiation of the coefficients by e^x . This allowed for a more intuitive interpretation of the regression result.

The goodness of fit for the logistic regression was measured by the likelihood ratio test. The likelihood ratio test evaluates whether or not the constrained logistic model (the model with all explanatory variables) fits better than the unconstrained model logistic model (model with only the intercept). The null hypothesis for this test is that the constrained logistic model

does not fit the model better than the unconstrained model. The null hypothesis for the likelihood ratio test can be rejected if the p-value <0.05. Therefore, if the null hypothesis is rejected, one can infer that their constrained logistic model fits the data better than an unconstrained model. This test is used in similar ways to the F-test in some linear regression models.

The logistic regression equation was modeled as follows:

$$\begin{aligned}
 & \textit{LogLikelihood of Law Change}_i \\
 &= \beta_1 + \beta_2 \textit{GOP Control} + \beta_3 \textit{Former PreClearance State} \\
 &+ \beta_4 \textit{White Majority} + \beta_5 \textit{Crime Rate} + \beta_6 \textit{Voter Turnout Rate} \\
 &+ \beta_7 \textit{Median Age} + u_i
 \end{aligned}$$

The logistic regression equation contains a total of 7 variables: 3 binary and 4 continuous. The binary dependent variable “*Log-likelihood of Law Change*” is the likelihood that a state changes its voting laws after the Shelby County v. Holder (2013) U.S. Supreme Court decision. A value of 1 was assigned to states that changed their voting laws after Shelby County and all other states were assigned 0. *GOP Control* and *Former Preclearance State* are the two main explanatory variables in this model. *GOP Control* is a binary variable where a value of 1 is assigned to states where the GOP control both the legislature and the governorship in 2016, and 0 is assigned to all other states. *Former Preclearance State* is also a binary variable where a value of 1 is assigned to states that were covered under section 4(b) of the Voting Rights Act of 1965 and 0 is assigned to all other states. *White Majority*, *Crime Rate*, *Voter Turnout Rate*, and

Median Age all serve as continuous control variables for the model. *White Majority* measures the degree to which whites are a majority of the population within a state. This variable was constructed by subtracting 50 from the white population percentage within each state. *Crime Rate* is the rate of violent crimes per 100,000 people in 2015 for each state. *Voter Turnout Rate* is the VEP turnout rate for each state. *Median Age* is the median age for each state in 2010. The “i” subscripts in the regression model represent each of the 51 subjects included in this study.

Results

Table 1: Results of the logistic regression model. The coefficient estimates are expressed in terms of log odds ratios. The conversion from log odds ratios to odds ratios is shown in Table 2.

Table 1: Logistic Regression Results	
	<i>Dependent variable:</i>
	Restrictive Law Change
GOP Control (Gubernatorial and Legislature)	2.543** (1.051)
Former Pre-clearance State	1.034 (0.913)
White Majority	−0.010 (0.042)
Crime Rate	−0.003 (0.004)
Voter Turnout Rate	−0.057 (0.087)
Median Age	0.164 (0.189)
Constant	−4.203 (7.437)
Observations	51
Log Likelihood	−22.702
Akaike Inf. Crit.	59.405
<i>Note:</i>	*p<0.1; **p<0.05; ***p<0.01

Table 2: Log Odds Ratio to Odds Ratio Conversion

Table 2: Odds Ratio Results		
Variable	Coefficients	Odds Ratio
Intercept	-4.20	0.01
GOP Control (Gubernatorial and Legislature)	2.54	12.72**
Former Pre-clearance State	1.03	2.81
White Majority	-9.58E-03	0.99
Crime Rate	-3.37E-03	1.00
Voter Turnout	-5.75E-02	0.94
Median Age	1.64E-01	1.18
Note: *p<0.10; **p<0.05; ***p<0.01		

Table 3: Likelihood Ratio Test Results

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Test Statistic	df1	P value	Alternative Hypothesis
14.54	6	0.0242**	Constrained Model is a better fit than the unconstrained model
Note: *p<0.10; **p<0.05; ***p<0.01			

Discussion

Most of the discussion following the *Shelby County v. Holder* decision has centered around whether or not the subsequently passed voter ID laws had an effect on voter turnout in the elections following the decision. While this is certainly a matter of concern, there has not been much discussion about the what factors may explain why states decide to change their voting laws in the first place. Explanations for voting law changes have ranged from institutional racial discrimination to political motivations, but there has not been any methodical attempt at explaining why in recent research. The results of this study attempt to explore this issue and add knowledge to this discussion.

The results from the logistical regression in Table 1 show that only one out of the six explanatory variables was considered to be statistically significant. The binary variable *GOP Control*, was the only variable to have a statistically significant relationship with whether or not a state passed a new voting law after the *Shelby County* decision. According to Table 2, GOP control of both the governorship and legislature within a state, significantly increased the odds of a voting law change by factor of 12 to 1, thus supporting my hypothesis. This result can be interpreted as evidence for the theory that voting law changes passed after the *Shelby County* decision were politically motivated. However, the reasoning behind why GOP controlled states would be more likely to enact more restrictive changes in voting laws is less obvious and open to interpretation. One possible explanation for the reasoning behind instituting more restrictive voting laws is that the GOP, often characterized as the “tough on crime” or “law and order” party, is extremely concerned with voter fraud and willing to engage in severe measures to prevent it. This is often the argument made by GOP legislators in states that do pass more

restrictive voting laws. Another explanation could also be that Republican politicians in GOP controlled states wish to solidify any political advantages they may have within their state, and are using more restrictive voting laws to discourage opposition voters from turning out. This is often the argument made by advocacy groups about why new restrictive voting laws are passed. The question of whether or not these laws actually influence voter turnout is outside the scope of this research study.

The results of the 5 remaining explanatory variables in Table 1 show no statistically significant relationship with whether or not a state changed its voting laws after the Shelby County decision. These results were not only not statistically significant, but they also demonstrated very small changes in the odds ratios as seen in Table 2. The statistical insignificance of the *Former Preclearance State* variable, disproves the hypothesis that being a former preclearance state has an affect on whether or not a state changes its voting laws after the Shelby County decision. This result is surprising, because it seems to contradict common reasoning regarding why states passed more restrictive laws after Shelby County v. Holder. The reasoning behind the now disproved hypothesis, was that Shelby County v. Holder would allow former preclearance states that were severely restricted in their ability to pass voting laws the freedom to do so after several decades of supervision by the Department of Justice. This however, is not entirely the case. Although there are examples of former preclearance states such as Texas and Alabama that changed their voting laws immediately after Shelby County, this was not the case for former preclearance states such as California and New York. The inclusion of liberal states that were covered by the coverage formula in section 4(b) of the Voting Rights Act may have had an affect on the significance of the *Former Preclearance State*

variable. States like California, New York, and New Hampshire are progressive states with progressive policies regarding voting laws. Additionally, only selected counties in these progressive states were covered by section 4(b), compared to the coverage of entire states such as Texas and Alabama. These differences in the coverage of states by section 4(b) also may have had an effect on the *Former Preclearance State* variable. Future research could study whether being an entirely covered preclearance state has more of an effect on law changes after Shelby County, than being a partially covered state.

The control variables for demographics (*White Majority & Median Age*), voter turnout (*Voter Turnout*), and crime (*Crime Rate*) were included in the logistic regression to ensure that factors often associated with studies concerning voting, laws, and politics were accounted for in this study. All four variables were shown to have statistically insignificant effects on the likelihood that a state makes its voting laws more restrictive after Shelby County. The insignificance of these variables can be understood in a few different ways. The simplest explanation is that crime, age, race, and voter turnout have no observable relationship with whether or not a state changes its voting laws. This interpretation would support the assertion that new voting laws do not intend to discriminate against disadvantaged groups (minorities, elderly, etc.). This is a claim that most GOP lawmakers have made when discussing the potential discriminatory effect of new voting laws. However, the lack of an observable effect, especially with race, could be due to construct of the racial demographic variable *White Majority*. *White Majority* is a measure that's subtracts 50 from the white population percentage in every state. This was done with the idea that states with higher percentages of whites would be more likely to change voting laws in order to preserve the political hegemony that white voters may enjoy

in the state. However, it is possible that if racial demographics were measured using a black population percentage instead, a relationship with voting law change may have been observed. The black population in the United States has been the primary target of discriminatory actions over its 241-year history, thus it would make sense to assume that any sort of attempt to discriminate via new voting laws after Shelby County would target black voters especially. Additionally, Section 4(b) of the Voting Rights Act, the portion of the act that was struck down in the Shelby County decision, was initially created in 1965 to actively reverse and prevent discriminatory practices aimed at black voters in the United States. Future research could explore this dynamic and see if using a different measure for state racial demographics would create a statistically significant relationship between racial demographics and the likelihood that a state changed its voting laws after Shelby County.

The statistically insignificant regression results for these variables were not necessarily unexpected, but their inclusion increased this model's goodness of fit as demonstrated by the likelihood ratio test shown in Table 3. The rejection of the null hypothesis in the likelihood ratio test shows that the specified logistic regression model detailed in the methods section does a better job of fitting data than an unspecified model without explanatory variables.

Conclusion

The Voting Rights Act of 1965 will always be considered a watershed moment in U.S. history. The passage of this act has effectively ended the blatant and disenfranchising discrimination that minorities, especially blacks, endured in the voting booth for the century prior to act passage. The Voting Right Act along with several other civil rights era legislation has

helped advanced equality between various racial groups as well as prevented future cases of blatant abuse and discrimination in the polls. While the Shelby County decision and subsequent voting changes right afterwards have prompted vigorous discussions and debates, other discussions centering around the motivations behind voting laws should not be ignored. The purpose of study was to bring more attention to discussion concerning what could potentially lead a state to change its voting laws. The results from this study suggests that motivations behind new voting laws are mostly political, however further research will be needed to ensure that discriminatory intent has no place in the motivations behind new and restrictive voting laws. Shelby County v. Holder has initiated a new struggle for the future of the Voting Rights Act in the 21st century. It has been, and it will be continually important to study the motivations behind new voting laws, the effects they have on turnout, and the ultimate repercussions they have on our democracy.

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