APPENDIX B

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BRENNAN CENTER FOR JUSTICE

FACT SHEET

Growing Racial Disparities in Voter Turnout, 2008–2022

MARCH 2024

A Brennan Center study of nearly 1 billion voter file data points finds the following:

- **The nationwide racial turnout gap** — the difference in voting rates between white voters and voters of color — **has grown consistently since 2012**.
- That gap has **grown faster** in the places that, until the Supreme Court's 2013 *Shelby County v. Holder* decision, had been **covered by Section 5 of the Voting Rights Act**, which provided for federal oversight to ensure that voting changes were not discriminatory (a process called *preclearance*).

A Growing Racial Turnout Gap

- In 2020, the racial turnout gap was more than **12 percentage points**. For Black voters, it was almost **15 percentage points**. Had voters of color voted at the same rate as white voters, **9 million more ballots** would have been cast. In 2022, the racial turnout gap was **18 percentage points**, meaning **14 million more ballots** would have been cast.
- Between 2010 and 2022,
  - the gap between **white Americans** and **Americans of color** grew by **5 percentage points** to 18 points.
  - the gap between **white Americans** and **Black Americans** grew by **8 percentage points** to 16 points.
  - the gap between **white Americans** and **Latino Americans** grew by **4 percentage points** to almost 22 points.

The Effect of *Shelby County v. Holder*

By dismantling the preclearance regime, *Shelby County* has been a significant driver of the growing racial turnout gap. In other words, restrictive voting laws and practices negatively impact nonwhite turnout compared to white turnout.

- In the areas once subject to preclearance, the **racial turnout gap grew** on average **almost twice as fast** as in similar parts of the country that hadn't been subject to federal oversight: by **9 percentage points** in once-covered areas compared to **5 percentage points** in demographically similar parts of the country.
- *Shelby County* **cost hundreds of thousands of votes from voters of color** in formerly covered counties in the 2022 midterm election.

RESEARCH REPORT

BRENNAN CENTER FOR JUSTICE

Growing Racial Disparities in Voter Turnout, 2008–2022

By Kevin Morris and Coryn Grange MARCH 2024

Brennan Center for Justice at New York University School of Law

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Introduction

After the civil rights revolution of the 1960s, voter access increased and representation in government grew more equitable. Unfortunately, our research shows that for more than a decade, this trend has been reversing. This report uses data to which few previous researchers have had access to document the racial turnout gap in the 21st century.

The racial turnout gap — or the difference in the turnout rate between white and nonwhite voters — is a key way of measuring participation equality. We find that the gap has consistently grown since 2012 and is growing most quickly in parts of the country that were previously covered under Section 5 of the 1965 Voting Rights Act, which was suspended by the Supreme Court in its 2013 decision in *Shelby County v. Holder*.[1]

Section 5 of the Voting Rights Act required jurisdictions with a history of racial discrimination in voting to "preclear" any changes to their voting policies and practices with the U.S. Department of Justice (or federal courts). In the Supreme Court's *Shelby County* decision, Chief Justice John Roberts, writing for the majority, argued that Congress had not established that the formula used to determine the jurisdictions that would be subject to preclearance (found in Section 4b) was reflective of current political realities and that the formula was thus unconstitutional. While the Court agreed that the original coverage formula's reliance (in part) on low turnout was justified in the 1960s and 1970s, the narrow majority concluded that contemporary turnout gaps should be used to assess current coverage under Section 4b. The Court relied heavily on turnout rates to substantiate its argument, writing that in the 2012 presidential election, "African-American voter turnout has come to exceed white voter turnout in five of the six States originally covered by §5." But this interpretation of the data was far too narrow: the low turnout gaps in 2012 were likely due to Barack Obama's presidential candidacy and did *not* demonstrate that preclearance was no longer needed.[2] That moment, on its own, was unrepresentative of the general pattern showing a sustained, and now growing, racial turnout gap.

In this report, we assess how the racial turnout gap has evolved in the decade since the Court's decision. We find that while the gap is growing virtually everywhere, *Shelby County* had an independent causal impact in regions that were formerly covered under Section 5. By 2022, our primary models indicate that the white–Black turnout gap in these regions was about 5 percentage points greater than it would have been if the Voting Rights Act were still in full force, and the white–nonwhite gap was about 4 points higher. Put differently: the turnout gap grew almost *twice as quickly* in formerly covered jurisdictions as in other parts of the country with similar demographic and socioeconomic profiles.

Recent scholarship finds that restrictive voting laws generally limit the turnout of voters of color the most.[3] But while the research documents the effects of individual policies like polling place consolidation and voter identification laws, less is known about how the effects of these policies compound as more restrictions on voting are enacted.[4] Moreover, many policies and practices that drive voting are not codified in state law. Take, for instance, voter list maintenance practices: following the *Shelby County* decision, jurisdictions that previously had been required to preclear any changes to voting with the federal government dramatically increased the rate at which they removed voters, even if state laws governing list maintenance did not change.[5] We cannot identify and measure the impact of each individual change to voting policies and practices across the country, but the racial turnout gap necessarily takes account of *all* changes in voting policy, statutory or otherwise. Our unique data set, collected from nearly 1 billion vote records, allows us to conduct this analysis for the first time.

This report uses voter file snapshots from shortly after each of the past eight federal elections from Catalist and L2 to estimate turnout rates by race. Catalist and L2 are respected firms that sell voter file data to campaigns, advocacy groups, and academic institutions. Our conclusions based on this body of information about individual-level turnout behavior far surpasses what previous researchers have been able to establish working from limited survey data. We show that the racial turnout gap has grown everywhere. In all regions, the gap in the 2022 midterms was larger than in any midterm since at least 2006. In 2022, white Americans voted at higher rates than nonwhite Americans in every single state besides Hawaii. Moreover, the turnout gap cannot be entirely explained by socioeconomic differences — in income or education level — between Americans of different races and ethnicities.

That gap costs American democracy millions of ballots that go uncast by eligible voters. It also has significant consequences for political candidates and their campaigns. In 2020, if the gap had not existed, 9 million more ballots would have been cast — far more than the 7 million by which Joe Biden won the national popular

vote. In 32 states, the number of "uncast" ballots due to the turnout gap was larger than the winning presidential candidate's margin of votes.[6] That's not to say that the racial turnout gap necessarily changed electoral outcomes in any given state, but the immensity of this figure does put the magnitude of the turnout gap into greater perspective. The gap matters for our political system.

Given that the racial turnout gap is growing around the country, including in regions that weren't covered by Section 5, *Shelby County*'s impact is not immediately clear. The widening of the gap nationally can't be directly attributed to the Supreme Court's decision, though the Court perhaps emboldened jurisdictions that were not subject to preclearance to enact new restrictive policies.[7] However, the turnout gap — especially the white–Black turnout gap — is growing more quickly in counties that were formerly subject to Section 5 than in other, comparable parts of the country. A variety of statistical approaches support the conclusion that this more rapid growth in the turnout gap is attributable to the Supreme Court's decision in *Shelby County*.

In addition, the effect of *Shelby County* has been growing over time; the decision did not result in a one-time increase. Instead, the difference between formerly covered and other jurisdictions was larger in 2022 than in any election since the decision was handed down. Meanwhile, with the federal government unable to protect the political rights of people of color using the full power of the Voting Rights Act, the laws and practices that would have been subject to preclearance continue to accumulate.[8]

I. Methodology

To calculate turnout rates in this report, we rely on data from the registered voter files. Current academic scholarship indicates that the voter file data from states with self-reported racial identification is superior to the data collected by the Current Population Survey, which has been used in much of the existing research on the racial turnout gap and actually understates the magnitude of the turnout gap.[9] Even the best political opinion surveys are often biased when it comes to self-reported turnout — some respondents falsely report that they voted, and others misremember whether they participated, leading to incorrect estimates of turnout.[10]

Voter files, on the other hand, are government administrative records of who participated and are free of response or sampling bias. While other academic surveys like the Cooperative Election Study have begun validating respondents' reported turnout history in recent years, the voter files offer an unparalleled look at the U.S. electorate.[11]

Voter File Data

All told, we analyze nearly 1 billion voter file records.[12] This study is, to the best of our knowledge, the first to use such a large set of registered voter files to estimate turnout rates. Specifically, we analyze snapshots of the registered voter file from every state from the past eight federal elections. Each snapshot includes a record of every voter registered in the state at that time. These snapshots were each collected shortly after the election in question, offering an accurate picture of participants in each of the elections.[13] For the 2008–2012 elections, we rely on snapshots provided by Catalist; for the 2014–2022 elections, we use records from L2. There is no reason that obtaining data from different vendors would impact any results we present in the body of this report. One potential concern could arise from different racial predictions from the vendors, but in no case do we rely on proprietary racial categorization. Instead, in all years and from both vendors, we rely solely on either self-reported racial data or on consistent, open-source methodologies discussed below.[14]

We refrain from analyzing *registration* rates calculated from the voter files. Such files contain some amount of deadwood — that is, voters who are registered but no longer eligible to vote (perhaps because they have moved or passed away). If racial groups have different levels of deadwood, we would have biased registration rates. Moreover, states conduct voter list maintenance (the removal of ineligible voters) at different times. Comparing the total number of registrants in two states in the spring of an odd-numbered year might be less an indication of underlying registration rates than of the timing of this routine administrative list maintenance. Neither of these issues is likely to impact *turnout* rates estimated from the voter file. These records indicate whether each person actually cast a ballot. What's more, voters who participate in an election are unlikely to be removed from the rolls as part of systematic voter list maintenance the following spring, when our snapshots were collected: states generally remove individuals due to nonparticipation.[15]

Voters' Race and Racial Turnout Rates

Most states do not include self-reported racial identification in their voter files.[16] For these states, we use Bayesian Improved Surname Geocoding (BISG), an approach that incorporates two different data sources to predict each voter's race.[17] The first is the racial composition of a voter's neighborhood, in this case census block groups. The second is the racial distribution of surnames from the Census Bureau. Every 10 years, the Census Bureau publishes data on the racial identifications of Americans with different surnames. For instance, in the 2010 census, 92 percent of respondents with the last name Martinez identified as Latino, and 89 percent of respondents with the last name Wood identified as white. Using both data sources, BISG estimates the likelihood that a voter is Black, white, Latino, Asian, or "some other race."[18] BISG is widely used among academic researchers and has been accepted by courts as a valid basis for evaluating a number of concepts, including the presence of racially polarized voting.[19]

Throughout this report, we slightly modify the canonical version of BISG, which uses the racial characteristics of the total population (from the decennial census) of a voter's block group.[20] We use geographic population characteristics to estimate the characteristics of voters; thus, the more similar the geographic population we use is to the pool of registered voters, the better we can predict race. The total population can skew estimates where it is

different from the citizen voting-age population (CVAP) — for instance, in areas with large noncitizen immigrant populations. We therefore use the CVAP from the five-year American Community Survey (ACS) estimate ending with each election year as our target population for the BISG analyses. In the technical appendix accompanying this report, we show that using CVAP results in better estimates (in states with self-reported race) and that our primary results hold when using total or total adult population.

We calculate turnout rates by dividing the number of ballots cast by members of each racial group by the CVAP from the ACS five-year estimates ending in each election year.[21] The Census Bureau publishes CVAP at the block-group level, a low geographic level that roughly corresponds to neighborhoods. (The median block group had a population of 1,248 in 2021.)[22] In conjunction with the geocoded voter file, we produce detailed turnout estimates for very low geographic units across the nation.[23] We also aggregate up to higher geographic levels like counties and states.

Calculating turnout as the share of citizens of voting age in each racial group who participate — and not as the share of registered voters in each group — follows the definition provided by Bernard Fraga in his book, *The Turnout Gap*.[24] We calculate the turnout gap in the same way, by subtracting the turnout rate of each group from the turnout rate of white Americans.

Adjusting the Turnout Gap

In addition to looking at the raw turnout gap, we also present results weighting the gap by the nonwhite share of the population in each state. This lets us determine how much higher overall turnout would have been had nonwhite voters participated at the same rate as white voters and compare the gap's impact on statewide turnout across states with different racial characteristics. Such estimates rely on two measures. The first is the size of the racial turnout gap. The greater the distance between white and nonwhite turnout, the higher the weighted turnout gap. The second is the relative size of the nonwhite population in a given jurisdiction. Those where the population is less white will have a higher weighted turnout gap. Weighting the turnout gap allows us to compare the impact of the gap on statewide turnout in different sorts of states.

We do not mean to imply that large racial turnout gaps do not matter where minority populations are small. For example, Native American turnout rates are lower than those of other groups, a result of centuries of racially discriminatory policymaking.[25] However, the Native American population in most states is not large enough to depress overall statewide turnout. Different measures are clearly needed to capture the participatory implications of large turnout gaps on small populations. Despite this limitation, however, weighting the turnout gap offers a way of identifying the states where racial turnout gaps are meaningfully depressing overall turnout numbers.

We weight a jurisdiction's turnout gap by estimating the jurisdiction's racial turnout gap and multiplying it by the nonwhite share of the population. Consider, for example, a hypothetical state where white turnout is 60 percent, nonwhite turnout is 50 percent, and 20 percent of the CVAP is nonwhite. The turnout gap is 10 percentage points (60 percent – 50 percent), and the weighted gap is 2 percentage points (10 percentage point turnout gap × 20 percent nonwhite population share). In other words, statewide turnout in this state would have been 2 percentage points higher in the absence of the turnout gap.

II. Participation Rate Differences Across Time

In the analyses that follow, we examine how turnout rates and gaps have evolved since 2008. Data of this kind is not available prior to 2008, making that the earliest year for which voter file snapshots can be used on a nationwide scale. While the Obama presidency probably reduced racial turnout gaps early in our study period, our results indicate that the gap has widened ever since 2014, when a nonwhite presidential candidate was not temporarily reducing these disparities.

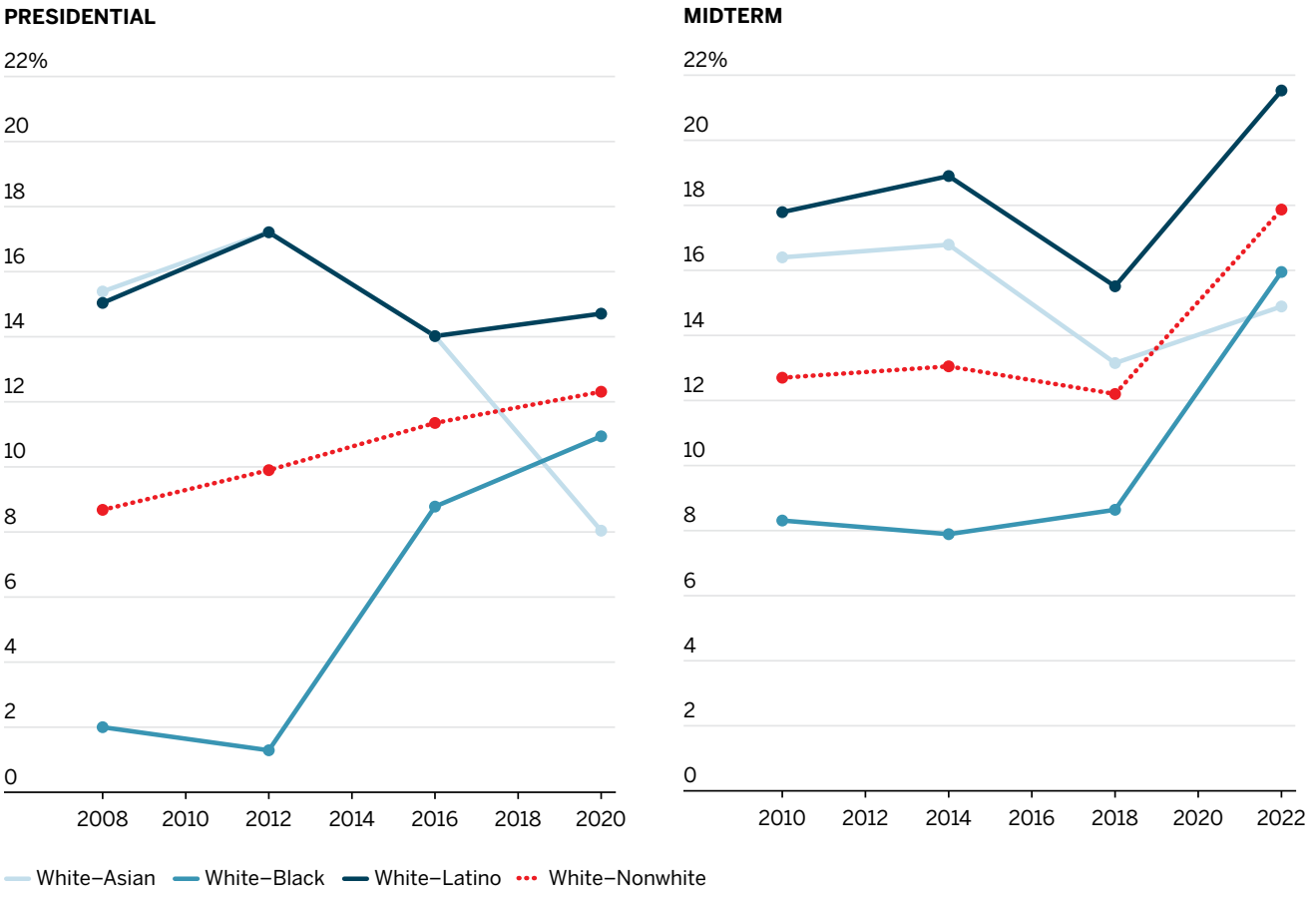
General Turnout Gap

Figure 1 plots the national turnout rates among Asian, Black, Latino, and white voters — the ethnic/racial groups for which BISG provides reliable estimates. As figure 1 makes clear, turnout for white and Black voters in the 2008 and 2012 elections, with Obama at the top of the ticket, reached near parity. While turnout rates for Asian and Latino voters lagged white and Black voters, the overall white–nonwhite turnout gap was narrower during these years than in the decade that followed.

As we discussed above, the majority of the Court in *Shelby County* pointed to the narrow turnout gaps in the 2008 and 2012 presidential elections to argue against the continued necessity of Section 5 of the Voting Rights Act. Of course, political science research has long established

FIGURE 1

Racial Turnout Gap, 2008–2022



that Black voters participate at higher rates when Black candidates are on the ballot; this, as much as anything else, was the likely explanation for the near parity in those years.[26] Figure 1 makes clear just how narrow the Court's argument was. In the 2010 election, when Section 5 was still in full force, the white–Black turnout gap was 8 percentage points — four times the size of the gap in 2008. By pointing only to presidential elections with a Black candidate, it focused on elections where factors unrelated to voting rights (temporarily) reduced the racial turnout gap.

While turnout rates have collectively improved since 2012, white turnout has increased the most: from the 2012 to 2020 presidential elections, white turnout rose by 10 percentage points while overall nonwhite turnout went up by less than 8 points. Similarly, from the 2014 to 2022 midterm elections, white turnout rose by 13 points while nonwhite turnout increased by only 8 points. Much of the increase in the gap was concentrated in 2022, perhaps due to the highly contentious round of redistricting leading into that year's election. All told, the white–nonwhite turnout gap increased from 10 points to 12 points between 2012 and 2020.

The shifts in national turnout rates among different racial groups raise many questions. Black voters, for instance, are generally concentrated in the Northeast and the South, while Latino and Asian communities are larger on the West Coast. Are the differences in racial turnout rates just *regional* differences? Are voters on the West Coast less likely to participate overall, regardless of their race? Figures 2 and 3 plot the turnout rates for each racial group within each of the country's broadly defined regions: Northeast, South, Midwest, and West.[27]

Figures 2 and 3 make clear that most of the racial turnout gap is not explained by regional differences. Within each region, white turnout exceeded that of other groups in every year apart from the 2008 and 2012 elections in the South, where Black turnout slightly exceeded white turnout.[28]

Americans with less education, less money, and fewer resources are less likely to participate in elections.[29] The opportunity cost of participating can be higher for Americans with fewer resources.[30] Traveling to a polling place, for instance, is harder for people without access to a car; the time cost might be compounded for an individual required to take unpaid time off work to vote. Further, individuals juggling multiple jobs or child-care responsibilities, or who face other demands on their time, might forget to register to vote prior to the deadline. Policies that make it more difficult to vote fall hardest on the people with the fewest resources to dedicate to voting.

Economically disadvantaged voters might also abstain from participating because of alienation from government and a political system that in many ways fails to reflect their policy preferences.[31] Regressive policies, such as campaign finance rules that favor wealthy donors and corporate entities or aggressive partisan gerrymandering, send messages to voters that politicians do not care about their needs. As Soss and Jacobs observe, policies that do not address voters' pressing challenges can "foster atomized publics with little sense of what they have in common and at stake in politics and government."[32] The same is true when voters think of the government as something that happens *to*, and not *with*, them. In some communities, for example, a constant and aggressive police presence teaches citizens that government is something imposed on them, not something that they can control.[33]

As a result of centuries of racially discriminatory policymaking, including when only white people were permitted by law to vote or make policy, racial and ethnic minorities are over-represented in populations where economic and other social precarities are common.[34] Given that social disadvantages can undermine democratic participation, do socioeconomic factors explain the racial turnout gap? They do explain some of it: turnout in the bottom income quartile in 2022 was 32 percent, compared with 58 percent in the top income quartile. The bottom quartile was also considerably less white (the CVAP was 53 percent white compared with 72 percent white in the top quartile). But we find that there are turnout gaps between racial groups living in socioeconomically similar neighborhoods, which indicates that these characteristics can't entirely explain such gaps.

While the voter file does not include information about voters' economic status or education, ACS five-year estimates from the Census Bureau reveal the income and education characteristics of the neighborhoods in which they live. We break out turnout gaps by census tract in figures 4 and 5 to test whether neighborhood characteristics influence turnout.[35] We first plot the turnout gap for different races in neighborhoods based on the median household income, with the first quartile being the lowest-income neighborhoods and the fourth quartile being the highest.

Figure 4 makes immediately clear that the turnout gap is not driven simply by the fact that voters of color live in lower-income neighborhoods: a persistent turnout gap has grown steadily in each income quartile over the past decade. Outside the highest-income areas, the white–Black turnout gap closed prior to 2014, though it has subsequently grown. While white–nonwhite turnout rates approached parity in the early parts of the past decade among voters living in low-income neighborhoods, the same is not true in high-income neighborhoods, which have consistently had the largest turnout gaps. The white–nonwhite turnout gap exceeded 15 percentage points in 2022's midterm election among voters living in the highest-income parts of the country.[36]

FIGURE 2

Presidential Election Turnout Rates by Race and Region, 2008–2020

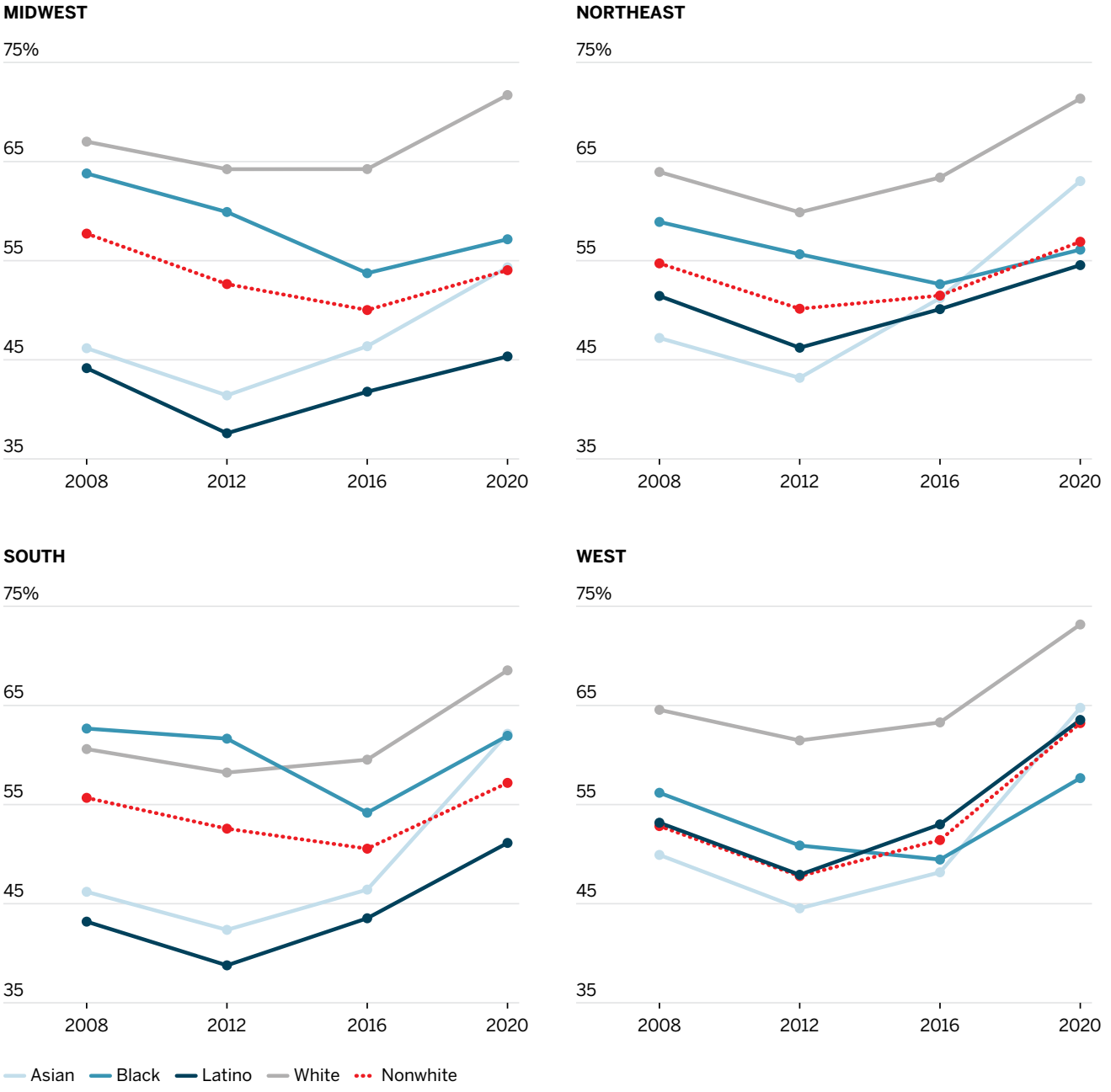


FIGURE 3

Midterm Election Turnout Rates by Race and Region, 2010–2022

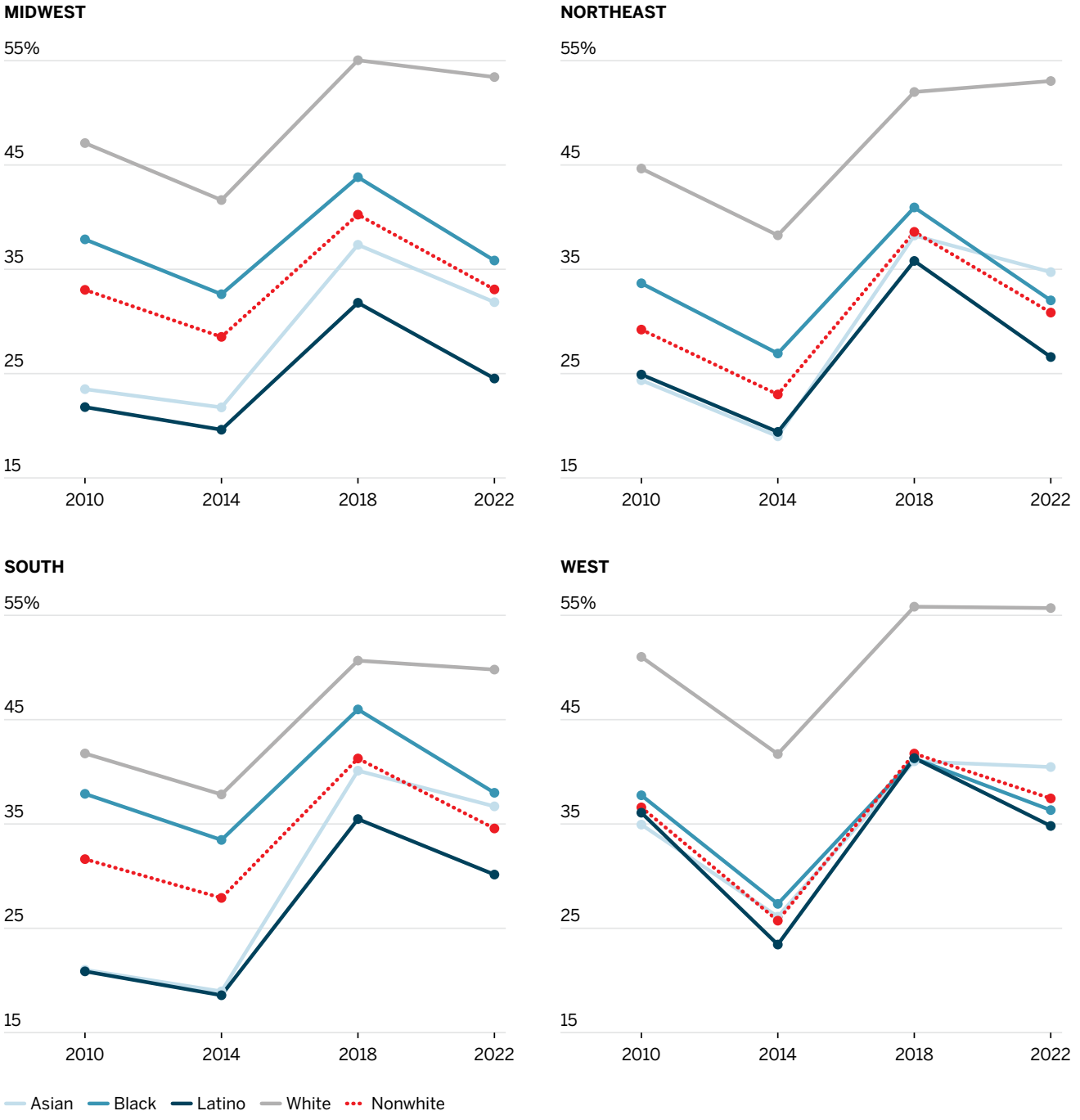
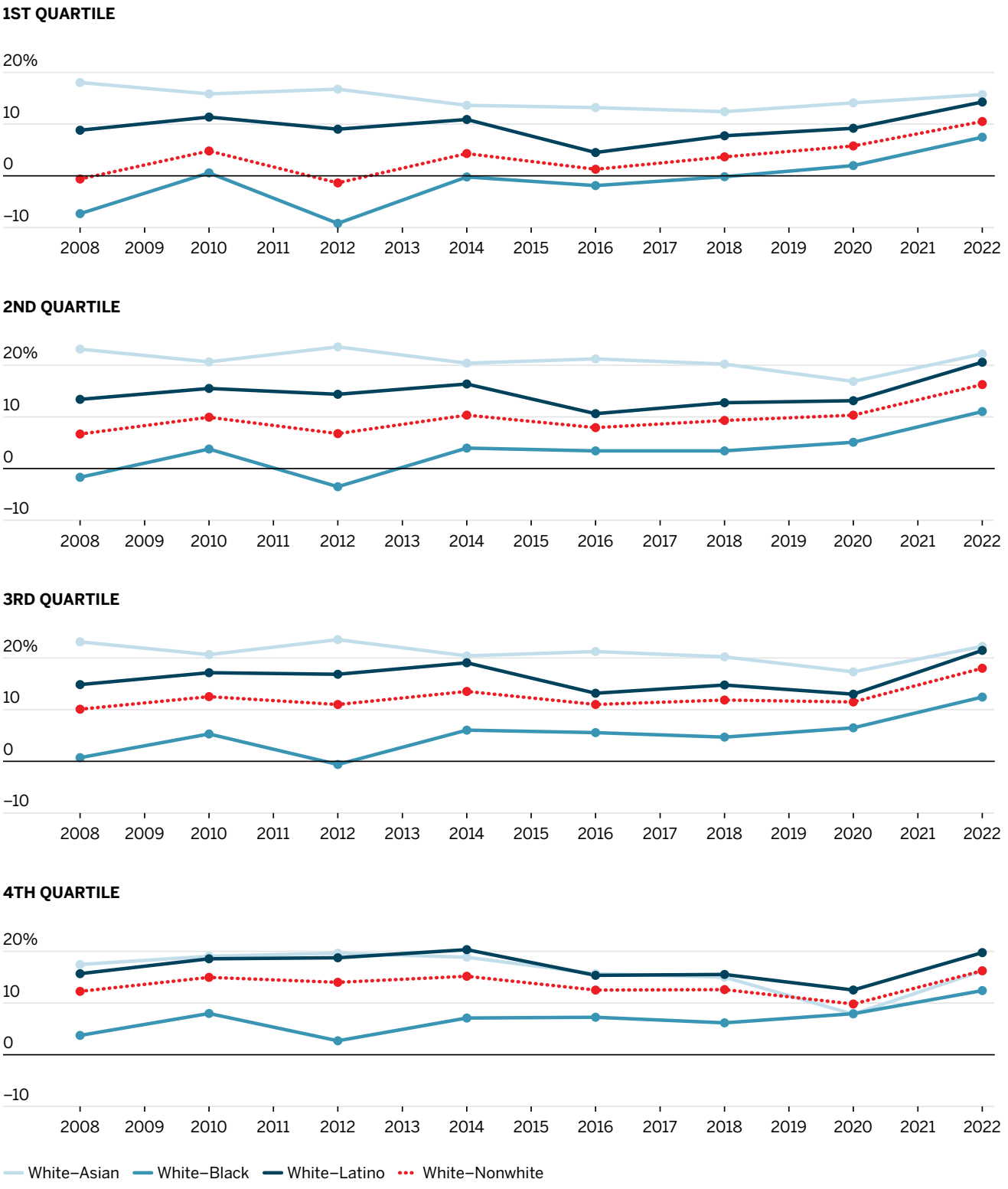


FIGURE 4

Racial Turnout Gap Across Income Quartiles, 2008–2022



The trends in the white–Asian turnout gap, broken out by income, tell a different story. As figure 1 shows, the overall white–Asian turnout gap narrowed from 14 points in 2016 to just 8 points in 2020. Figure 4 shows, however, that increased participation rates were largely concentrated among Asian voters living in high-income neighborhoods. For Asian Americans living in the lowest-income neighborhoods, the gap grew between 2016 and 2020.

Neighborhood estimates of education level similarly cannot fully explain the turnout gap, as seen in figure 5. When we split tracts into quartiles based on the proportion of the adult population that has at least a bachelor's degree, turnout gaps remain for all groups. Similar to the trends across income level, the white–nonwhite turnout gap is largest among voters living in the highest-educated neighborhoods. And, while the gaps may be smaller in lower-education neighborhoods, those are also the neighborhoods where the gap is growing most rapidly. Further, reductions in the white–Asian turnout gap are almost entirely concentrated among voters in the highest-educated neighborhoods. While the white–Asian gap is substantially larger than that of other racial and ethnic groups among voters living in all but the most educated areas, it has consistently been close to or smaller than the white–Latino gap in high-education neighborhoods.

Weighted Turnout Gaps

Figure 6 shows how the turnout gap impacted statewide turnout in the 2020 presidential (left-hand panel) and 2022 midterm (right-hand panel) elections. We break states out according to whether they were entirely, partially, or not covered by the preclearance condition of the Voting Rights Act prior to *Shelby County*. Nationally, turnout would have been 4 percentage points higher in 2020 and 6 percentage points higher in 2022 if nonwhite voters had participated at the same rate as white voters. These figures are particularly striking considering that turnout in these elections was at near-record highs; in fact, turnout in 2020 was the highest in at least a century. And yet, had voters of color participated at the same rates as white voters in 2020, 9.3 million more ballots would have been cast, and in 2022 that figure would have been 13.9 million. White turnout exceeded nonwhite turnout in every single state except Hawaii in 2022.

Figure 6 indicates that the weighted turnout gap was not uniformly distributed across states. It was largest in Alaska in 2020 and Florida in 2022. New Mexico and Texas had the second- and third-largest gap in both elections. These states are home to large nonwhite populations, so their presence at the top is unsurprising given that the relative size of the nonwhite population directly contributes to the influence of the racial turnout gap on overall participation rates. Another striking feature of this figure, however, is the concentration of high weighted gaps in states in the West; generally speaking, the impact of the racial turnout gap on statewide turnout was larger in states where Latinos make up a large share of the nonwhite population. This corresponds with results presented in the previous section: although Latino turnout rates were not markedly different in different regions, Latinos make up a larger share of the population in the West, exerting a larger influence on statewide turnout in those states.

Figure 6 also makes clear just how distinct the states formerly covered by Section 5 of the Voting Rights Act remain. The formerly covered states have large nonwhite populations and large turnout gaps, leading to some of the largest statewide turnout distortions in the nation. Put differently, a decade after *Shelby County*, the turnout gap continues to have a disproportionate impact in precisely the parts of the country that were once covered due to their histories of racially discriminatory voting practices.

Figures 7 and 8 break down the weighted turnout gaps in 2020 and 2022, respectively, based on which group formed the largest nonwhite racial or ethnic group in the state. The weighted gap is consistently highest in states where Latinos were the largest nonwhite group. Once again, the impact of the racial turnout gap on statewide participation rates is highest in the parts of the country that were covered under Section 5 of the Voting Rights Act. (In these charts, "other" includes all states where a group other than Black or Latino Americans is the single largest nonwhite group.)

Figure 9 shows how the weighted gap has evolved over the past 15 years. We break the trends out into four major regions. The figure indicates that the weighted gap has grown nearly everywhere, just as the raw racial turnout gap has. By way of reminder, the growth in the weighted gap is driven both by changes in the turnout gap and by changes in the nonwhite share of the population; if the turnout rate is constant but the nonwhite share of the population grows, the effect of the turnout gap on statewide turnout increases.

FIGURE 5

Racial Turnout Gap Across Education Quartiles, 2008–2022

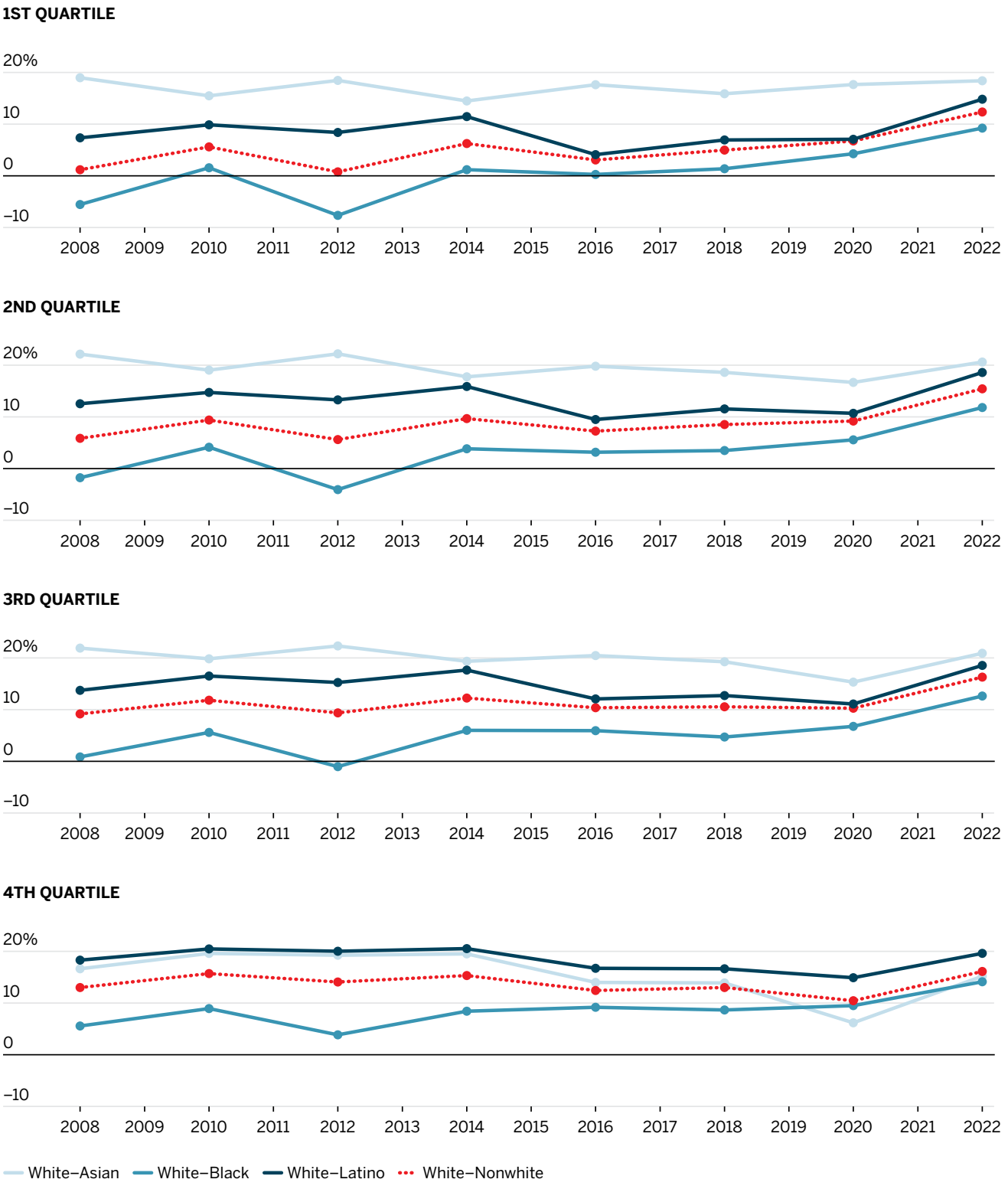


FIGURE 6

Weighted Turnout Gap, 2020–2022

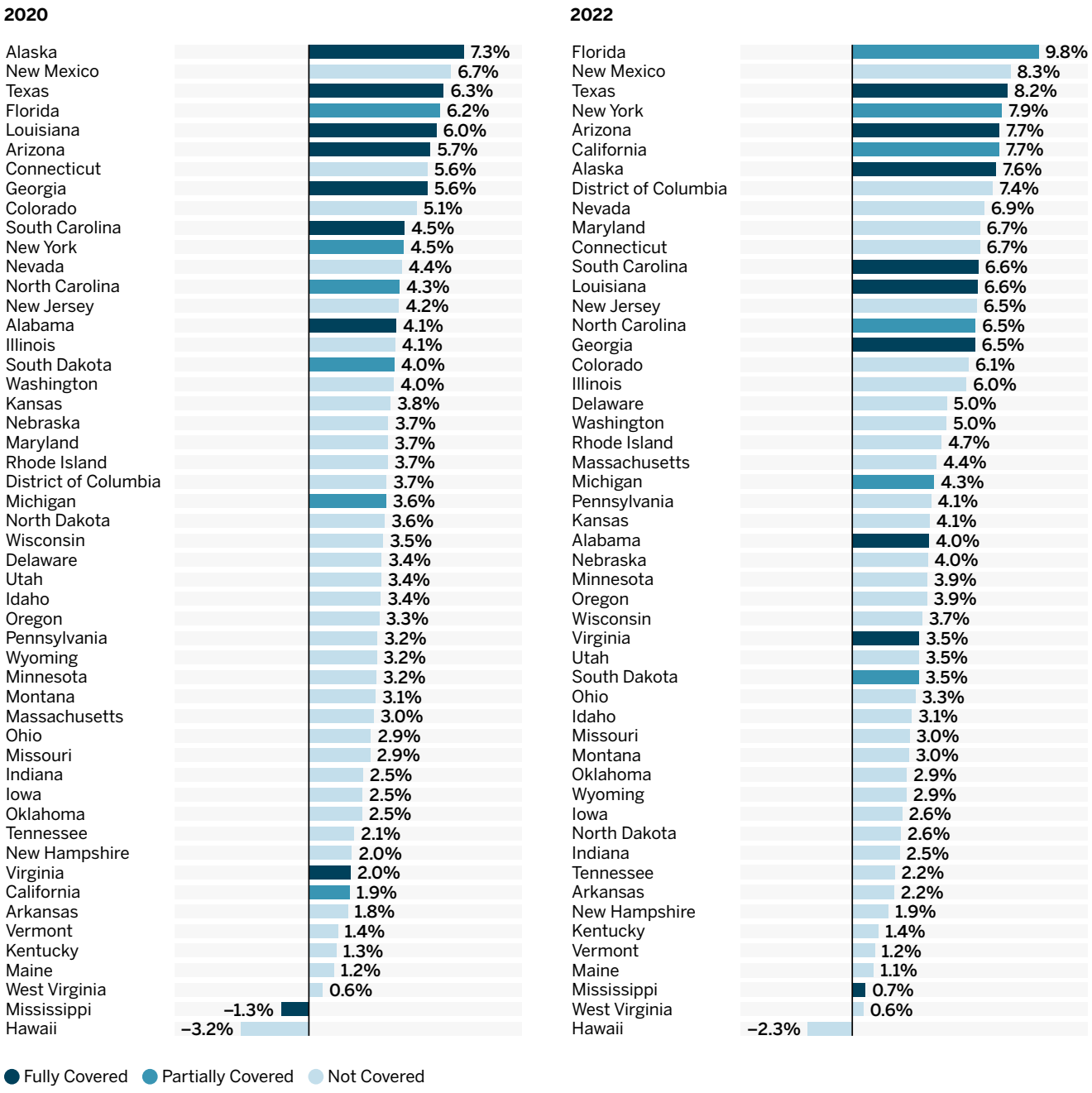


FIGURE 7

Weighted Turnout Gap by Largest Nonwhite Racial or Ethnic Group, 2020

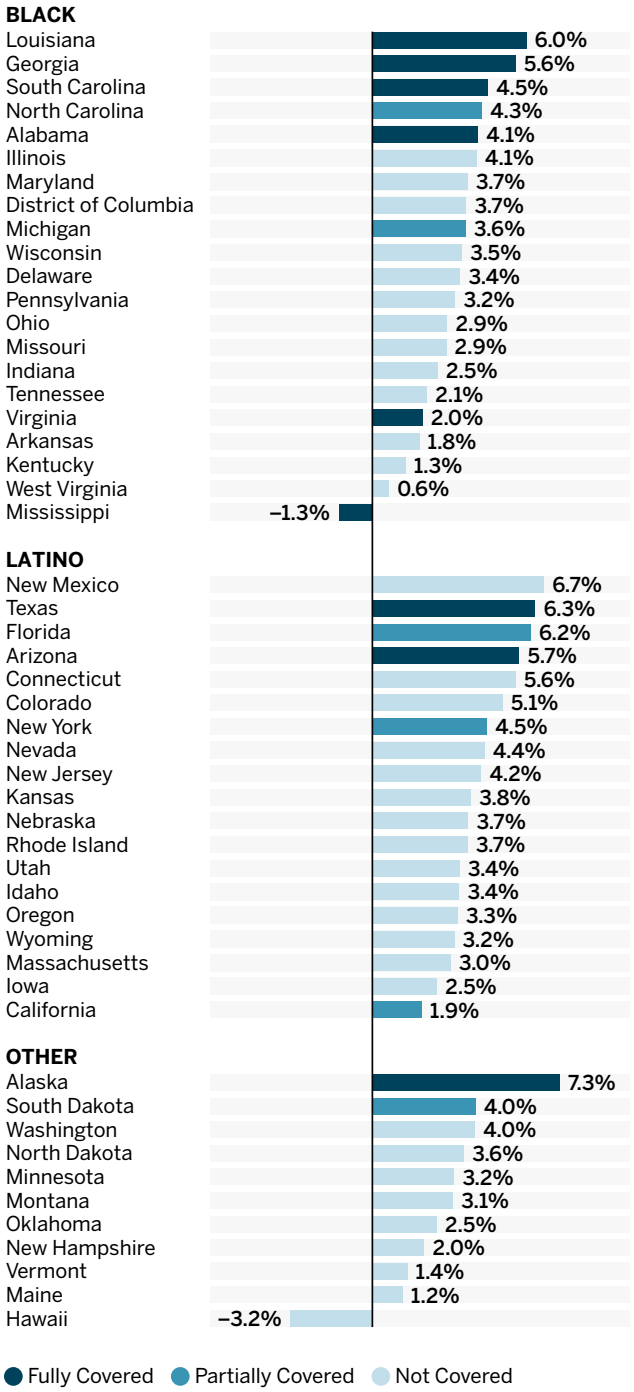


FIGURE 8

Weighted Turnout Gap by Largest Nonwhite Racial or Ethnic Group, 2022

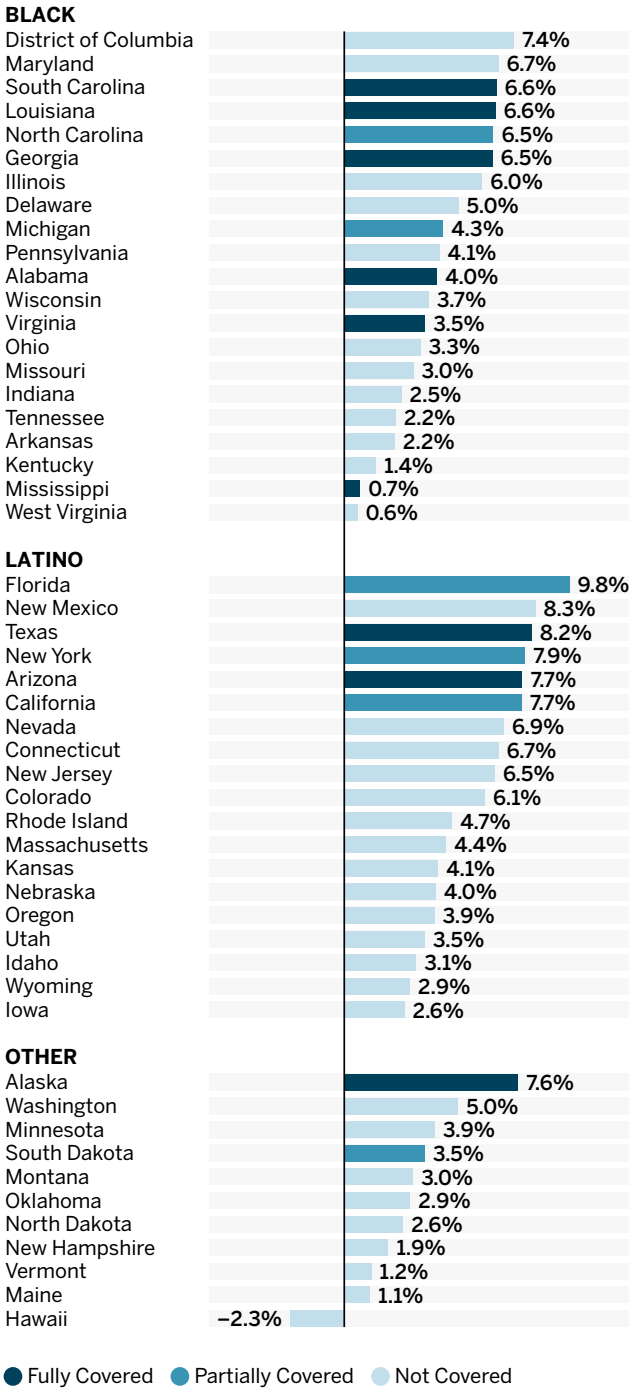
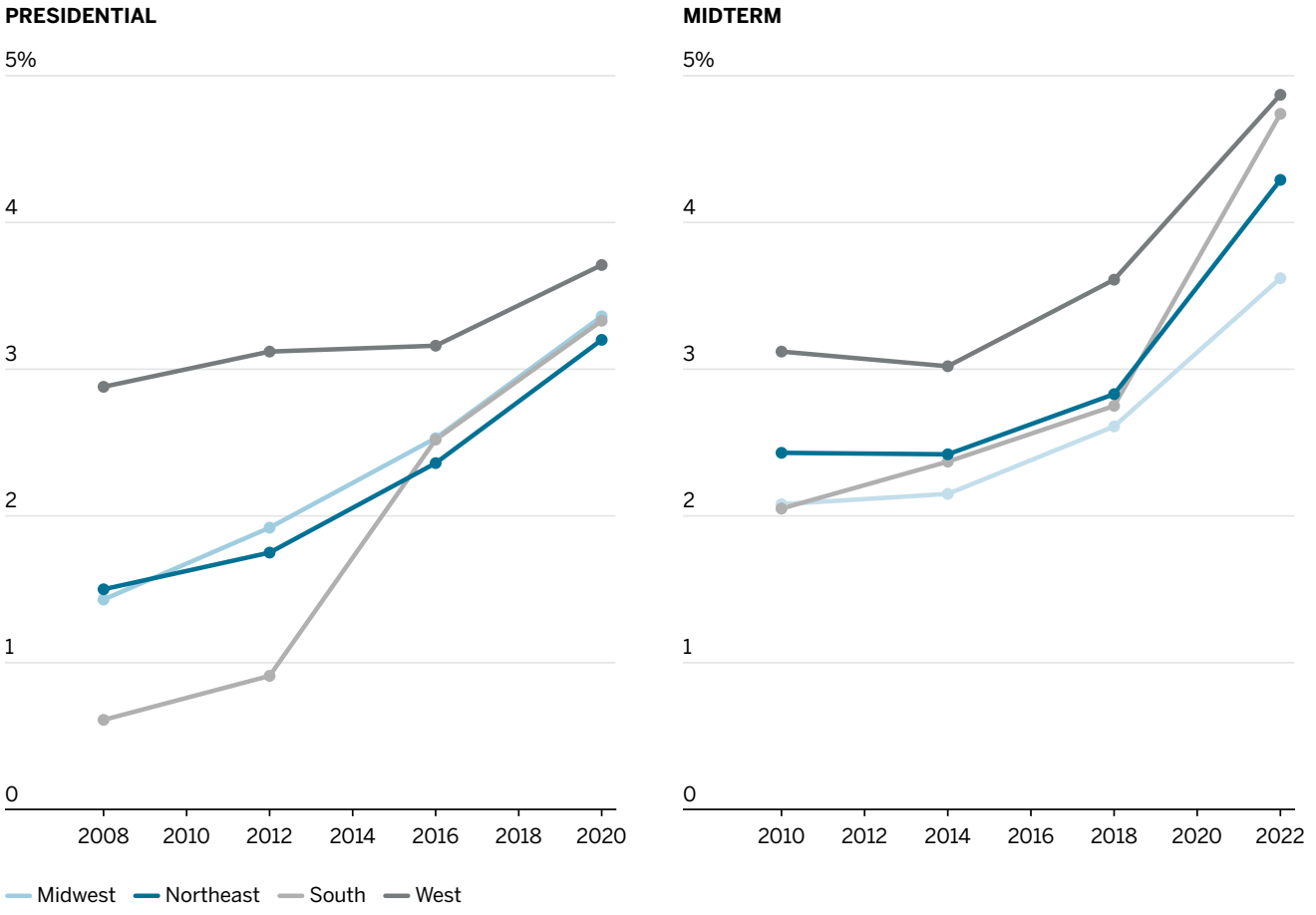


FIGURE 9

Weighted Turnout Gap by Region, 2008–2022



III. The Effects of *Shelby County v. Holder*

Prior to 2013, states and localities with a history of racial discrimination in their voting practices were required to clear any changes to their electoral policies before they could go into effect. Over the past decade, since the Supreme Court suspended preclearance, nearly 30 laws that make voting more difficult have gone into effect in states formerly covered under Section 5.[37]

These formal changes in laws may be just the tip of the iceberg. County-level administrators have a great amount of discretion over how elections are run, deciding such things as the movement or even closure of polling places.[38] Such discretionary modifications are not reflected in changes to statewide voting law, but they would have been subject to preclearance in covered jurisdictions prior to the *Shelby County* decision.

Because jurisdictions are no longer required to report and submit these changes to the federal government for analysis of their potentially discriminatory effects, researchers have struggled to assess the total impact this Supreme Court decision has had on voters of color. By evaluating the decision's effects on the racial turnout gap, we are able to provide at least one measure that necessarily takes account of *all* changes in voting, whether statutory or otherwise. Our unique data set allows us to conduct this analysis for the first time.

As we showed in the previous sections, places formerly covered by Section 5 had the highest weighted turnout gaps in 2020 and 2022. But that doesn't necessarily prove that the elimination of the preclearance regime *caused* the gaps in these places to grow; it's possible that these places already had higher than average turnout gaps prior to 2013, for instance, or that the gaps in places with large Black populations would have increased the most over the past decade even if the preclearance system had continued.

To test the effect of the *Shelby County* decision more directly, we calculate the white–nonwhite and white–Black turnout gap for every county in the country for each election between 2008 and 2022.[39] But the counties formerly covered by Section 5 differed socioeconomically in important ways from the rest of the country.[40] They were, for instance, on average 16.7 percent Black, compared with just 3.4 percent for non-covered counties. Covered counties voted for Barack Obama at higher rates, and were also younger, than uncovered counties. Because of these differences, we might expect the turnout gap to evolve in formerly covered counties in the post–*Shelby County* period in distinct ways from the rest of the country. Take, for instance, the Black share of the population. Given our expectation that Obama's candidacy reduced the white–Black turnout gap, we would expect the turnout gap to grow the most quickly in the post-Obama era in areas with large Black populations. Put differently, there might have been forces other than *Shelby County* disproportionately increasing the turnout gap in formerly covered jurisdictions.

To account for the differences between covered and non-covered counties, we use a tool called entropy balancing. This lets us weight the counties that were not covered so that they resemble the covered ones, based on 2012 (that is, pre-*Shelby County*) characteristics. For a much more detailed discussion of our methodology, a balance table, and various robustness checks, see the appendix.

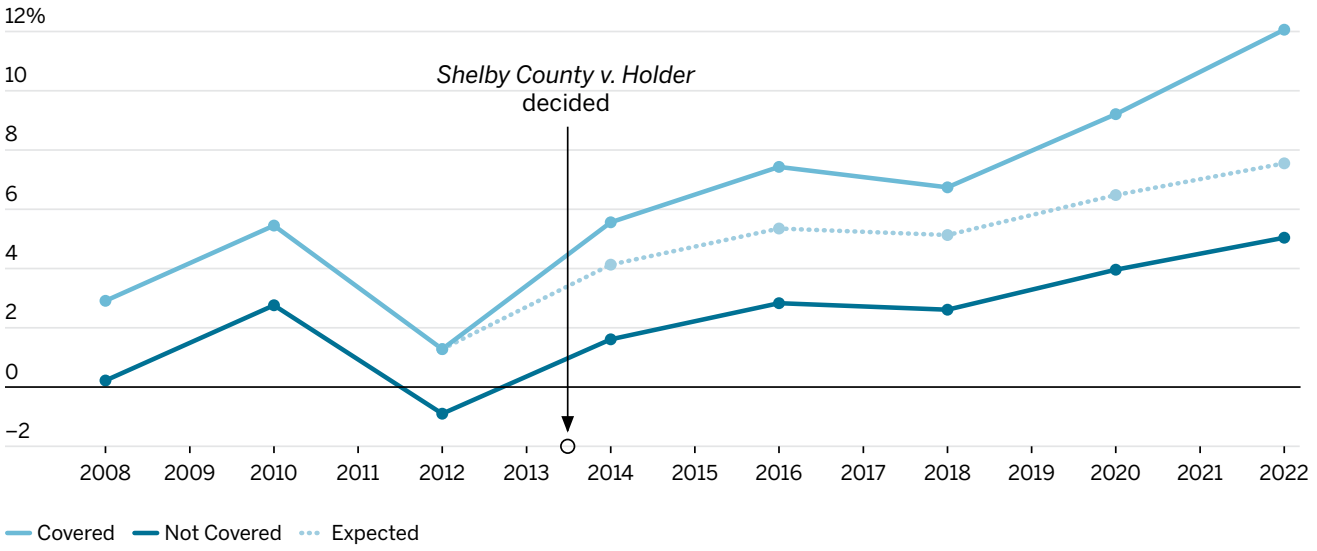
Figure 10 plots the trends in the white–Black turnout gap over time for counties covered under Section 5 and the (weighted) ones that were not. The white–Black gap before *Shelby County* was more than 3 points higher in covered counties than in counties that were not covered. By way of reminder, the Supreme Court wrote in *Shelby County* that the turnout gaps in formerly covered jurisdictions appeared to be in line with the rest of the country. While there was some truth to that point, it ignored the important socioeconomic differences between this region and the rest of the country. Figure 10 indicates that — after accounting for these differences — conditions in Section 5 jurisdictions were considerably worse than in the rest of the country even before *Shelby County*.

While the figure visually indicates that the turnout gaps might have grown more in places formerly covered by Section 5 than in others, *Shelby County* is clearly not the sole driver of the increasing turnout disparities. That's not necessarily surprising: as discussed above, new restrictive voting laws have gone into effect all around the country over the past decade, not only in formerly covered states, and this could be responsible for some of the upward trends in the gap.

However, the Supreme Court decision could be exacerbating underlying trends. To test this possibility, we use a "difference-in-differences" design.[41] We begin from the assumption that the turnout gaps in covered and non-covered counties would have evolved in parallel if the Court hadn't invalidated Section 4b, net of controlling for other relevant characteristics. The plausibility of this assumption is bolstered by the fact that, as figure 10 shows, the gaps went up and down in virtual lockstep *prior* to 2013.

FIGURE 10

White–Black Turnout Gap Time Series



Note: Uncovered counties entropy balanced using the following covariates: population, share white, share Black, median income, median age, share with bachelor's degree or higher, and 2012 Obama vote share.

This doesn't mean that the gaps in the two sets of counties would have been the same; as figure 10 makes clear, the formerly covered counties had higher gaps even prior to *Shelby County* (once we weighted the other counties appropriately). If the post–*Shelby County* differences between covered and non-covered counties increased to a great enough extent, we could conclude that *Shelby County* had a causal impact on the turnout gap.

Our statistical models (which include county and year fixed effects) indicate that *Shelby County* caused a statistically significant increase in both the white–Black and the white–nonwhite turnout gaps. In the non-covered counties, the white–nonwhite and white–Black turnout gaps grew by 5 and 6 percentage points between 2012 and 2022, respectively; in the covered counties, however, the comparable figures were 9 and 11 points, respectively. In other words, by 2022, the white–nonwhite turnout gap grew about 4 points larger and the white–Black gap 5 points larger in the formerly covered counties than they would have if *Shelby County* hadn't been handed down. They grew at a substantially quicker pace than similar, non-covered counties. Over the post-treatment period as a whole, the average treatment effect on the treated counties was about 2 points, which is statistically significant at the 99 percent confidence level.

In addition to these *overall* effects, we also conclude that the effects of *Shelby County* were largest in exactly the sorts of counties we would expect. We start from the observation that *Shelby County* could have had different effects in different sorts of counties. Many counties were fully covered under Section 5 of the Voting Rights Act; any changes to their local election practices needed to be precleared by the federal government. There were, however, other counties that were not covered by Section 5, but where the decision might still have had an impact: non-covered counties in states that were partially covered by Section 5. That's because the Supreme Court ruled in *Monterey County v. Lopez* that all *statewide* voting policies were subject to review if even a single county in the state was covered by Section 5.[42] In Florida, for instance, only five counties were formally covered by preclearance. Nevertheless, Section 5 blocked the state's 2002 House district maps. These uncovered counties in partially covered states could therefore make local decisions without getting preclearance from the federal government, but state policies impacting the administration of elections in these counties were subject to such approval. Because *Shelby County* didn't impact these uncovered counties as much, we would expect the decision to have a muted effect in these places.

Table 1 indicates that the effect of *Shelby County* was indeed muted in counties that were not covered by Section 5 but were in partially covered states. In fact, the coefficients on State Covered × Post *Shelby County* are not statistically significant in the white–nonwhite gap model. We do, however, find that *Shelby County* meaningfully increased the turnout gaps in counties where both state *and* local practices were subject to preclearance.

Our second extension deals with Section 5 objection letters from the years prior to *Shelby County*. Before

Section 4b was invalidated, localities would receive an "objection letter" from the federal government if a proposed change was not cleared under the preclearance condition. Put differently, these objection letters identified policies with racially disparate impacts and stopped them from going into effect. We would expect that *Shelby County* would have a larger effect in counties that tried to enact a racially regressive policy in the years when they were still covered under Section 5 of the Voting Rights Act. To avoid the possibility that objection letters are simply identifying the counties that were directly covered by Section 5, we do not include the uncovered counties in partially covered states in this analysis (these counties did not need to preclear changes and thus would not have received objection letters).

Table 2 indicates that this was the case. *Shelby County* did increase the white–nonwhite turnout gap even in counties without an objection letter. But the gaps went up considerably more in the counties that did have an objection letter: by an additional 1.8 points (for the white–Black gap) and 1.6 points (for the white–nonwhite gap).

That the causal effect of *Shelby County* on the white–nonwhite turnout gap is significant only in the fully covered counties, and not in the uncovered counties in partially covered states, underscores the importance of local election administration for participation rates. So too does our finding that the gap increase was concentrated in counties that tried to implement discriminatory changes under Section 5. County-level coverage, not constraints on statewide policy, appear to have been the drivers of post-*Shelby County* turnout gap increases.

In the appendix, we show that the finding that *Shelby County* increased the turnout gaps is robust to many robustness checks.

TABLE 1

Shelby County's Larger Impact in Counties Directly Covered by Section 5

	WHITE–NONWHITE	WHITE–BLACK
State Covered × Post *Shelby County*	−0.006	0.016*
	(0.004)	(0.007)
State and County Covered × Post *Shelby County*	0.032*	0.011*
	(0.004)	(0.005)
County fixed effects	✓	✓
Year fixed effects	✓	✓
Num. obs.	24,278	18,027
R2	0.835	0.775
R2 adj.	0.811	0.743

* $p < 0.05$

Note: Treatment status in the base period accounted for by the county-level fixed effects. Standard errors clustered by county.

TABLE 2

Shelby County's Larger Impact in Counties with Objection Letters

	WHITE–NONWHITE	WHITE–BLACK
County Covered × Post *Shelby County*	0.018*	0.012
	(0.006)	(0.012)
County Covered with Objection Letter × Post *Shelby County*	0.016*	0.018*
	(0.005)	(0.006)
County fixed effects	✓	✓
Year fixed effects	✓	✓
Num. obs.	20,926	15,235
R2	0.828	0.737
R2 adj.	0.803	0.699

* $p < 0.05$

Note: Treatment status in the base period accounted for by the county-level fixed effects. Standard errors clustered by county.

Conclusion

If the United States wants to make good on its foundational claims of a democratic system of governance open to all citizens, it must find ways to close the racial turnout gap. Wider now than at any point in at least the past 16 years, the gap costs millions of votes from Americans of color all around the country. Perhaps most worrisome of all, the gap is growing most quickly in parts of the country that were previously covered under the preclearance regime of the 1965 Voting Rights Act until the disastrous *Shelby County* ruling.

This report gives us a better look at the contours of the racial turnout gap than ever before and throws the severity of the problem into stark relief. We urge scholars to continue to study the myriad drivers of the turnout gap, from statewide policies to local election practices, from language barriers to disaffection from the criminal justice system; without a full understanding of the causes, we cannot develop solutions that will permanently ensure political representation for Americans of all races.

Importantly, as we've shown, socioeconomics can't fully explain the gap; the gap remains in high- and low-income neighborhoods alike. We do, however, prove one of the causes of the increasing racial turnout gap: the Supreme Court's ruling in *Shelby County*. There is no doubt that the end of federal preclearance in regions with histories of racial discrimination increased the racial turnout gap. We argue that this is due to changes both in state policy and in local election practices. A fully functional Section 5 of the Voting Rights Act would improve conditions in areas where racial discrimination remains in voting policy. We urge Congress to pass the John R. Lewis Voting Rights Advancement Act to update and restore the preclearance regime for the 21st century.

Endnotes

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

2 Lawrence Bobo and Franklin D. Gilliam, "Race, Sociopolitical Participation, and Black Empowerment," *American Political Science Review* 84, no. 2 (1990): 377–93, https://doi.org/10.2307/1963525; and Ebonya Washington, "How Black Candidates Affect Voter Turnout," *Quarterly Journal of Economics* 121, no. 3 (2006): 973–98, https://doi.org/10.1162/qjec.121.3.973.

3 Anna Baringer, Michael C. Herron, and Daniel A. Smith, "Voting by Mail and Ballot Rejection: Lessons from Florida for Elections in the Age of the Coronavirus," *Election Law Journal: Rules, Politics, and Policy* 19, no. 3 (2020): 289–320, https://doi.org/10.1089/elj.2020.0658; Bernard L. Fraga and Michael G. Miller, "Who Do Voter ID Laws Keep from Voting?," *Journal of Politics* 84, no. 2 (2022): 1091–1105, https://doi.org/10.1086/716282; John Kuk, Zoltan Hajnal, and Nazita Lajevardi, "A Disproportionate Burden: Strict Voter Identification Laws and Minority Turnout," *Politics, Groups, and Identities* 10, no. 1 (2022): 126–34, https://doi.org/10.1080/21565503.2020.1773280; and Enrijeta Shino, Mara Suttmann-Lea, and Daniel A. Smith, "Determinants of Rejected Mail Ballots in Georgia's 2018 General Election," *Political Research Quarterly* 75, no. 1 (2022): 231–43, https://doi.org/10.1177/1065912921993537.

4 Kevin Morris and Peter Miller, "Authority After the Tempest: Hurricane Michael and the 2018 Elections," *Journal of Politics* 85, no. 2 (2023): 405–20, https://doi.org/10.1086/722772; and Fraga and Miller, "Who Do Voter ID Laws Keep from Voting?"

5 Jonathan Brater et al., *Purges: A Growing Threat to the Right to Vote*, Brennan Center for Justice, 2018, https://www.brennancenter.org/our-work/research-reports/purges-growing-threat-right-vote.

6 David Wasserman et al., "2020 Popular Vote Tracker," *Cook Political Report*, 2020, https://www.cookpolitical.com/2020-national-popular-vote-tracker.

7 Further, by putting the burden on advocates to monitor changes in policy and bring Section 2 cases in all 50 states, the decision made it more likely that a change in a non-covered jurisdiction would go unnoticed or unchallenged. Section 2 prohibits any electoral practice that minimizes the voting strength of a racial or ethnic group.

8 J. Morgan Kousser and others have documented the central role that the federal government must play in promoting and safeguarding multiracial democracy in the United States. See J. Morgan Kousser, *Colorblind Injustice: Minority Voting Rights and the Undoing of the Second Reconstruction* (Chapel Hill, NC: University of North Carolina Press, 2000), https://uncpress.org/book/9780807847381/colorblind-injustice; and Jacob Grumbach, *Laboratories Against Democracy: How National Parties Transformed State Politics* (Princeton, NJ: Princeton University Press, 2022), https://doi.org/10.2307/j.ctv2hbr28q.

9 Stephen Ansolabehere, Bernard L. Fraga, and Brian F. Schaffner, "The Current Population Survey Voting and Registration Supplement Overstates Minority Turnout," *Journal of Politics* 84, no. 3 (2022): 1850–55, https://doi.org/10.1086/717260.

10 Ted Enamorado and Kosuke Imai, "Validating Self-Reported Turnout by Linking Public Opinion Surveys with Administrative Records," *Public Opinion Quarterly* 83, no. 4 (2019): 723–48, https://doi.org/10.1093/poq/nfz051.

11 These voter files do not indicate for *whom* someone voted; ballots are secret in the United States. Instead, they indicate whether someone voted and, in some states and years, how the ballot was cast (in person or via the mail).

12 The snapshots we leverage collectively have 1.5 billion records; this report, however, looks only at the individuals who voted in a particular federal general election.

13 In the technical appendix accompanying this report, we report the date of each snapshot. Though the voter files are the best available data, they are not perfect. Voter files are constantly in flux. For instance, it can take states a handful of months to record participation in the registered voter file. Moreover, states are constantly "cleaning" their voter files and removing ineligible voters. By the time a complete set of participants is included in the file, other voters may have died, moved away, or been removed from the file for another reason. Thus no 100 percent accurate voter file exists that captures all participants and includes all individuals registered as of a given election. See Seo-young Silvia Kim and Bernard Fraga, "When Do Voter Files Accurately Measure Turnout? How Transitory Voter File Snapshots Impact Research and Representation," American Political Science Association, APSA Preprints, Version 1, September 14, 2022, https://doi.org/10.33774/apsa-2022-qr0gd.

14 In many states, voters' state identification numbers are reported by both Catalist and L2. Using the state ID number, along with voters' house number and ZIP code, we identify 94 million voters who did not move between the 2012 and 2014 elections. The correlation coefficients (an estimate of the "fit" of these data sets) on the predicted probability of being white, nonwhite, Black, or Latino are all 0.97 (it is 0.93 for probability of being Asian). Given that voters' racial estimates are updated each year as the racial composition of the citizen voting-age population in an assigned block group changes, we would expect a correlation coefficient approaching, but not exactly, 1. As such, we conclude that the files are highly comparable and that combining these files improves the power of our analyses and does not bias our results. In addition, the parallel trends assumption (that is, that the turnout gaps in covered and non-covered counties would have evolved in parallel if the Court hadn't invalidated Section 4b) means that changing data vendors does not bias our causal estimates of the effect of *Shelby County* on the turnout gap, so long as differences between vendors are unrelated to coverage status. Among this set of voters, the average change in the predicted probability of being white decreased by 0.5 percentage points for voters in covered and uncovered states alike between 2012 and 2014, indicating that our results are not being driven by the crossover from Catalist to L2 in 2014.

15 According to the National Voter Registration Act, voters can be removed from the rolls only under specific circumstances if the state doesn't have personalized information indicating a change in eligibility. Generally, voters must fail to respond to a postcard and fail to participate in two federal election cycles before they can be removed. Thus, many individuals removed after a given election will be those who did not vote. For a detailed discussion of how list maintenance impacts voter file data, see Kim and Fraga, "When Do Voter Files Accurately Measure Turnout?"

16 The exceptions are Alabama, Florida, Georgia, Louisiana, North Carolina, and South Carolina.

17 Kosuke Imai and Kabir Khanna, "Improving Ecological Inference by Predicting Individual Ethnicity from Voter Registration Records," *Political Analysis* 24, no. 2 (2016): 263–72, https://doi.org/10.1093/pan/mpw001.

18 Following BISG's categorization, we consider Latino or Hispanic voters to be nonwhite in all cases. Throughout our analyses, we aggregate up the posterior probabilities rather than assigning voters a discrete race. Thus, if we had 10 voters who were each predicted to be Black with 40 percent certainty and white with 60 percent certainty, we would assume (in aggregate) that we had four Black and six white voters. Discrete assignment would assume that we had 10 white voters,

the most likely racial category for each of them. It is worth noting that the surname data provided by the Census Bureau and incorporated into the BISG algorithm does not report whether an individual is "some other race." Instead, the developers of the BISG algorithm combine the "Non-Hispanic American Indian and Alaska Native Alone" and "Non-Hispanic Two or More Races" to create the "some other race" category. Because the "other" category returned by BISG does not correspond exactly to "other" as defined in, e.g., the Census Bureau's CVAP data, at no point do we present turnout estimates of the "other" category. Wherever we present the overall nonwhite turnout rates (or the white–nonwhite gap), "nonwhite" is calculated by subtracting the estimated number of white ballots (or CVAP) from the total number of ballots (CVAP), thus sidestepping this issue.

19 Christian R. Grose, Expert Report of Christian R. Grose, Ph.D., La Union Del Pueblo Entero et al. v. Gregory w. Abbott et al., No. 5:21-CV-0844-XR (W.D. Tex 2022); Loren Collingwood, Expert Report of Loren Collingwood, Ph.D., LULAC Texas et al. v. John Scott et al., No. 1:21-cv-786-XR (W.D. Tex 2022); Jacob M. Grumbach and Alexander Sahn, "Race and Representation in Campaign Finance," *American Political Science Review* 114, no. 1 (2020): 206–21, https://doi.org/10.1017/s0003055419000637; and Kevin DeLuca and John A. Curiel, "Validating the Applicability of Bayesian Inference with Surname and Geocoding to Congressional Redistricting," *Political Analysis* 31, no. 3 (2023): 465–71, https://doi.org/10.1017/pan.2022.14.

20 Imai and Khanna, "Improving Ecological Inference."

21 The Census Bureau did not begin reporting CVAP numbers until 2009, and the 2022 numbers will not be available until early 2024. Therefore, the denominators for 2008 turnout are the five-year 2009 CVAP estimates, while those for 2022 turnout are the 2021 estimates.

22 U.S. Census Bureau, "American Community Survey 5-Year Data (2009–2022)," accessed July 24, 2023, https://www.census.gov/data/developers/data-sets/acs-5year.html.

23 This approach has been used in recent political science scholarship. Kevin T. Morris and Kelsey Shoub, "Contested Killings: The Mobilizing Effects of Community Contact with Police Violence," *American Political Science Review* (2023): 1–17, https://doi.org/10.1017/s0003055423000321; Eitan D. Hersh and Clayton Nall, "The Primacy of Race in the Geography of Income-Based Voting: New Evidence from Public Voting Records," *American Journal of Political Science* 60, no. 2 (2016): 289–303, https://doi.org/10.1111/ajps.12179; Wendy K. Tam Cho, James G. Gimpel, and Iris S. Hui, "Voter Migration and the Geographic Sorting of the American Electorate," *Annals of the Association of American Geographers* 103, no. 4 (2013): 856–70, https://doi.org/10.1080/00045608.2012.720229; and Jacob R. Brown and Ryan D. Enos, "The Measurement of Partisan Sorting for 180 Million Voters," *Nature Human Behaviour* 5, no. 8 (2021): 998–1008, https://doi.org/10.1038/s41562-021-01066-z.

24 Bernard L. Fraga, *The Turnout Gap: Race, Ethnicity, and Political Inequality in a Diversifying America* (Cambridge: Cambridge University Press, 2018), 12, https://doi.org/10.1017/9781108566483.

25 National Congress of American Indians, "Every Native Vote Counts: Fast Facts," 2020, http://www.nativevote.org/wp-content/uploads/2020/05/2020-Native-Vote-Infographic.pdf; and James Thomas Tucker, Jacqueline De León, and Dan McCool, *Obstacles at Every Turn: Barriers to Political Participation Faced by Native American Voters*, Native American Rights Fund, 2020, https://vote.narf.org/wp-content/uploads/2020/06/obstacles_at_every_turn.pdf.

26 Bobo and Gilliam, "Race, Sociopolitical Participation, and Black Empowerment"; and Washington, "How Black Candidates Affect Voter Turnout."

27 We divide states into regions as follows. Northeast: Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont. South: Alabama, Arkansas, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia. Midwest: Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin. West: Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

28 See also Fraga, *The Turnout Gap*, 110.

29 Fraga, *The Turnout Gap*; Yeaji Kim, "Absolutely Relative: How Education Shapes Voter Turnout in the United States," *Social Indicators Research* 168 (2023): 447–69, https://doi.org/10.1007/s11205-023-03146-1; Alexander K. Mayer, "Does Education Increase Political Participation?," *Journal of Politics* 73, no. 3 (2011): 633–45, https://doi.org/10.1017/s002238161100034x; Robert Paul Hartley, "Unleashing the Power of Poor and Low-Income Americans: Changing the Political Landscape," Poor People's Campaign: A National Call for Moral Revival, August 2020, https://www.poorpeoplescampaign.org/wp-content/uploads/2020/08/PPC-Voter-Research-Brief-18.pdf; Henry E. Brady, Sidney Verba, and Kay Lehman Schlozman, "Beyond SES: A Resource Model of Political Participation," *American Political Science Review* 89, no. 2 (1995): 271–94, https://doi.org/10.2307/2082425; and Zachary Markovich and Ariel White, "More Money, More Turnout? Minimum Wage Increases and Voting," *Journal of Politics* 84, no. 3 (2022): 1834–38, https://doi.org/10.1086/716291.

30 Scot Schraufnagel, Michael J. Pomante, and Quan Li, "Cost of Voting in the American States: 2022," *Election Law Journal: Rules, Politics, and Policy* 21, no. 3 (2022): 220–28, https://doi.org/10.1089/elj.2022.0041.

31 Suzanne Mettler and Mallory SoRelle, "Policy Feedback Theory," chapter 3 in *Theories of the Policy Process*, Christopher M. Weible and Paul A. Sabatier, eds. (New York: Routledge, 2018), https://doi.org/10.4324/9780429494284-4; Suzanne Mettler and Joe Soss, "The Consequences of Public Policy for Democratic Citizenship: Bridging Policy Studies and Mass Politics," *Perspectives on Politics* 2, no. 1 (2004): 55–73, https://doi.org/10.1017/s1537592704000623; and Joe Soss and Lawrence R. Jacobs, "The Place of Inequality: Non-participation in the American Polity," *Political Science Quarterly* 124, no. 1 (2009): 95–125, https://doi.org/10.1002/j.1538-165x.2009.tb00643.x.

32 Soss and Jacobs, "The Place of Inequality," 110.

33 Monica C. Bell, "Police Reform and the Dismantling of Legal Estrangement," *Yale Law Journal* (2017): 2054–2150, https://www.jstor.org/stable/45222555; Brie McLemore, "Procedural Justice, Legal Estrangement, and the Black People's Grand Jury," *Virginia Law Review* 105, no. 2 (2019): 371–95, https://www.jstor.org/stable/26842242; Robert J. Sampson and Dawn Jeglum Bartusch, "Legal Cynicism and (Subcultural?) Tolerance of Deviance: The Neighborhood Context of Racial Differences," *Law and Society Review* 32, no. 4 (1998): 777–804, https://doi.org/10.2307/827739; and Amy E. Lerman and Vesla M. Weaver, *Arresting Citizenship: The Democratic Consequences of American Crime Control* (Chicago: University of Chicago Press, 2014).

34 Richard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America* (New York: Liveright Publishing, 2017), https://wwnorton.com/books/the-color-of-law; Jacob W. Faber, "We Built This: Consequences of New Deal Era Intervention in America's Racial Geography," *American Sociological Review* 85, no. 5 (2020): 739–75, https://doi.org/10.1177/0003122420948464; Daniel Aaronson et al., "The Long-Run Effects of the 1930s HOLC 'Redlining' Maps on Place-Based Measures of Economic Opportunity and Socioeconomic Success," *Regional Science and Urban Economics* 86 (2021): 103622, https://doi.org/10.1016/j.regsciurbeco.2020.103622; and Solomon Greene, Margery Austin Turner, and Ruth Gourevitch, "Racial Residential Segregation and Neighborhood Disparities," US Partnership on Mobility from Poverty, August 29, 2017, https://www.urban.org/sites/default/files/publication/92961/racial-residential-segregation-and-

neighborhood-disparities.pdf.

35 U.S. Census Bureau, "Census Tracts," accessed January 5, 2023, https://www2.census.gov/geo/pdfs/education/CensusTracts.pdf (explaining that "census tracts are small, relatively permanent statistical subdivisions of a county. [They] average about 4,000 inhabitants.").

36 While there is recent scholarship arguing that BISG misclassifies nonwhite individuals as white in wealthy areas, we show in the appendix that the same relationships between socioeconomic characteristics and turnout gaps remain when looking only at states with self-reported race. See Lisa P. Argyle and Michael Barber, "Misclassification and Bias in Predictions of Individual Ethnicity from Administrative Records," *American Political Science Review* (May 15, 2023): 1–9, https://doi.org/10.1017/s0003055423000229.

37 Jasleen Singh and Sara Carter, "States Have Added Nearly 100 Restrictive Laws Since SCOTUS Gutted the Voting Rights Act 10 Years Ago," Brennan Center for Justice, June 23, 2023, https://www.brennancenter.org/our-work/analysis-opinion/states-have-added-nearly-100-restrictive-laws-scotus-gutted-voting-rights.

38 Ariel R. White, Noah L. Nathan, and Julie K. Faller, "What Do I Need to Vote? Bureaucratic Discretion and Discrimination by Local Election Officials," *American Political Science Review* 109, no. 1 (2015): 129–42, https://doi.org/10.1017/s0003055414000562; and Markie McBrayer, R. Lucas Williams, and Andrea Eckelman, "Local Officials as Partisan Operatives: The Effect of County Officials on Early Voting Administration," *Social Science Quarterly* 101, no. 4 (2020): 1475–88, https://doi.org/10.1111/ssqu.12815.

39 The weighted turnout gap is driven in part by the nonwhite share of the population in a given jurisdiction. Given that *Shelby County* could not realistically have impacted this characteristic, we do not test the impact of the Court's decision on the weighted turnout gap. We focus in this section on the white–nonwhite and white–Black gaps for two reasons. First, most of these regions were covered under Section 5 specifically because of discrimination against Black Americans. Second, Black Americans make up half of the nonwhite population in these counties, compared with just 25 percent in the rest of the country (see table A5 in the appendix). The relatively small size of the other groups makes studying their specific gaps more statistically challenging.

40 Throughout this section, we include in the covered group counties that were not covered but whose state's policies were subject to preclearance (because another county in the state was covered), unless otherwise noted.

41 Brantly Callaway and Pedro H. C. Sant'Anna, "Difference-in-Differences with Multiple Time Periods," *Journal of Econometrics* 225, no. 2 (2021): 200–230, https://doi.org/10.1016/j.jeconom.2020.12.001.

42 Monterey County v. Lopez, 525 U.S. 266 (1999).

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Technical Appendix to *Growing Racial Disparities in Voter Turnout, 2008–2022**

Kevin Morris and Coryn Grange
Brennan Center for Justice at NYU School of Law

Contents

*The full report can be found here: `https://www.brennancenter.org/our-work/research-reports/growing-racial-disparities-voter-turnout-2008-2022`.

A.1 Snapshot Dates

As discussed briefly in the main body of the report, voter file snapshots offer an unparalleled look into the racial turnout gap. It is important to note, however, that these snapshots change every day as voters register or are removed from the rolls. As such, estimates can be slightly different if scholars are working with different snapshots. We follow the advice of Kim and Fraga (2022) and here include the dates of the snapshots used in this report. Unfortunately, Catalist does not report the dates of the snapshots on which their files are based (though they are dated shortly after the election), so we can provide the dates only from the L2-based snapshots.

Table A1: Snapshot Dates

State	2014	2016	2018	2020	2022
AK	2015-03-13	2017-01-27	2019-02-11	2021-02-03	2023-02-18
AL	2015-04-10	2017-03-07	2019-01-27	2021-02-04	2023-01-20
AR	2015-03-24	2017-03-29	2018-09-21	2021-01-19	2023-04-20
AZ	2015-04-22	2017-04-12	2018-09-07	2021-04-27	2023-03-21
CA	2015-05-21	2017-03-25	2019-01-31	2021-02-19	2022-12-19
CO	2015-05-05	2017-02-08	2019-08-31	2020-12-23	2022-12-19
CT	2015-03-25	2017-01-20	2019-06-03	2021-03-30	2023-04-01
DC	2015-03-07	2017-02-15	2019-01-17	2021-01-30	2023-03-11
DE	2015-02-23	2017-01-17	2019-04-02	2021-03-24	2023-04-01
FL	2015-01-28	2017-01-27	2019-02-08	2021-02-04	2023-02-11
GA	2015-05-16	2017-01-27	2018-12-22	2021-02-04	2022-12-23
HI	2015-03-05	2017-03-22	2019-04-05	2021-04-01	2023-03-21
IA	2015-03-25	2017-01-31	2019-03-06	2021-03-04	2023-01-29
ID	2015-02-23	2017-03-20	2019-03-04	2021-03-16	2023-04-20
IL	2015-03-02	2017-03-18	2019-02-21	2021-03-05	2023-03-21
IN	2015-05-06	2017-04-07	2019-02-13	2021-01-15	2023-04-01
KS	2015-02-26	2017-02-16	2019-01-31	2021-03-16	2023-04-01
KY	2015-03-05	2017-03-03	2018-09-29	2021-05-11	2023-04-01

Table A1: Snapshot Dates *(continued)*

State	2014	2016	2018	2020	2022
LA	2015-02-23	2017-02-14	2019-01-15	2021-01-22	2023-01-20
MA	2015-04-02	2017-04-11	2019-02-14	2021-01-19	2023-04-26
MD	2015-02-25	2017-01-20	2018-12-14	2021-02-15	2023-03-21
ME	2015-04-29	2017-04-07	2018-09-26	2021-05-28	2023-04-01
MI	2015-02-28	2017-02-21	2019-03-22	2021-01-30	2023-02-25
MN	2015-03-03	2017-03-10	2019-04-02	2021-02-14	2023-04-01
MO	2015-03-02	2017-02-08	2019-06-03	2021-02-11	2023-02-25
MS	2015-03-17	2017-03-07	2019-03-11	2021-03-23	2023-04-20
MT	2015-03-27	2017-01-25	2019-02-07	2020-12-14	2023-02-25
NC	2015-07-29	2017-01-12	2019-02-01	2021-01-28	2023-02-18
ND	2015-04-15	2017-02-09	2019-03-22	2021-03-18	2023-03-15
NE	2015-03-25	2017-01-13	2019-01-10	2021-01-20	2023-01-16
NH	2015-03-20	2018-08-15	2019-04-10	2021-03-25	2023-05-08
NJ	2015-02-25	2017-03-31	2019-04-03	2021-03-11	2023-02-04
NM	2015-03-19	2017-02-08	2019-02-22	2021-02-25	2023-04-01
NV	2015-01-30	2017-01-13	2019-01-23	2020-12-17	2023-02-04
NY	2015-03-25	2017-03-14	2019-02-27	2021-03-15	2023-03-01
OH	2015-01-08	2017-01-09	2019-01-22	2021-01-07	2023-01-16
OK	2015-03-26	2017-01-12	2019-03-01	2021-02-08	2023-02-25
OR	2015-04-16	2017-01-13	2019-02-24	2021-02-05	2023-03-11
PA	2015-05-01	2017-02-14	2019-09-23	2021-02-17	2023-02-04
RI	2015-03-06	2017-01-18	2019-03-15	2021-02-10	2023-02-25
SC	2015-04-09	2017-02-24	2019-03-12	2021-04-16	2023-03-11
SD	2015-03-13	2017-02-20	2019-01-14	2021-01-22	2023-02-25
TN	2015-02-23	2017-02-17	2019-01-30	2021-03-29	2023-02-04
TX	2015-04-15	2017-03-12	2019-02-24	2021-03-25	2023-03-15
UT	2015-03-06	2017-01-25	2019-03-07	2021-03-26	2023-02-18
VA	2015-04-18	2017-03-29	2019-03-12	2021-02-18	2023-04-01
VT	2015-03-20	2017-02-14	2019-03-08	2021-03-04	2023-02-25
WA	2015-05-05	2017-05-24	2019-01-08	2020-12-09	2023-01-20

Table A1: Snapshot Dates *(continued)*

State	2014	2016	2018	2020	2022
WI	2015-03-03	2017-03-30	2019-02-01	2021-02-24	2023-02-18
WV	2015-03-16	2017-04-03	2019-03-22	2021-03-11	2023-04-20
WY	2015-03-30	2017-02-02	2019-04-02	2021-01-13	2023-04-20

A.2 Alternative Racial Predictions

In the body of this report, we present results in which voters' races are estimated (in non-self-report states) using a BISG algorithm in which the underlying population distribution is drawn from the Citizen Voting Age Population, or CVAP. We argue that this is reasonable because CVAP is a better estimate than total population of the demographics of *potential voters*. In areas with many noncitizens of color, or where children are disproportionately nonwhite, using total population overestimates the nonwhite share of the electorate and biases the turnout gap downward.

Here, we present results supportive of that conclusion. We calculate 2020 turnout rates for each racial group in each county in the six states where self-identified race is available (Alabama, Florida, Georgia, Louisiana, North Carolina, and South Carolina). We then compare the turnout rates that BISG would estimate for each racial group using either CVAP, adult population, or total population as the underlying geographic distribution. We remove the counties where the CVAP of the group of interest is less than 100, and then calculate the absolute value of the "error"—that is, the difference between the *actual* turnout rate based on self-reported data, and the *estimated* turnout rate from BISG. Table A2 presents the mean of these county-level errors (the mean absolute error, or MAE) for each racial group using each estimation strategy.

The above estimates all rely on the methodology developed by Imai and Khanna (2016). In the intervening years, however, researchers have proposed new approaches. In

Table A2: MAE: Different Target Populations for BISG. Counties Weighted Equally.

Race	CVAP	Adult	Total Population	BIRDiE
White	5.3%	7.7%	9.0%	16.9%
Nonwhite	10.8%	19.1%	22.5%	69.2%
Black	14.1%	13.5%	14.5%	28.3%
Latino	6.2%	14.2%	18.3%	14.4%
Asian	18.6%	8.4%	8.8%	288.5%
White–Black Gap	19.3%	21.1%	23.5%	27.5%
White–Nonwhite Gap	16.1%	26.8%	31.6%	86.1%

2023, a team of researchers (McCartan et al., 2023) released a working paper implementing what they call Bayesian Instrumental Regression for Disparity Estimation (BIRDiE). To test whether our approach suffers meaningfully relative to this new approach when aggregated to the county level in states with self-identification on their voter files, we also replicate the MAE analysis using BIRDiE, run at the ZIP code level. Those estimates are presented in the final column.

Table A2 indicates that the CVAP approach is preferable to the other strategies for white and nonwhite turnout. While the error for Black turnout is higher using the CVAP approach than using adult population, it is nonetheless smaller than when race is estimated using total population. Importantly, using CVAP is clearly far superior to approaches including noncitizens for estimating Latinos' race. Although CVAP results in poorer estimates for Asian Americans than the other approaches using alternate target populations, less than 1.5% of the CVAP in this region is Asian. In no case does BIRDiE return better estimates than our primary approach.

Table A3 once again shows the MAE, but this time weights counties by the relative size of the CVAP of interest in each county. When we weight by CVAP, the BISG approach using CVAP as the target population outperforms both of the other approaches for every racial group. In no case does BIRDiE return better estimates than our primary approach.

We thus conclude that using CVAP as the underlying racial distribution for the BISG analyses is justified. However, as we show below in our discussion of the causal effect of *Shelby*

Table A3: MAE: Different Target Populations for BISG. Counties Weighted by CVAP.

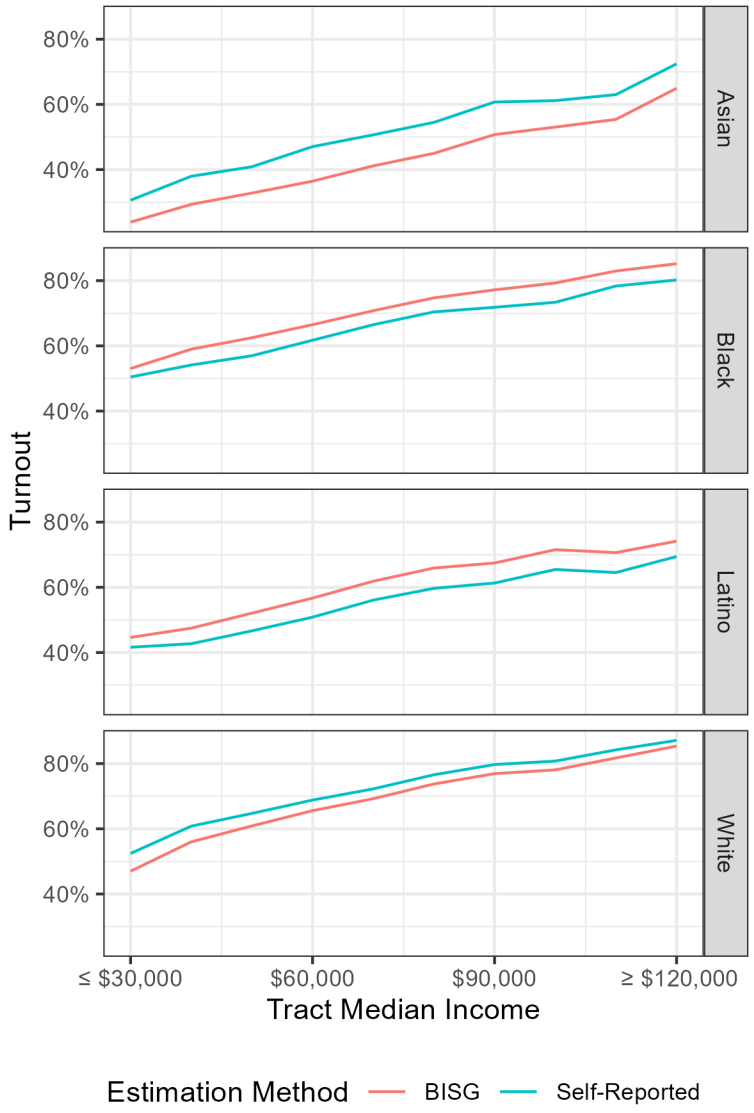
Race	CVAP	Adult	Total Population	BIRDiE
White	2.5%	6.0%	7.5%	16.7%
Nonwhite	4.4%	10.5%	13.1%	29.1%
Black	5.9%	6.3%	7.3%	20.1%
Latino	8.2%	12.7%	14.6%	25.4%
Asian	11.1%	8.4%	8.4%	167.3%
White–Black Gap	9.1%	13.3%	16.3%	11.5%
White–Nonwhite Gap	8.8%	19.2%	23.3%	43.7%

County v. Holder on the racial turnout gap, our results are consistent regardless of how the BISG algorithm is used (due to the computing intensity of the BIRDiE approach and its underperformance in the self-report states, we do not estimate race using BIRDiE for all voters in all states in all years, as we do with the alternative BISG populations).

A.3 Errors Associated with BISG and Socioeconomic Characteristics

Traditional BISG approaches have been shown to have errors correlated with neighborhood socioeconomic characteristics (Argyle and Barber, 2023). In the body of the report, we include turnout rates for neighborhoods at different income and education levels, based primarily on our BISG estimates. Here, we show that there is not a strong relationship between BISG errors and tract-level sociodemographics (income or education) in states with self-reported data. Figures A1 and A2 show that, while there there is consistently a gap between the "true" turnout rate and that estimated by BISG, the gaps are fairly consistent regardless of the demographics of a voter's home Census tract. For this analysis, we retain only the voters who self-identified as white, Black, Latino, or Asian.

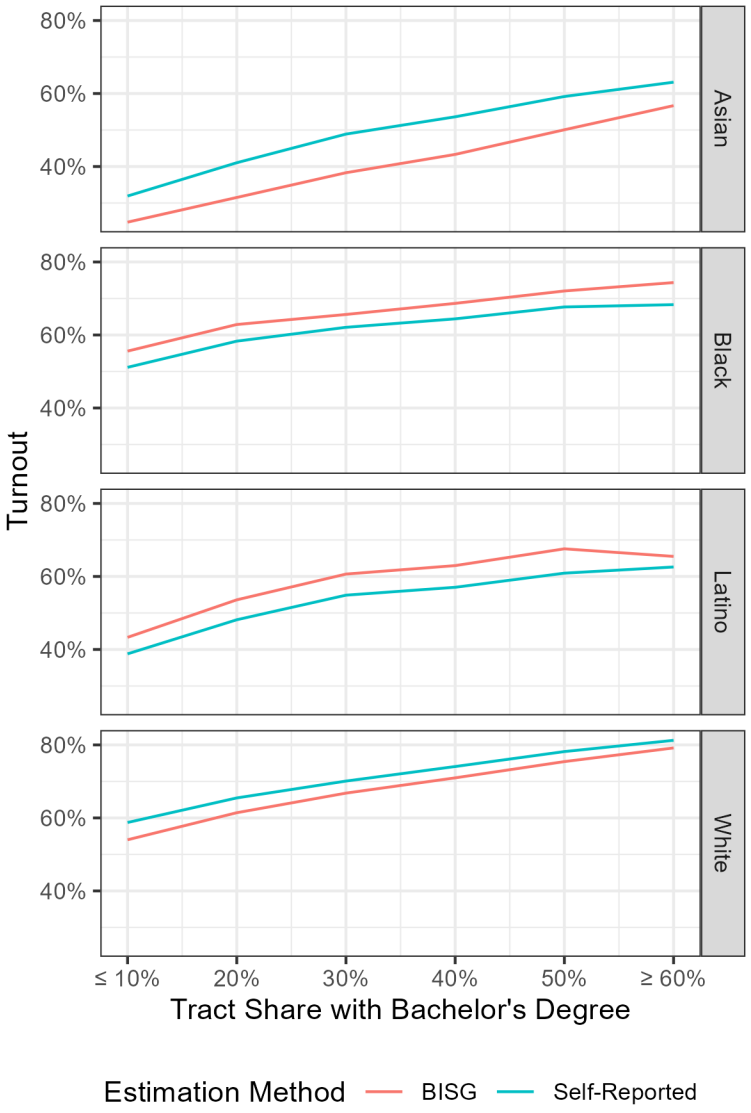
Figure A1: Racial Turnout Rates by Neighborhood Income, Self-Report vs BISG



A.4 Alternative Source for Self-Identification in 2014, 2016

The "processed" voter files from L2 following the 2014 and 2016 elections do not include self-reported race from the six states with self-reported race in their raw files. The processed files do, however, include voters' unique state voter identification numbers, which we can use to merge the processed files with the raw files. This is how we obtain voters' self-reported

Figure A2: Racial Turnout Rates by Share of Tract with Bachelor's Degree, Self-Report vs BISG



race in these two elections. The snapshots do not align perfectly in terms of timing, but we are nonetheless able to match more than the overwhelming majority of all participants to an entry in the raw voter file, where the voter's race (or lack thereof, if they decline to denote it) can be obtained directly. Table A4 shows the share of participants in each state in each year that were successfully matched to the raw voter file. BISG is used to estimate the race of the remaining voters (as it is for those who report "other" for their race, or decline to provide their race). Louisiana stopped using unique statewide IDs in its voter file in 2016,

Table A4: Match Rates Between L2 and Raw Voter Files

	Match Rates	
State	2014	2016
AL	100.00%	99.24%
FL	100.00%	100.00%
GA	99.96%	100.00%
LA	98.43%	88.01%
NC	100.00%	100.00%
SC	98.95%	100.00%

reducing the match rate in that state that year.

A.5 Discussion of Entropy Balancing

We use entropy balancing (Hainmueller, 2012) on pretreatment characteristics to weight control counties. We do this rather than simply condition on covariates (though we do so in our robustness checks) in case the *Shelby County* decision had any post-treatment impact on important socioeconomic characteristics in the formerly covered jurisdictions, which could threaten our causal inference. We rely on the characteristics detailed above as observed in 2012, as they are the latest pretreatment characteristics available. Due to concerns about reversion to the mean when including pretreatment outcome variables in the preprocessing strategy (e.g., Daw and Hatfield, 2018), we do not include outcome variables (white–Black or white–nonwhite turnout gap) in the balancing procedure. Table A5 indicates that the entropic weights are highly successful at removing differences between the treated and control counties along this set of characteristics. After preprocessing our data, we assume that treated and control units would have moved in parallel absent *Shelby County*, conditional on their weights.

Table A5: Balance Table for Entropy Balancing and Genetic Matching

Variable	Covered Counties	Full Set of Uncovered Counties	Entropy Balanced Uncovered Counties	Genetically Matched Uncovered Counties
Share White	66.5%	86.2%*†	66.5%	68.7%*
Share Black	16.7%	3.4%*†	16.7%†	16.3%
Obama 2012 Vote Share	39.9%	37.5%*†	39.9%	40.7%
Population	126,618	78,829*	126,618	114,291
Median Income	$44,689	$46,295*†	$44,689	$43,899
Median Age	39.5	41*†	39.5	38.9*
Share with Bachelor's Degree or Higher	19.1%	19.7%	19.1%	18.4%*

Note:

* Mean different from covered counties (t-test, $p < 0.05$).

† Distribution different from covered counties (Kolmogorov–Smirnov test, $p < 0.05$).

A.6 Alternative Modeling Approaches

As discussed in the body of this report, our results are robust to a wide variety of different modeling specifications. Here, we detail the different approaches we take to estimating the causal effect of *Shelby County* on the racial turnout gap. We discuss the benefits and drawbacks of these different approaches. Ultimately, however, the majority of these robustness checks support our central finding: *Shelby County* increased the racial turnout gap in formerly covered jurisdictions. In the subsections that follow, we generally present the time series and coefficient plots for the different specifications, allowing the reader to see the trends in the data and determine the plausibility of the parallel trends assumption (based on the time series data and the pre-trends tests in the coefficient plots). Except where noted, we include the largest counties, though we always remove all counties with fewer than 100 citizens of voting age of the respective population (all nonwhite for the white–nonwhite gap; Black for the white–Black gap).

Table A6 summarizes the point estimates from each of the methodologies.

Table A6: Coefficients on Outcomes of Interest, Different Models

Model	White–Nonwhite Gap	White–Black Gap
State (No Covariates)		
TWFE	2.46%*	3.11%*
County (No Preprocessing)		
Parallel Trends Assumption Conditional on Covariates	5.36%*	4.96%*
Parallel Trends Assumption Unconditional on Covariates	4.19%*	4.70%*
County (Entropy Balancing)		
Primary Model (All Counties)	2.01%*	2.81%*
Base Period Covariates Averaged for Balancing	2.06%*	2.41%*
Parallel Trends Assumption Conditional on Covariates	2.37%*	3.15%*
Base Period Level Differences Averaged	1.63%*	2.42%*
BISG Target Population: Adult Population	4.48%*	2.83%*
BISG Target Population: Total Population	3.67%*	2.10%*
Former Confederacy Only	2.26%	3.78%*
New Hampshire Considered "Treated"	2.06%*	2.87%*
Uncovered Counties in Partially Covered States as "Untreated"	2.79%*	2.83%*
Weighted by Logged Population	1.69%*	2.50%*
Weighted by Raw Population	-2.38%*	0.90%
Weighted by Raw Population, Largest 5% of Counties in 2012 Excluded	2.48%*	2.64%*
County (Genetic Matching)		
Primary Model	2.02%*	2.58%*
Parallel Trends Assumption Conditional on Covariates	2.52%*	2.91%*

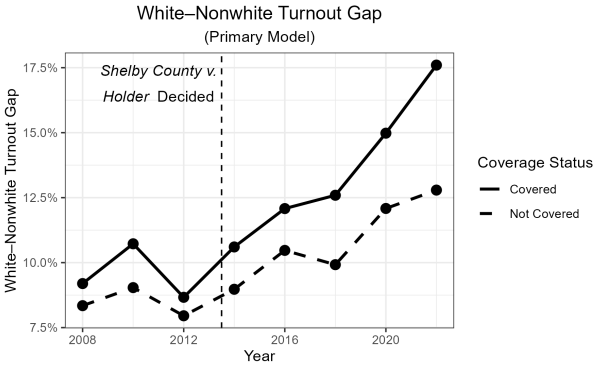
Note:

* Significant at the 95% confidence level.

A.6.1 Primary Models from Report

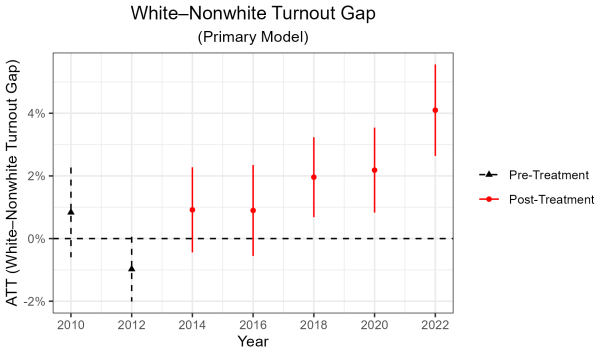
In the body of the report, we present only the time series plot for the white–Black turnout gap models, after balancing the uncovered counties to look similar to the treated ones. Here, we present the time series plots for both dependent variables, along with the coefficient plots for the two-way fixed effects (TWFE) models.

Figure A3: White–Nonwhite Gap, Entropy Balancing Models



Uncovered counties entropy balanced using the following covariates: population, share white, share Black, median income, median age, share with bachelor's degree or higher, 2012 Obama vote share.

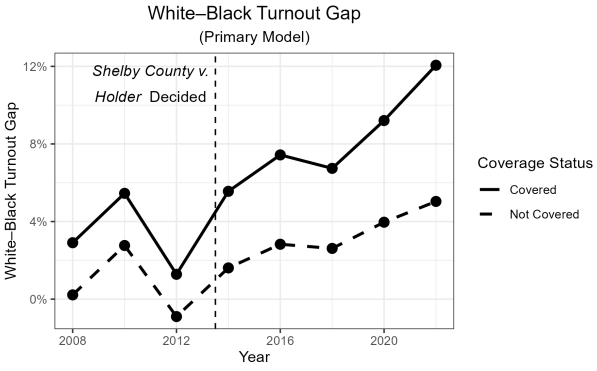
(a) Time Series



Model run at county level. Includes county and year FEs. Aggregated ATT is 2pts ($p < 0.05$). Uncovered counties entropy balanced using the following covariates: population, share white, share Black, median income, median age, share with bachelor's degree or higher, 2012 Obama vote share.

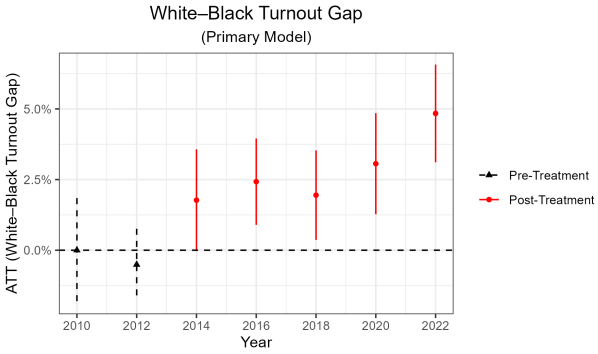
(b) Coefficients

Figure A4: White–Black Gap, Entropy Balancing Models



Uncovered counties entropy balanced using the following covariates: population, share white, share Black, median income, median age, share with bachelor's degree or higher, 2012 Obama vote share.

(a) Time Series



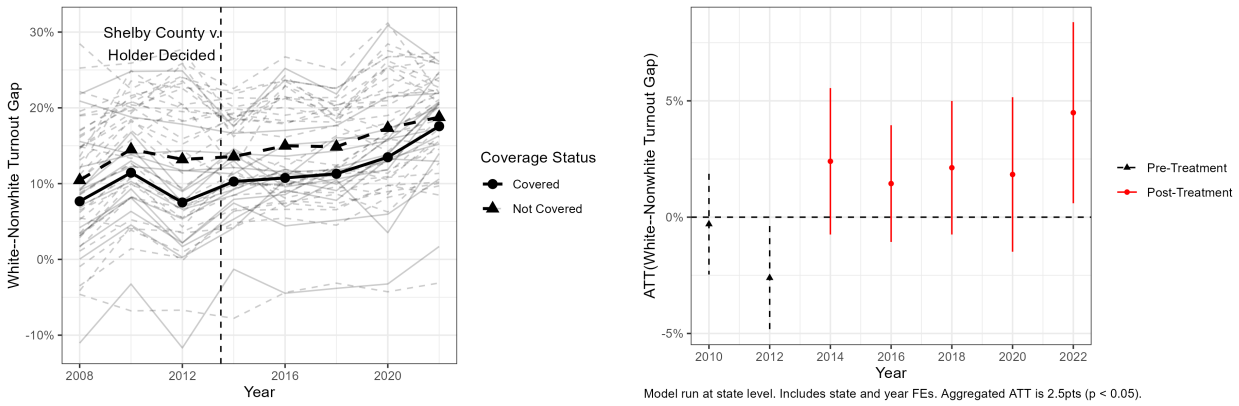
Model run at county level. Includes county and year FEs. Aggregated ATT is 2.8pts ($p < 0.05$). Uncovered counties entropy balanced using the following covariates: population, share white, share Black, median income, median age, share with bachelor's degree or higher, 2012 Obama vote share.

(b) Coefficients

A.6.2 State-Level Models

Elections in the United States are generally run at the county level. Administrators have wide latitude over polling place locations, voter list maintenance, and the training of poll workers. As such, our primary models look at counties as the unit of observation. However, BISG estimates are better estimated as we aggregate up to higher geographic levels. Here, we show that our results generally hold if we instead aggregate the turnout gaps up to the state level. Figures A5 and A6 show that while formerly covered jurisdictions generally had lower turnout gaps prior to *Shelby County* than uncovered ones, that difference shrank substantially in the first post-*Shelby* election and disappeared entirely by 2022. The time series figures also show in light gray the individual states. These models include only year and state fixed effects.

Figure A5: White–Nonwhite Gap, State-Level Models (TWFE)



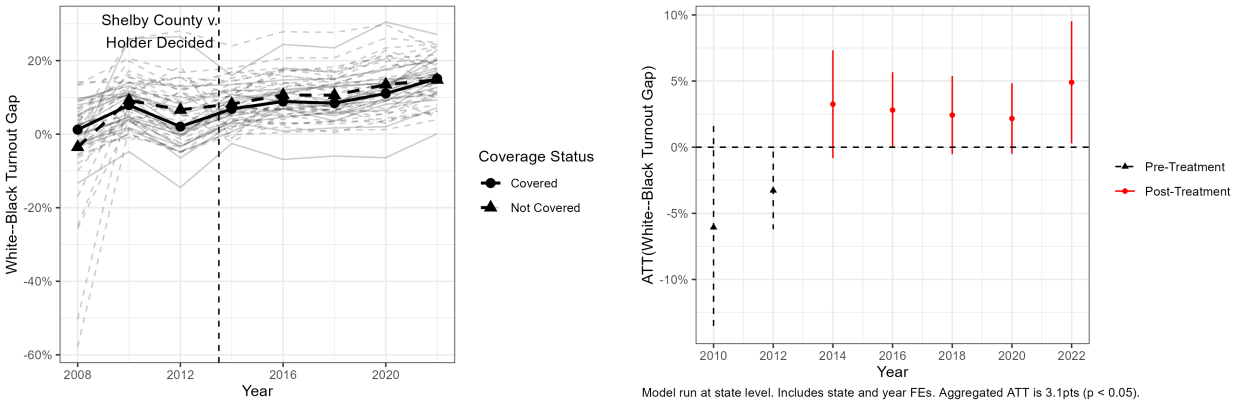
(a) Time Series

(b) Coefficients

A.6.3 County-Level Models, Without Entropy Balancing

In the body of the report, we discuss results in which we preprocess the county-level data using entropy balancing to ensure comparability between treated and control counties. Here, we run a TWFE model in which we condition the parallel trends assumption on covariates; in other words, all counties in the country are given a weight of 1, and we control for the

Figure A6: White–Black Gap, State-Level Models (TWFE)

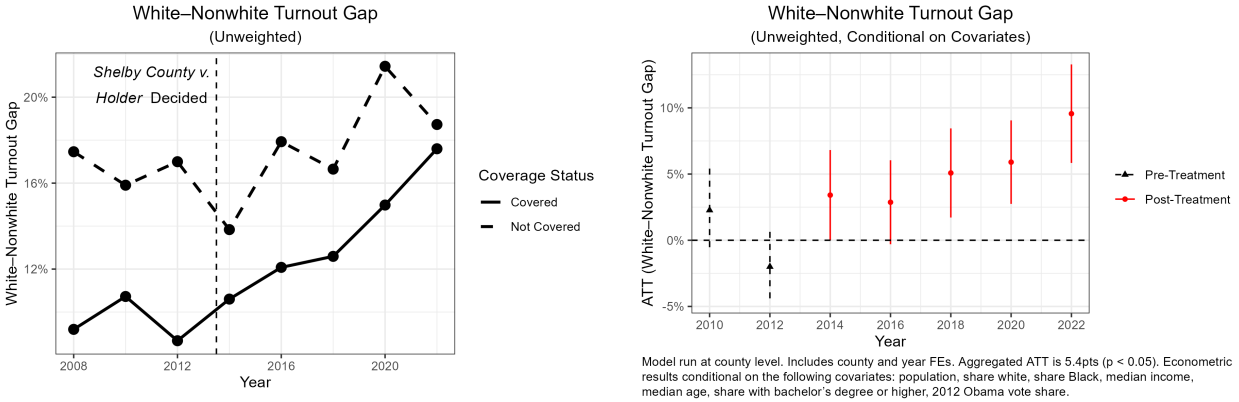


(a) Time Series (b) Coefficients

same things used in the entropy balancing procedure (population, share non-Hispanic white, share non-Hispanic Black, median income, median age, Obama's 2012 vote share, share with a bachelor's degree or higher). For most years, the covariates come from the five-year ACS estimates ending in the election year. The exceptions to this rule are 2008 (we use 2009, as the ACS estimates do not begin until that year) and 2022 (we use 2021, because the 2022 estimates were not yet available at the time of writing).

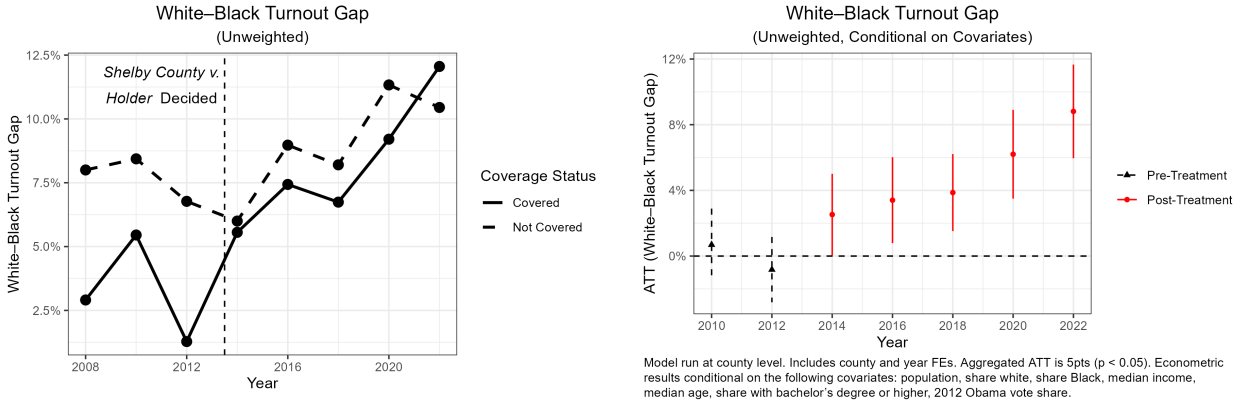
We also present the county-level, unprocessed TWFE model in which we do not condition the parallel trends assumption on the covariates, though note that this likely results in a violation of the assumption based on the pre-trends.

Figure A7: White–Nonwhite Gap, Unprocessed TWFE Models, Conditional on Covariates



(a) Time Series (b) Coefficients

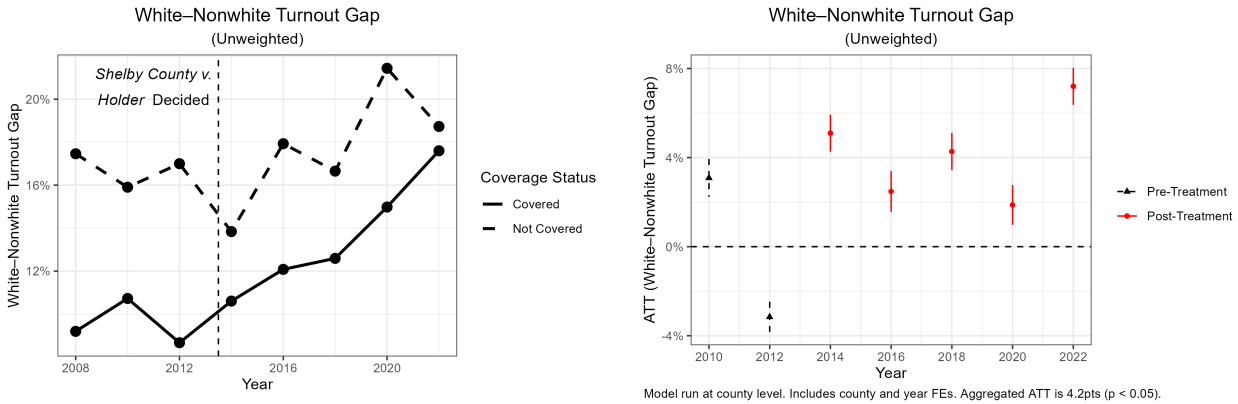
Figure A8: White–Black Gap, Unprocessed TWFE Models, Conditional on Covariates



(a) Time Series

(b) Coefficients

Figure A9: White–Nonwhite Gap, Unprocessed TWFE Models, Unconditional on Covariates



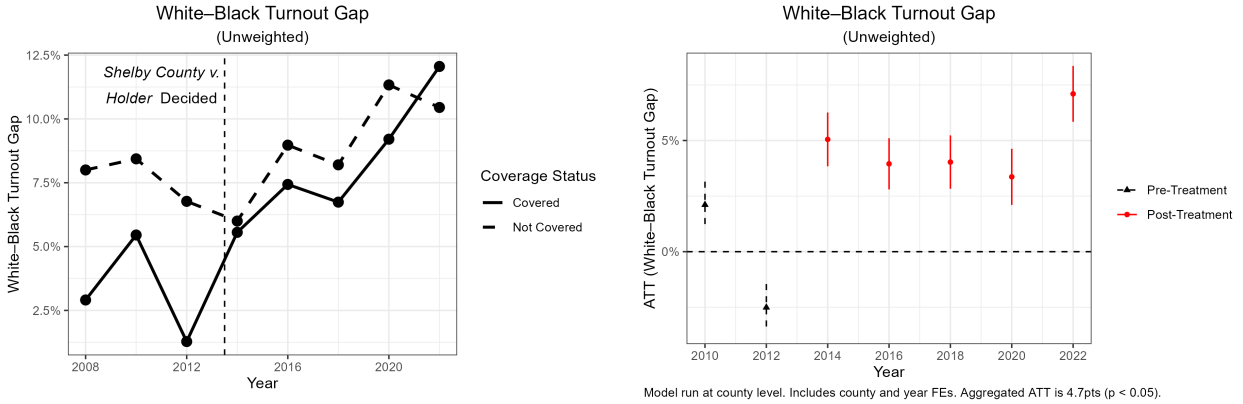
(a) Time Series

(b) Coefficients

A.6.4 Entropy Balancing, Base Period Covariates Averaged

In the body of the report, we balance treated and control units using their 2012 characteristics, as 2012 is the final pretreatment year. Some researchers (e.g., Daw and Hatfield, 2018), however, have raised concerns about reversion to the mean threatening an approach like this. To test whether using 2012 characteristics alone to balance the treated and control units is driving our results, we here use the average of each county's characteristics from

Figure A10: White–Black Gap, Unprocessed TWFE Models, Unconditional on Covariates



(a) Time Series

(b) Coefficients

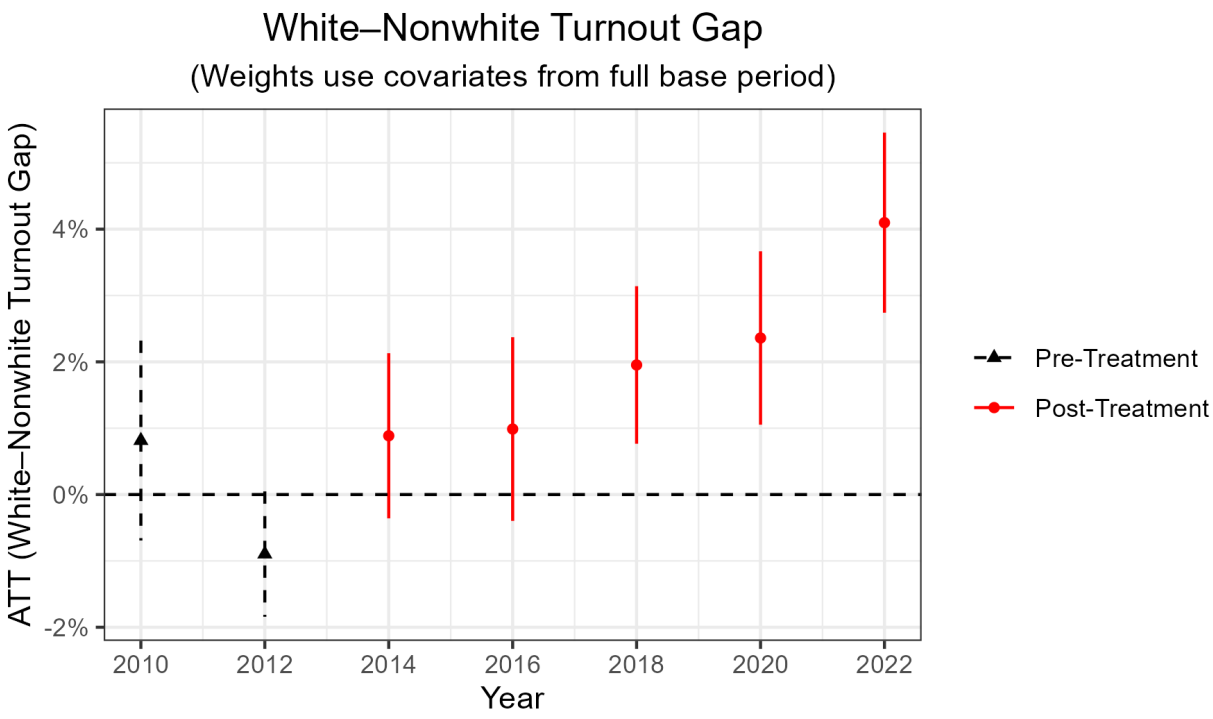
2008, 2010, and 2012 to do the balancing.[1] If some control counties were more similar to treated counties in 2012 by happenstance and thus up-weighted, averaging across the base period should solve this problem. As this approach does not change the time series plots, we do not reproduce them. Figures A11 and A12 indicate that weighting control counties using their average characteristics over the base period does not meaningfully change our results or the validity of the parallel trends assumption.

A.6.5 Entropy Balancing, Parallel Trends Conditional on Covariates

In the body of the report, we do not require that the parallel trends assumption in the entropy-balanced models be conditional on covariates; the time series and coefficient plots do not indicate that imposing this conditionality is necessary. However, to guard against the possibility that treated and control counties that were similar in 2012 might have evolved differently in the post-treatment period, we here produce the results in which the parallel trends assumption is conditional on the covariates used for balancing. As this approach does not change the time series plots, we do not reproduce them. Figures A13 and A14 indicate

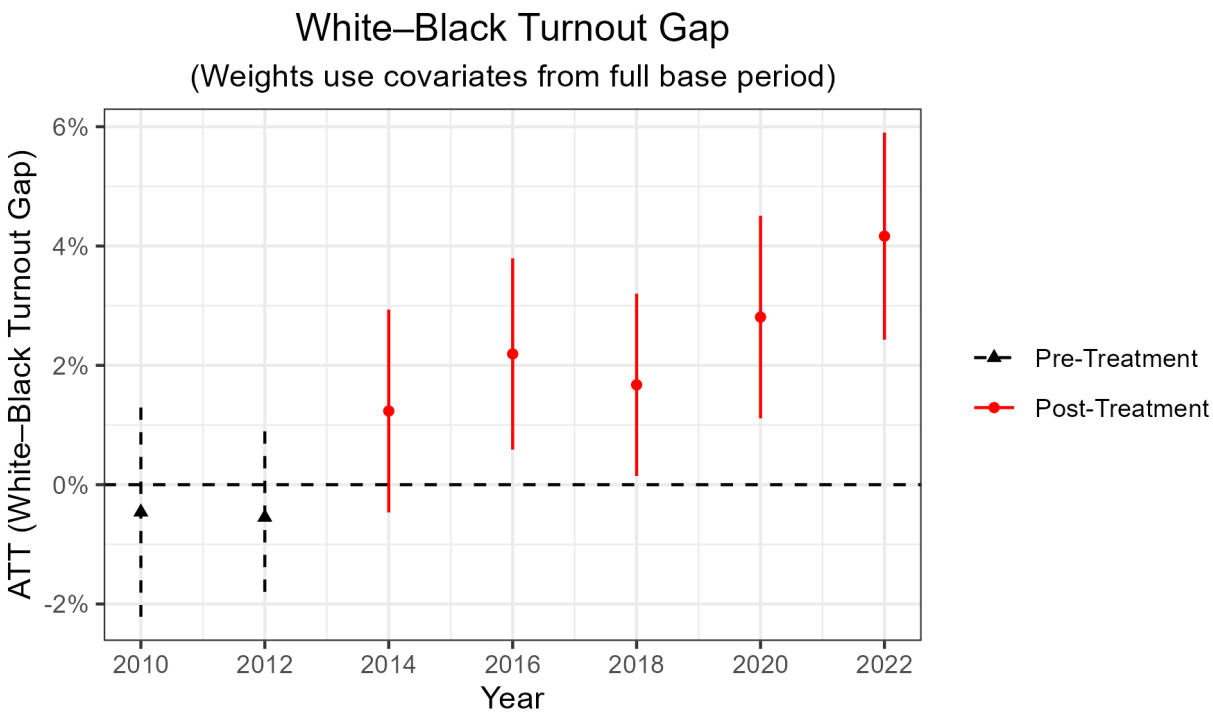
[1] Obama's vote share is averaged across the 2008 and 2012 elections.

Figure A11: White–Nonwhite Gap, Entropy Balancing Models, Balancing Covariates Averaged over Base Period



Model run at county level. Includes county and year FEs. Aggregated ATT is 2.1pts ($p < 0.05$). Uncovered counties entropy balanced using the following covariates: population, share white, share Black, median income, median age, share with bachelor's degree or higher, 2012 Obama vote share.

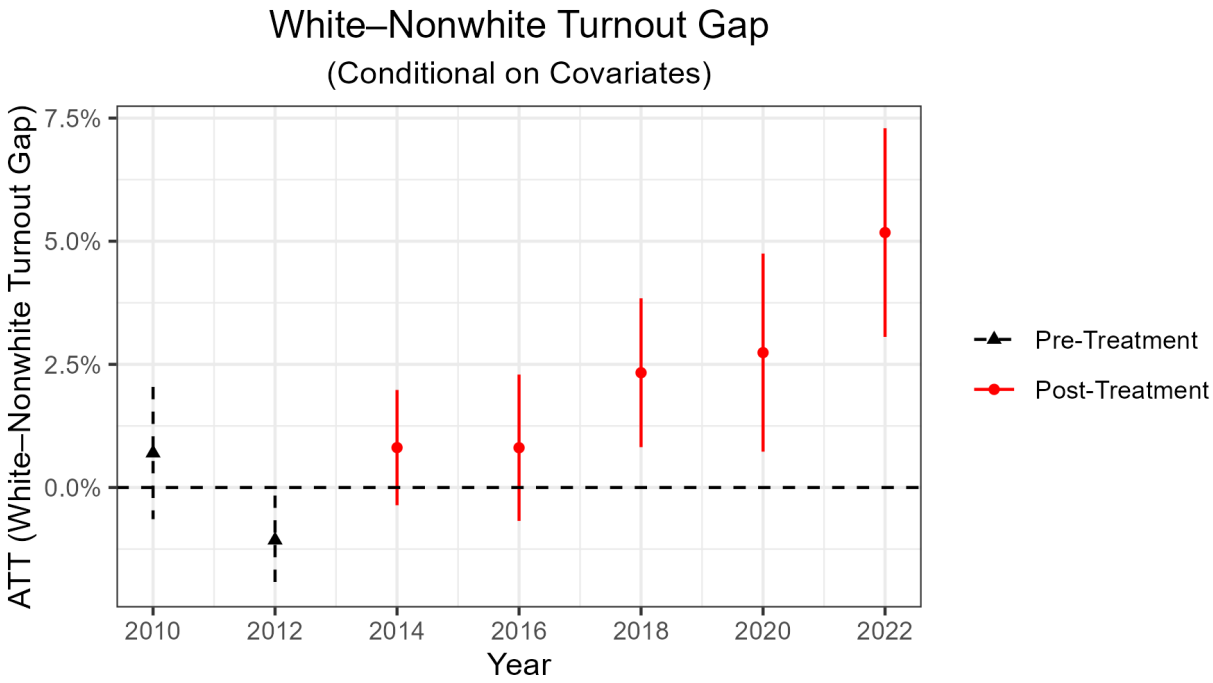
Figure A12: White–Black Gap, Entropy Balancing Models, Balancing Covariates Averaged over Base Period



Model run at county level. Includes county and year FEs. Aggregated ATT is 2.4pts ($p < 0.05$). Uncovered counties entropy balanced using the following covariates: population, share white, share Black, median income, median age, share with bachelor's degree or higher, 2012 Obama vote share.

that conditioning the parallel trends assumption in the entropy-balancing models does not meaningfully impact our conclusions or the plausibility of the parallel trends assumption for the white–nonwhite and white–Black turnout gaps.

Figure A13: White–Nonwhite Gap, Entropy Balancing Models, Parallel Trends Assumption Conditional on Covariates

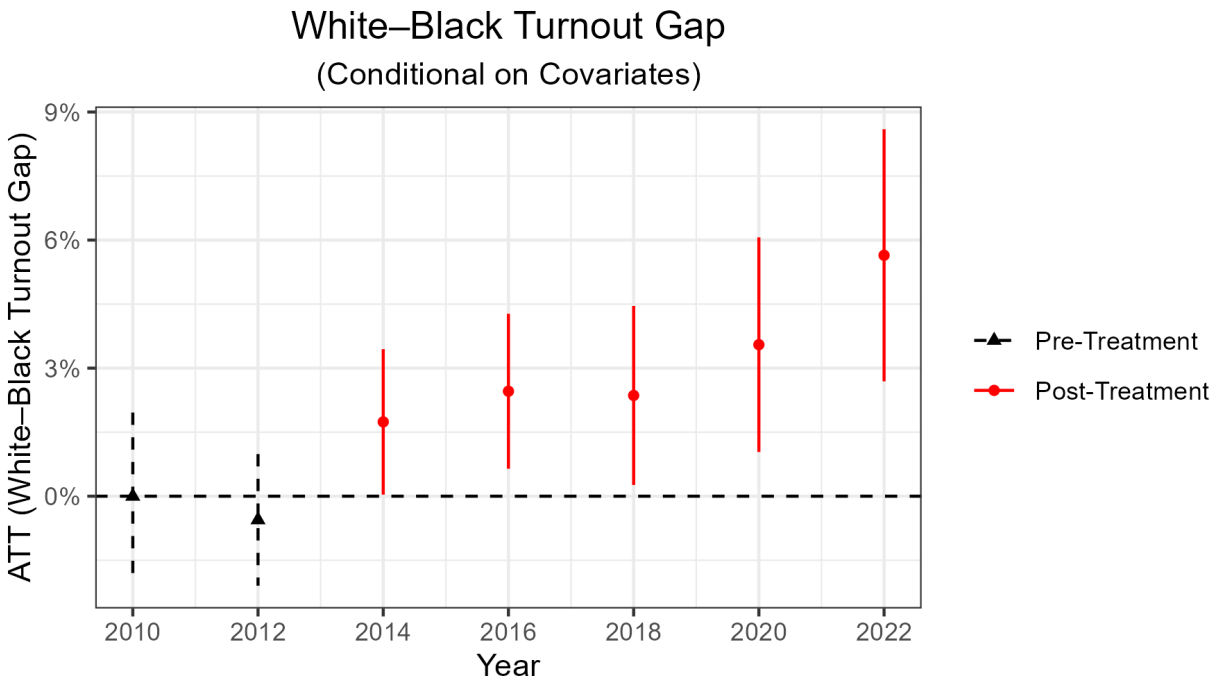


Model run at county level. Includes county and year FEs. Aggregated ATT is 2.4pts ($p < 0.05$). Uncovered counties entropy balanced using the following covariates: population, share white, share Black, median income, median age, share with bachelor's degree or higher, 2012 Obama vote share. Estimates also conditional on preceding covariates.

A.6.6 Entropy Balancing, Level Differences Averaged Across Pretreatment Period

In the body of the report, we use the `did` package developed by Callaway and Sant'Anna (2021), largely because of its flexibility for estimating different types of difference-in-differences models (such as conditioning the parallel trends assumption on covariates). This approach, however, measures all treatment effects relative to the *final* pretreatment period. In other words, this approach tests whether the turnout gap in formerly covered jurisdictions in the

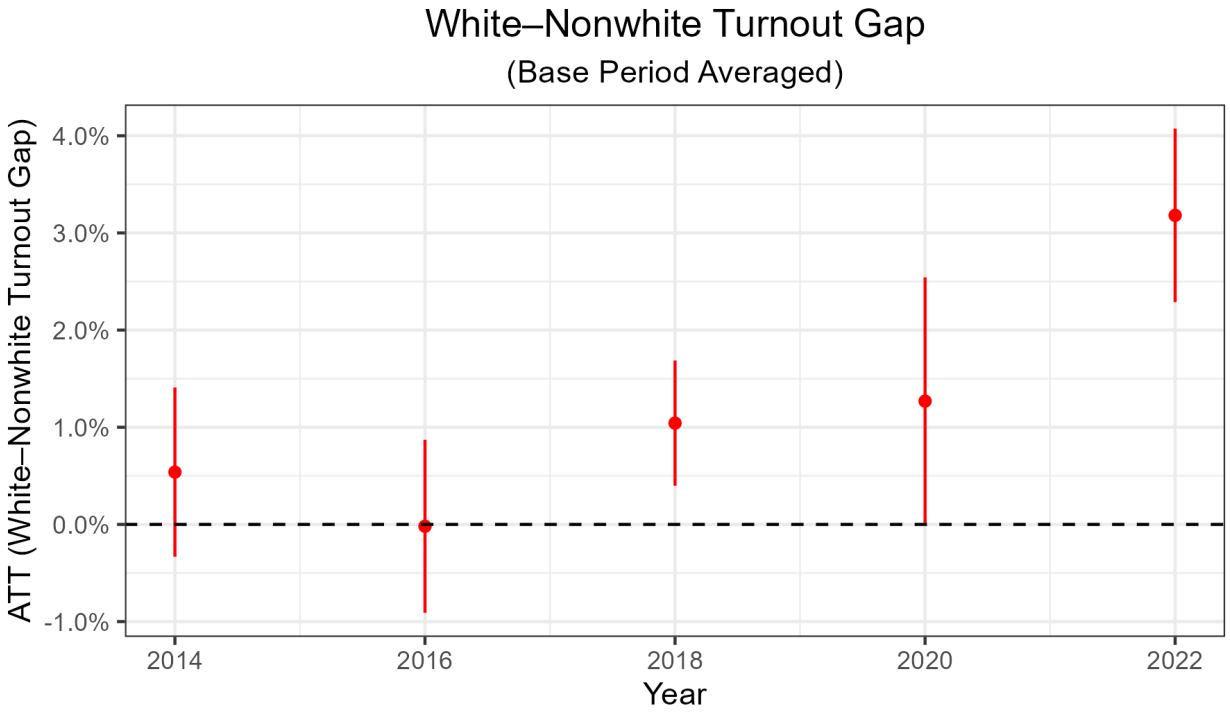
Figure A14: White–Black Gap, Entropy Balancing Models, Parallel Trends Assumption Conditional on Covariates



Model run at county level. Includes county and year FEs. Aggregated ATT is 3.1pts ($p < 0.05$). Uncovered counties entropy balanced using the following covariates: population, share white, share Black, median income, median age, share with bachelor's degree or higher, 2012 Obama vote share. Estimates also conditional on preceding covariates.

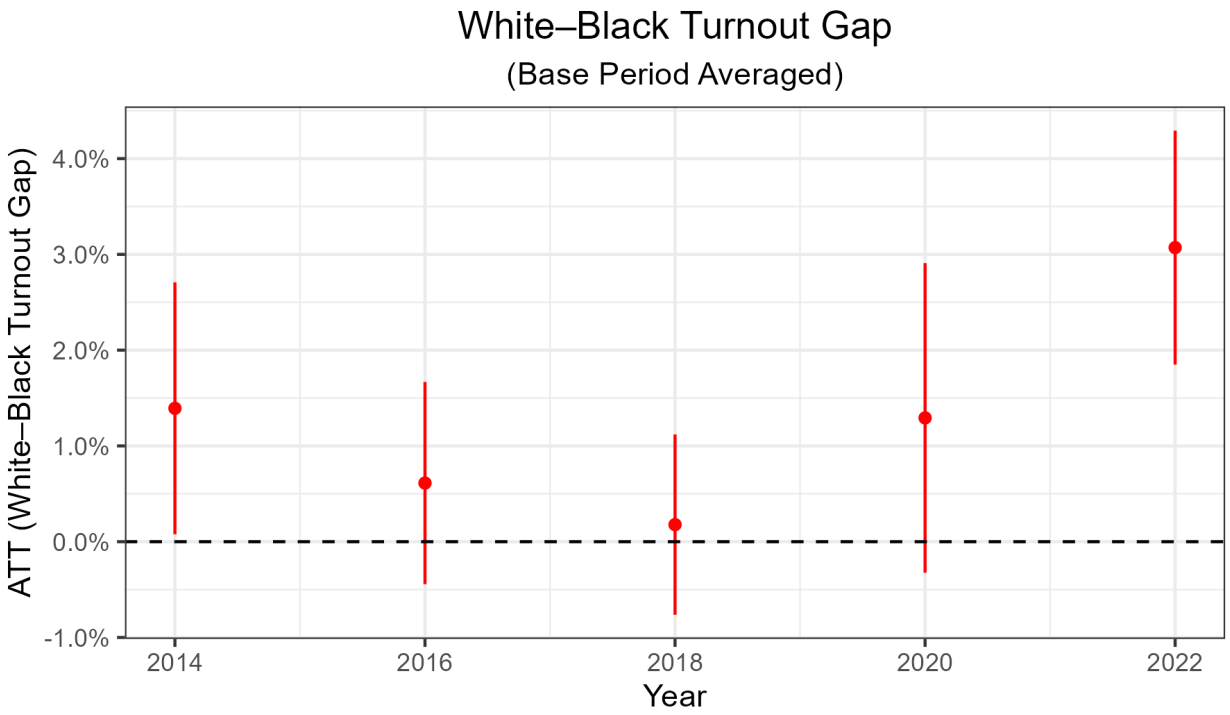
post-*Shelby* era were larger than in 2012, not whether they were larger than the full 2008–2012 period. If the turnout gaps in 2012 were not representative of the pretreatment period, this might lead to biased results. Here, we re-estimate our entropy-balanced TWFE models using the `fixest` package in `R` in which treatment effects are estimated as a deviation from the averaged level differences between treated and control units across the whole base period. As this approach does not change the time series plots, we do not reproduce them. (Because we are using the whole base period as the control set, we cannot estimate placebo coefficients for the pretreatment period as in the figures produced using the Callaway and Sant'Anna (2021) approach).

Figure A15: White–Nonwhite Gap, Entropy Balancing Models, Base Period Gap Averaged



Model run at county level. Includes county and year FEs. Aggregated ATT is 1.6pts ($p < 0.05$). Uncovered counties entropy balanced using the following 2012 covariates: population, share white, share Black, median income, median age, share with bachelor's degree or higher, 2012 Obama vote share.

Figure A16: White–Black Gap, Entropy Balancing Models, Base Period Gap Averaged

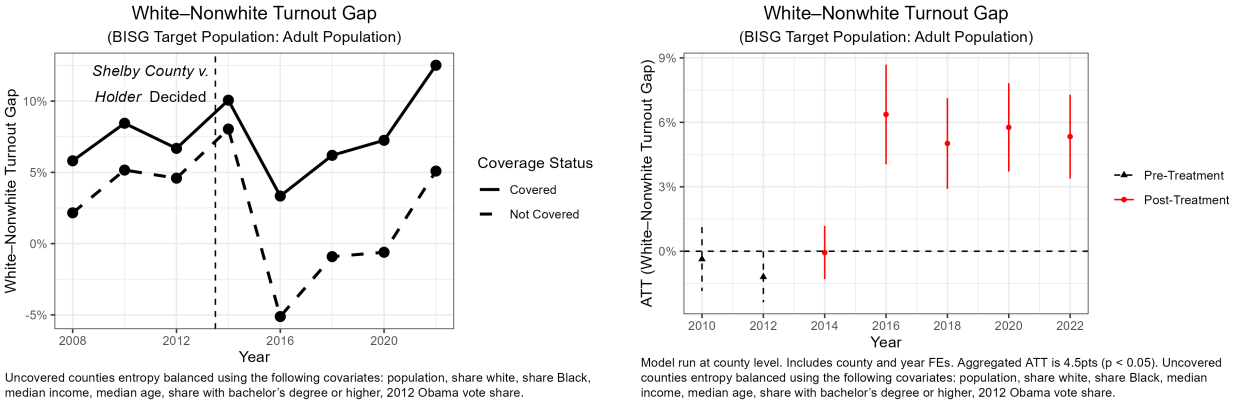


Model run at county level. Includes county and year FEs. Aggregated ATT is 2.4pts ($p < 0.05$). Uncovered counties entropy balanced using the following 2012 covariates: population, share white, share Black, median income, median age, share with bachelor's degree or higher, 2012 Obama vote share.

A.6.7 Alternative BISG Estimations

In the body of the report, we present results where race is estimated using a BISG algorithm where the target geographical population is block-group-level CVAP (though by way of reminder, where self-reported race is available, that is used in all instances). Here, we reproduce our results where race is estimated using adult and total population. In each specification, we continue to rely on entropy balancing to preprocess the data prior to the TWFE model. Given that using CVAP returns the best results in counties where the race of voters is known (see Section A.2), we rely primarily on those estimates in the body of the report. We note the the big shifts from 2014 to 2016 are driven by changes in the source of the geographic data. When we use BISG to estimate race based on adult or total population, these distributions come from the nearest decennial Census. Thus, in 2014 and earlier, voters' races are estimated using 2010 data for their block group; in 2016 and later, 2020 data are used. In our primary approach using CVAP, voters' races are estimated using the 5-year CVAP estimates for their block group ending in the year of the election.

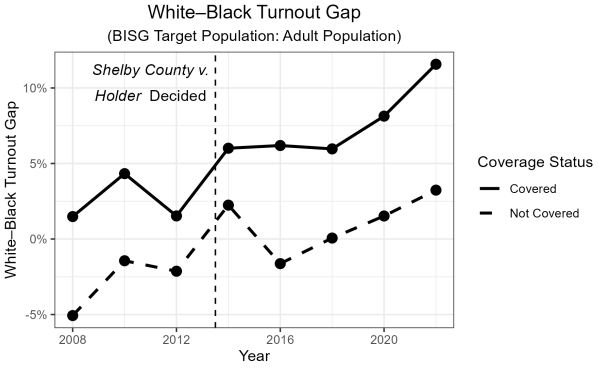
Figure A17: White–Nonwhite Gap, Entropy Balancing Models, BISG Predictions Using Adult Population



(a) Time Series

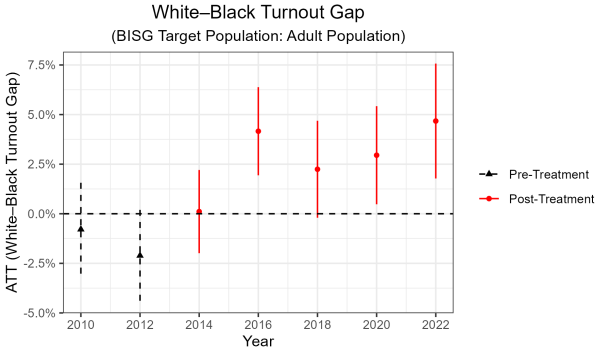
(b) Coefficients

Figure A18: White–Black Gap, Entropy Balancing Models, BISG Predictions Using Adult Population



Uncovered counties entropy balanced using the following covariates: population, share white, share Black, median income, median age, share with bachelor's degree or higher, 2012 Obama vote share.

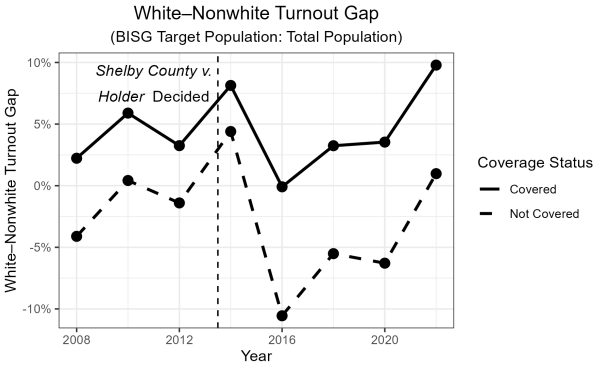
(a) Time Series



Model run at county level. Includes county and year FEs. Aggregated ATT is 2.8pts ($p < 0.05$). Uncovered counties entropy balanced using the following covariates: population, share white, share Black, median income, median age, share with bachelor's degree or higher, 2012 Obama vote share.

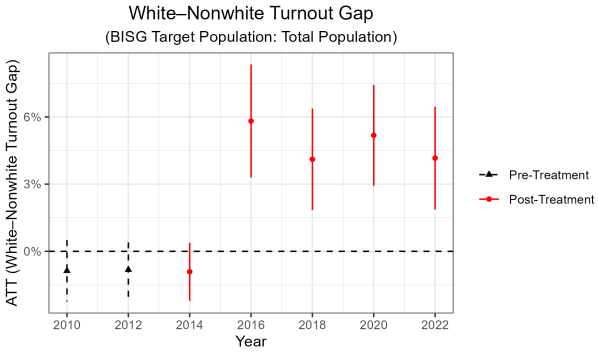
(b) Coefficients

Figure A19: White–Nonwhite Gap, Entropy Balancing Models, BISG Predictions Using Total Population



Uncovered counties entropy balanced using the following covariates: population, share white, share Black, median income, median age, share with bachelor's degree or higher, 2012 Obama vote share.

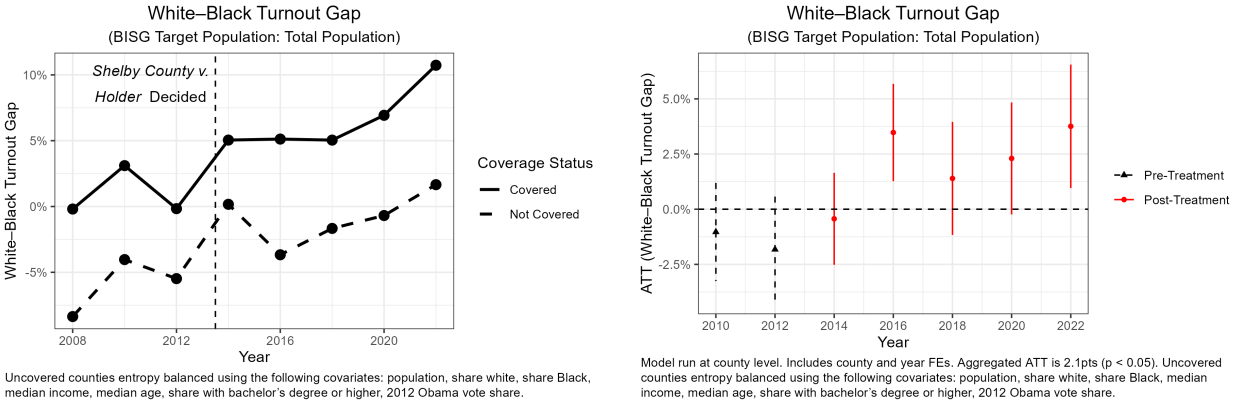
(a) Time Series



Model run at county level. Includes county and year FEs. Aggregated ATT is 3.7pts ($p < 0.05$). Uncovered counties entropy balanced using the following covariates: population, share white, share Black, median income, median age, share with bachelor's degree or higher, 2012 Obama vote share.

(b) Coefficients

Figure A20: White–Black Gap, Entropy Balancing Models, BISG Predictions Using Total Population



(a) Time Series

(b) Coefficients

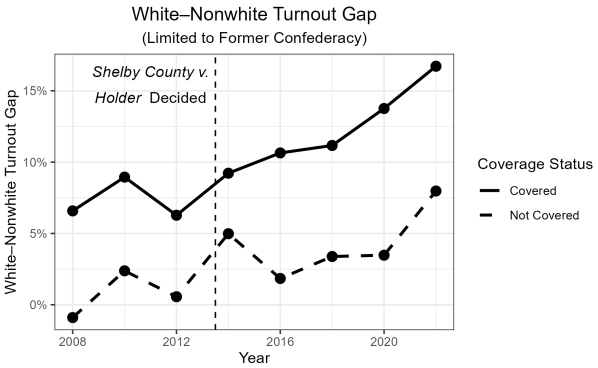
A.6.8 Limiting the Analysis to the Former Confederacy

In the body of the report, we draw our control group from the entire population of counties in the country that were not in states covered in part or whole by Section 5 of the Voting Rights Act. Recent scholarship investigating the impacts of the Voting Rights Act on mid-20th-century social outcomes, however, has compared counties "treated" by Section 5 to only "untreated" counties in the former Confederacy (Bernini et al., 2023) or to counties with pervasive Jim Crow regimes (Eubank and Fresh, 2022), because of their comparable social environments to the covered areas. Functionally, our primary approach using entropy balancing results in a similar specification: the average entropic weight assigned to uncovered counties in the former Confederacy is 2.1, compared with an average weight of 0.55 for uncovered counties elsewhere in the nation. Nevertheless, we here reproduce our results where we limit our analysis to the former Confederacy.

A.6.9 Reclassifying New Hampshire as "Treated"

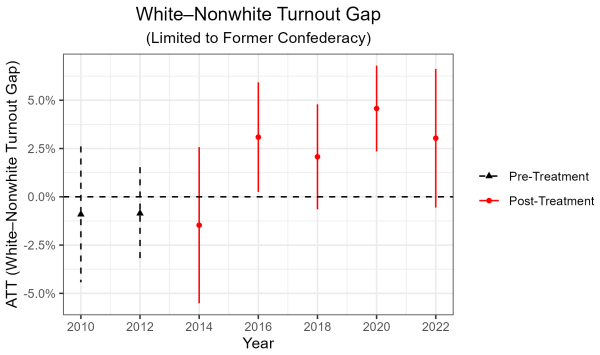
In the body of the manuscript, we consider New Hampshire counties to be "control" units, unaffected by *Shelby County*. The Granite State in unique, however: although it was not covered under the preclearance condition when *Shelby County* was handed down, it *was*

Figure A21: White–Nonwhite Gap, Entropy Balancing Models, Analysis Limited to Former Confederacy



Uncovered counties entropy balanced using the following covariates: population, share white, share Black, median income, median age, share with bachelor's degree or higher, 2012 Obama vote share.

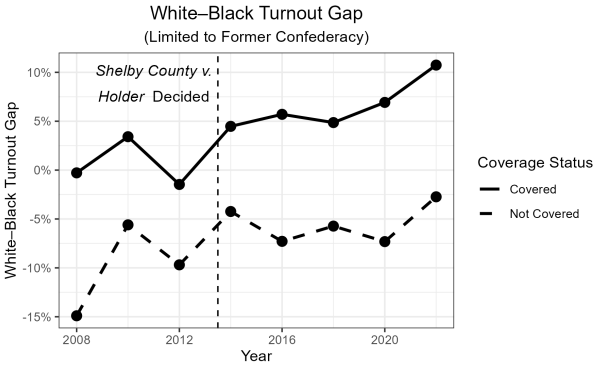
(a) Time Series



Model run at county level. Includes county and year FEs. Aggregated ATT is not statistically significant. Uncovered counties entropy balanced using the following covariates: population, share white, share Black, median income, median age, share with bachelor's degree or higher, 2012 Obama vote share.

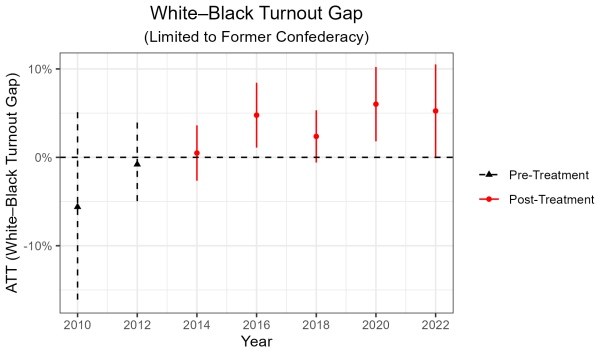
(b) Coefficients

Figure A22: White–Black Gap, Entropy Balancing Models, Analysis Limited to Former Confederacy



Uncovered counties entropy balanced using the following covariates: population, share white, share Black, median income, median age, share with bachelor's degree or higher, 2012 Obama vote share.

(a) Time Series

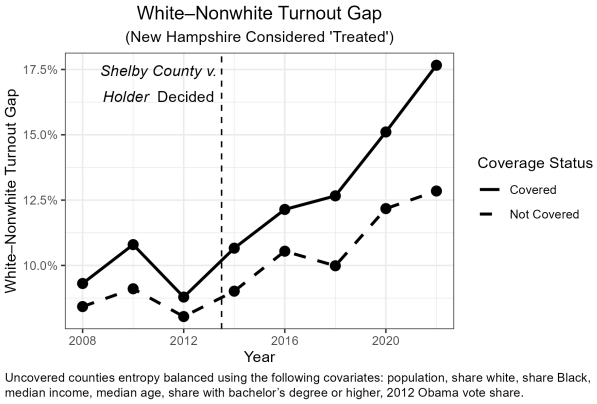


Model run at county level. Includes county and year FEs. Aggregated ATT is 3.8pts ($p < 0.05$). Uncovered counties entropy balanced using the following covariates: population, share white, share Black, median income, median age, share with bachelor's degree or higher, 2012 Obama vote share.

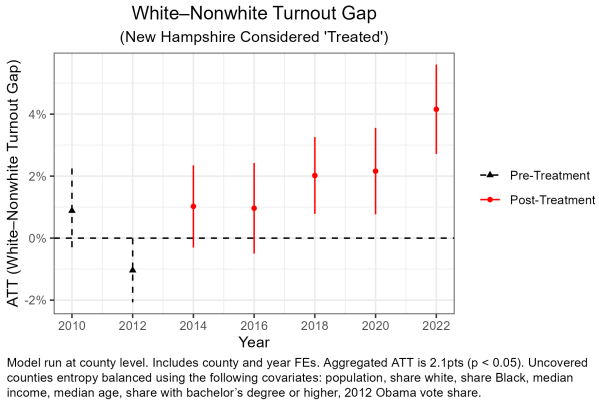
(b) Coefficients

covered until March of 2013.[2] As such, 2014 was the first federal election in which New Hampshire was not subject to Section 5. In that sense, it too was "treated," not by *Shelby County*, but by release from preclearance via a different mechanism. New Hampshire was "bailed out" under Section 4a of the VRA, which allows states to be released from preclearance if they meet certain conditions demonstrating a commitment to protecting the voting rights of minorities. For this reason, we believe that New Hampshire is better understood as a control case than a treated one. Nevertheless, we here show that our results are virtually unchanged if we consider New Hampshire "treated" instead of "control."

Figure A23: White–Nonwhite Gap, Entropy Balancing Models, New Hampshire considered "Treated"



(a) Time Series



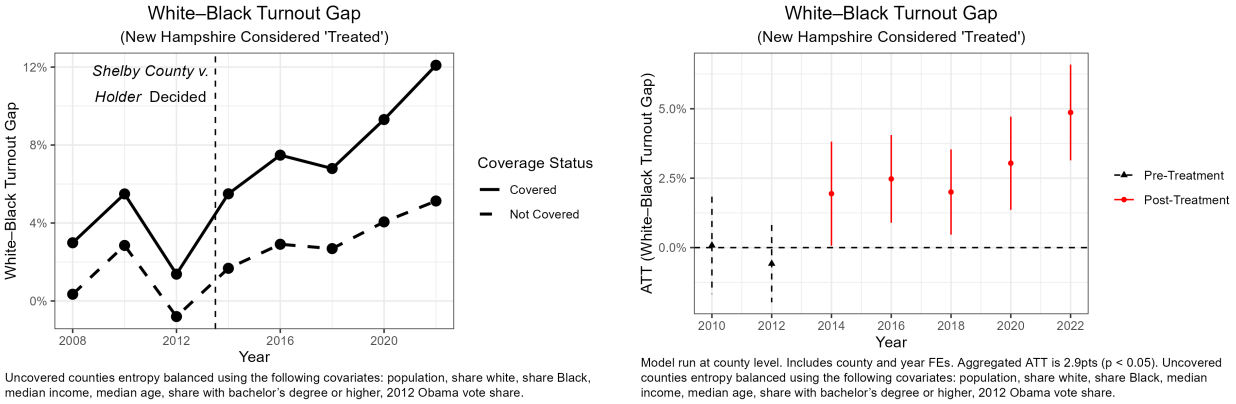
(b) Coefficients

A.6.10 Recoding Uncovered Counties in Partially Covered States

In the body of the report, we consider all counties "treated" by Section 5 of the Voting Rights Act if they were in a state that was only partially covered. For instance, even though only 3 counties in California were covered by the preclearance regime (Kings, Monterey, and Yuba Counties), we consider all counties in the state covered. This is because, according to the U.S. Supreme Court in *Lopez v. Monterey County* (525 U.S. 266 (1999)), all statewide

[2] See `https://campaignlegal.org/press-releases/new-hampshire-becomes-first-state-bailout-voting-rights` for a discussion.

Figure A24: White–Black Gap, Entropy Balancing Models, New Hampshire considered "Treated"



(a) Time Series

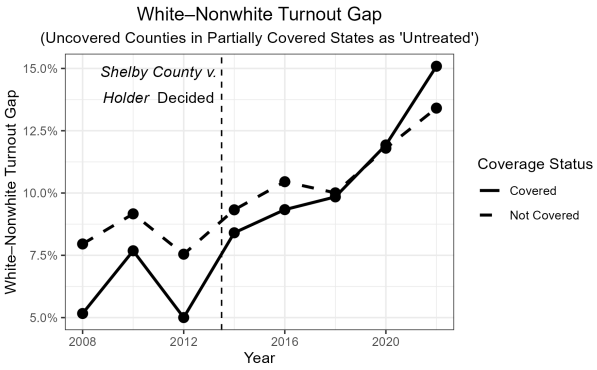
(b) Coefficients

voting policies were subject to preclearance so long as a single county in the state was covered by Section 4b. In other words, *statewide* policy was equally constrained by Section 5 of the Voting Rights Act regardless of whether the state was fully or partially covered by the provision. There are, however, other facets of election administration left up to the counties, such as polling place location. Here, we reclassify uncovered counties in partially covered states as control, and not treated, observations, to test whether these counties are driving our results. This specification results in higher point estimates than our primary models, especially later in the treatment period and for the overall white–nonwhite gap.

A.6.11 Weighting Counties by Population

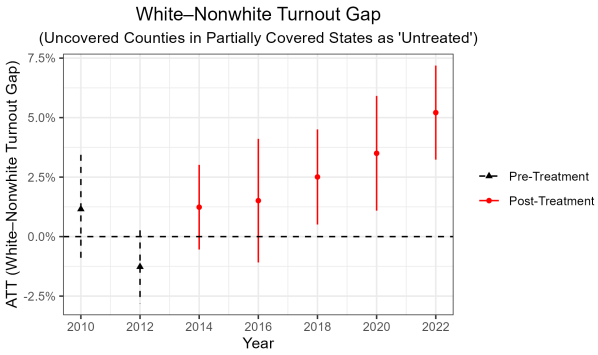
In the body of the report, we weight all counties equally, post–entropy balancing. This is because elections are generally run at the county level in the United States, and thus counties are the natural unit of analysis. We are interested in whether turnout gaps are growing in elections overseen by administrators in small and large counties alike. However, most voters are concentrated in a small handful of very large counties: roughly 23% of Black citizens of voting age in covered areas, for instance, live in just 10 of the nearly 1,300 covered counties. We might thus want to weight our analyses by the relevant population.

Figure A25: White–Nonwhite Gap, Entropy Balancing Models, Uncovered Counties in Partially Covered States as Controls



Uncovered counties entropy balanced using the following covariates: population, share white, share Black, median income, median age, share with bachelor's degree or higher, 2012 Obama vote share.

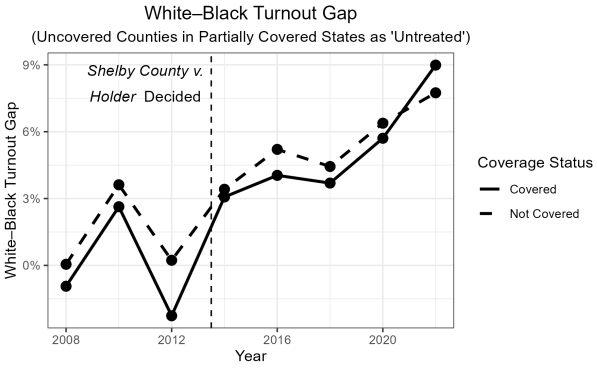
(a) Time Series



Model run at county level. Includes county and year FEs. Aggregated ATT is 2.8pts ($p < 0.05$). Uncovered counties entropy balanced using the following covariates: population, share white, share Black, median income, median age, share with bachelor's degree or higher, 2012 Obama vote share.

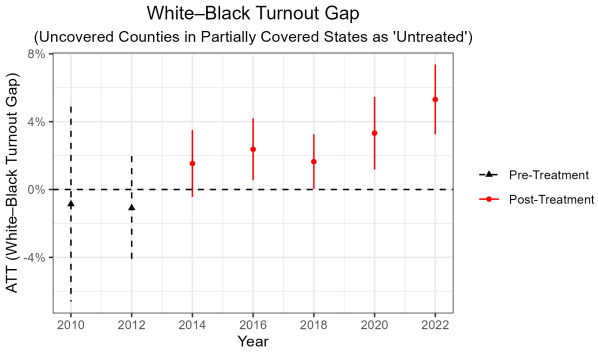
(b) Coefficients

Figure A26: White–Black Gap, Entropy Balancing Models, Uncovered Counties in Partially Covered States as Controls



Uncovered counties entropy balanced using the following covariates: population, share white, share Black, median income, median age, share with bachelor's degree or higher, 2012 Obama vote share.

(a) Time Series

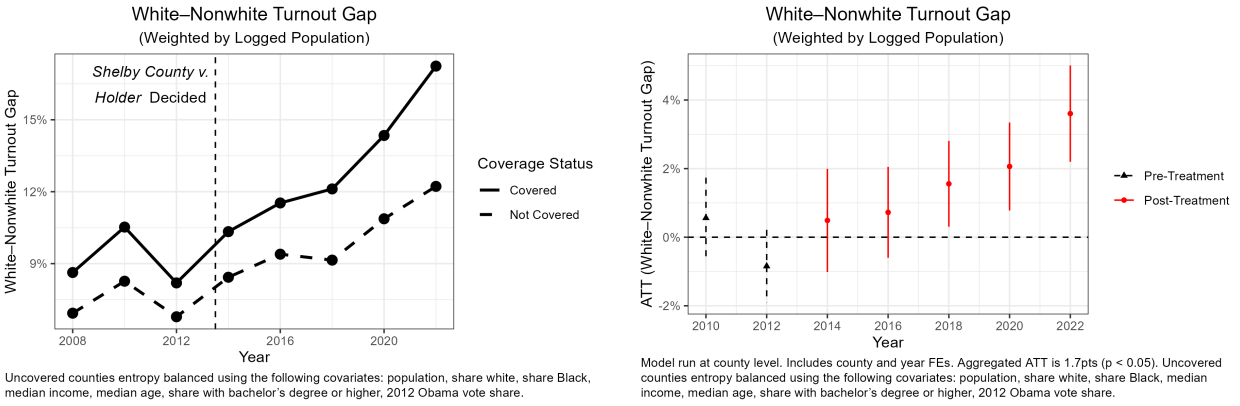


Model run at county level. Includes county and year FEs. Aggregated ATT is 2.8pts ($p < 0.05$). Uncovered counties entropy balanced using the following covariates: population, share white, share Black, median income, median age, share with bachelor's degree or higher, 2012 Obama vote share.

(b) Coefficients

We begin here by weighting counties throughout the country by their logged population of interest (nonwhite CVAP for the overall turnout gap; Black CVAP for the white–Black gap). Weights are scaled within year and treatment status; thus, the sum of the population weights for covered counties is 1 each year (the same is true for uncovered counties). This allows us to multiply the population weights by the entropy balancing weights and retain balanced groups. Using logged population, which grows more slowly than raw population, strikes a balance between weighting large counties more heavily, but not allowing them to completely drive our analyses. These results are consistent with the models in which we weight counties equally.

Figure A27: White–Nonwhite Gap, Entropy Balancing Models, Counties Weighted by Logged Population



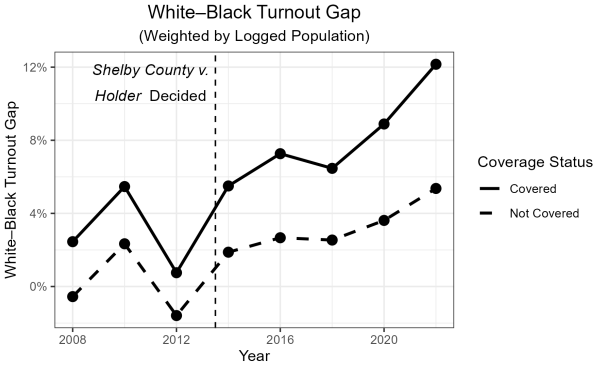
(a) Time Series

(b) Coefficients

Our results break down, however, when we weight counties by their *raw* population. In fact, weighting by raw population results in *negative* treatment effects for the white–nonwhite turnout gap.

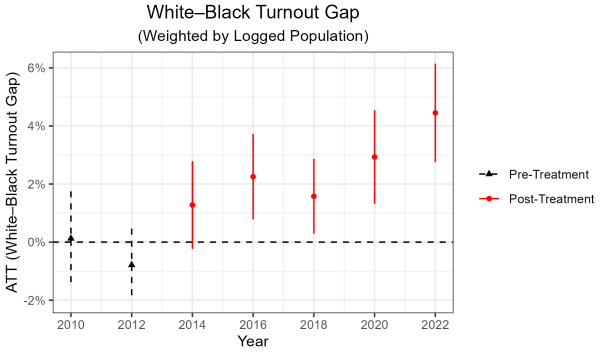
We have strong reason to believe, however, that these results are being overdetermined by the very largest counties in the sample. Los Angeles County, California, for instance, is assigned a population weight that is 863 times the median weight of the treated covered counties in 2022; for Harris County, Texas, that figure is 389. Such an extreme weight means that these results are driven largely by the enormous counties. And while it's possible that

Figure A28: White–Black Gap, Entropy Balancing Models, Counties Weighted by Logged Population



Uncovered counties entropy balanced using the following covariates: population, share white, share Black, median income, median age, share with bachelor's degree or higher, 2012 Obama vote share.

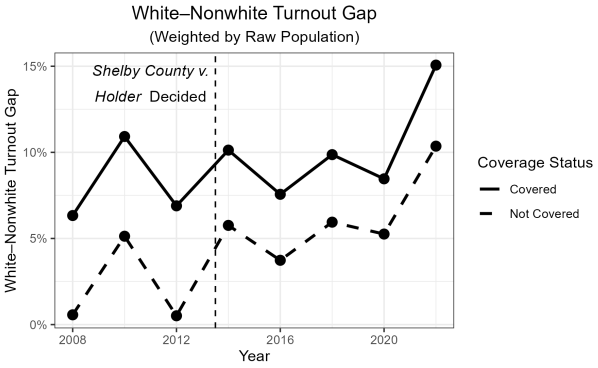
(a) Time Series



Model run at county level. Includes county and year FEs. Aggregated ATT is 2.5pts ($p < 0.05$). Uncovered counties entropy balanced using the following covariates: population, share white, share Black, median income, median age, share with bachelor's degree or higher, 2012 Obama vote share.

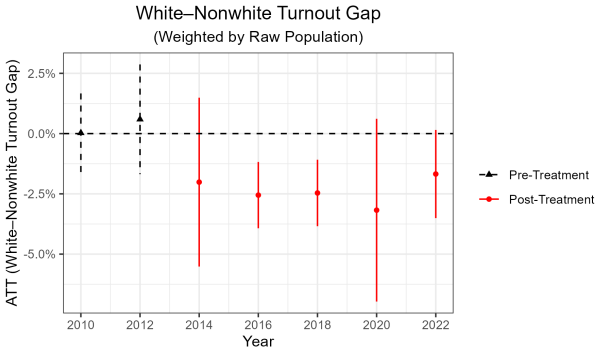
(b) Coefficients

Figure A29: White–Nonwhite Gap, Entropy Balancing Models, Counties Weighted by Raw Population



Uncovered counties entropy balanced using the following covariates: population, share white, share Black, median income, median age, share with bachelor's degree or higher, 2012 Obama vote share.

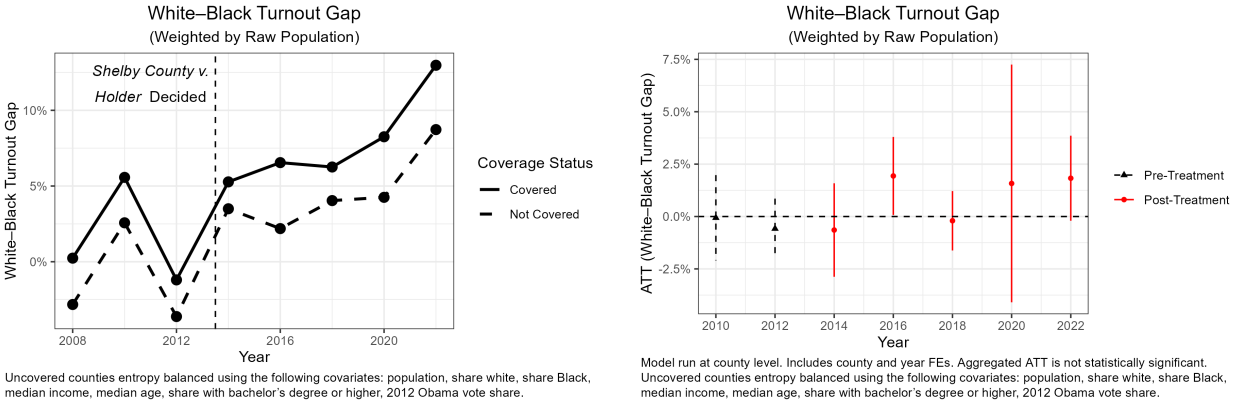
(a) Time Series



Model run at county level. Includes county and year FEs. Aggregated ATT is -2.4pts ($p < 0.05$). Uncovered counties entropy balanced using the following covariates: population, share white, share Black, median income, median age, share with bachelor's degree or higher, 2012 Obama vote share.

(b) Coefficients

Figure A30: White–Black Gap, Entropy Balancing Models, Counties Weighted by Raw Population

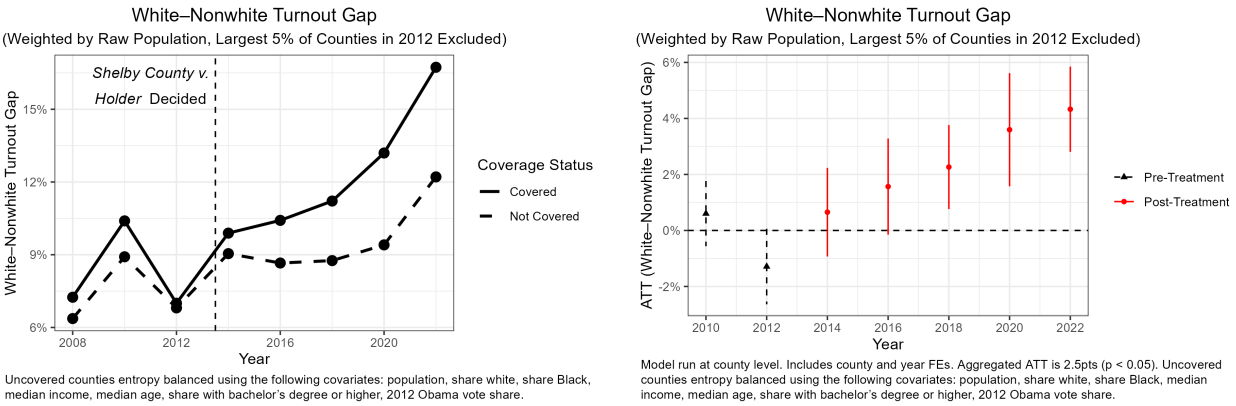


(a) Time Series (b) Coefficients

the effects of *Shelby County* really were different in the very largest counties, it seems that these extreme outliers are in fact outliers. We continue to find that *Shelby County* increased the turnout gap when we exclude the very largest counties.

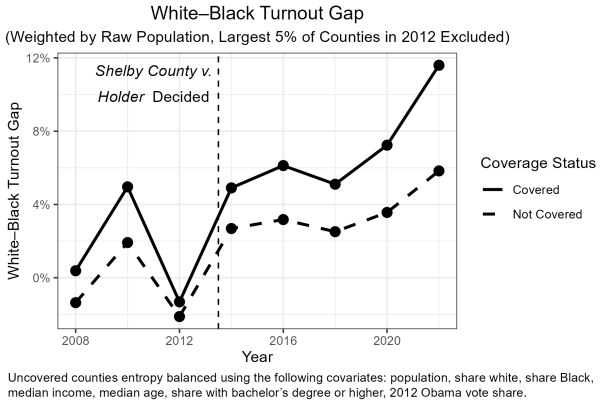
First, when we exclude the 5% of largest counties (based on their nonwhite or Black CVAP in 2012, depending on the model) but continue to weight by raw population, our results remain consistent. In other words, across at least 95% of counties, even when we weight by raw population, *Shelby County* meaningfully increased the racial turnout gap.

Figure A31: White–Nonwhite Gap, Entropy Balancing Models, Counties Weighted by Raw Population, Largest 5% Excluded

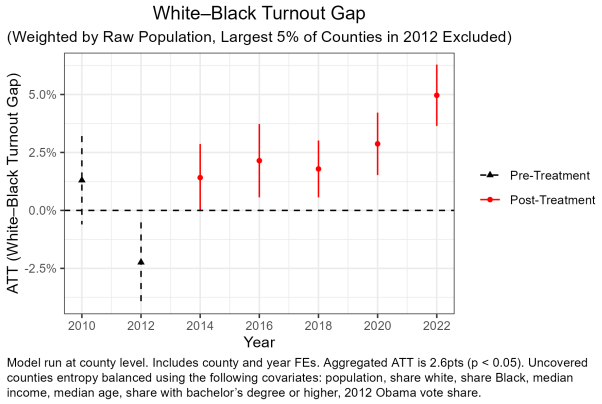


(a) Time Series (b) Coefficients

Figure A32: White–Black Gap, Entropy Balancing Models, Counties Weighted by Raw Population, Largest 5% Excluded



(a) Time Series



(b) Coefficients

In Table A7, we present the TWFE models using entropy balanced weights but where the observations are not weighted by population. Instead, we interact the treatment dummy (which is 1 for formerly covered counties for post-2012 years) with the county's population of interest. There are two things worth noting in the table. First, the coefficient on *Covered × Post Shelby County* is significant in both models; this means that there is an identifiable treatment effect of *Shelby County* in smaller counties. The negative, statistically significant coefficient on *Covered × Post Shelby County × Population (100,000s* in model 1 indicates that the effect of *Shelby County* on the white–nonwhite turnout gap was smaller in the largest of counties. Population size does not, however, significantly moderate the effect of *Shelby County* on the white–Black gap.

We thus conclude that, even after we account appropriately for population size, *Shelby County v. Holder* increased racial turnout gaps. Further, we remain convinced that analyzing elections and turnout at the county level *without* weighting by population remains the most theoretically grounded approach. Many of the causal mechanisms through which the consequences of *Shelby County* are effectuated, like redistricting plans and polling place locations, are implemented at the county level, and each county (for the most part) does so independently. There is by now a large body of literature (e.g., Hale, Montjoy and Brown,

Table A7: Treatment Moderated by Population

	White–Nonwhite Gap	White–Black Gap
Population (100,000s)	-0.034**	-0.005
	(0.012)	(0.019)
Covered × Population (100,000s)	0.020	0.029
	(0.013)	(0.022)
Covered × Post Shelby County	0.019***	0.026***
	(0.004)	(0.007)
Post Shelby County × Population (100,000s)	0.006**	0.008**
	(0.002)	(0.003)
Covered × Post Shelby County × Population (100,000s)	-0.006**	-0.002
	(0.002)	(0.003)
County Fixed Effects	✓	✓
Year Fixed Effects	✓	✓
Num.Obs.	24278	18027
R2	0.834	0.776
R2 Adj.	0.810	0.744

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Standard errors clustered by county.

Population is nonwhite CVAP for model 1, Black CVAP for model 2.

2015; Brown, Hale and King, 2019; Moynihan and Silva, 2008; Ferrer, Geyn and Thompson, 2023; Kimball and Baybeck, 2013; Mohr et al., 2019) detailing how voters' experiences are shaped by the county administrators where they live. If county-level administrators are exercising their newfound freedom—intentionally or not—to implement racially discriminatory voting policies that increase the racial turnout gap, this is of substantive interest regardless of the size of the county they oversee. This devolution of responsibility also increases the likelihood of treatment heterogeneity at the county level.

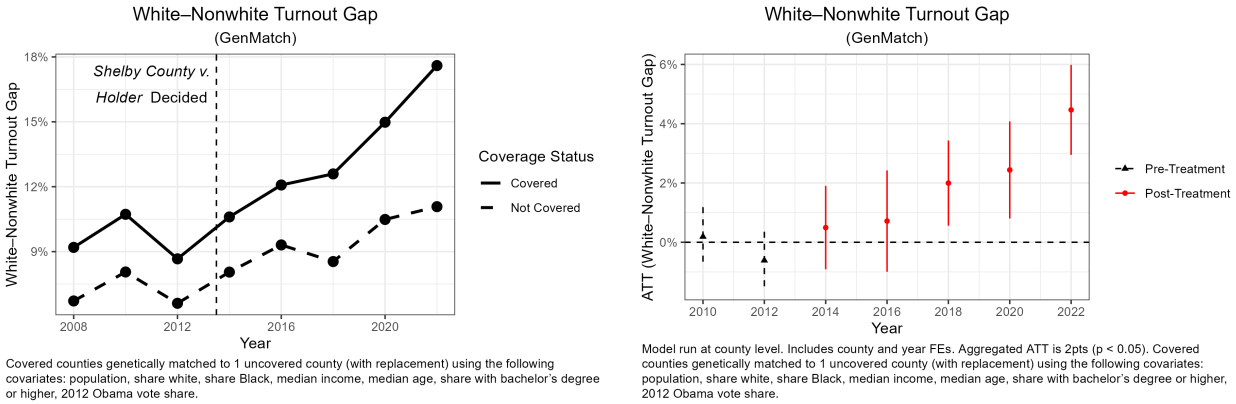
Of course, it remains distinctly possible that the impact of *Shelby County* had a different effect in large counties; there is good theoretical reason to think so. Harris County, Texas, provides a nice example. In 2020, the county introduced new reforms intended to make voting easier. It allowed for drive-through voting and 24-hour early voting and attempted to send all registered voters applications to request absentee ballots. In 2021, Texas passed an omnibus elections bill making voting more difficult, taking "particular aim at voting initiatives used in diverse, Democratic Harris County in the 2020 election" (Ura, 2021). The largest 5% of counties are often majority nonwhite (45% of them are, compared with just 9% of the rest of the counties in the country), are more Democratic (Obama won 75% of these large counties in 2012, compared with 17% of the rest of the country), and are more likely to have local election officials who are people of color.[3] It seems likely that despite state-level policies making voting more difficult in the aftermath of *Shelby County*, these largest counties would have local election officials most committed to mitigating any harm. Further, local and national media are considerably more focused on large counties, which may provide resources for countermobilization or a stronger check against would-be discrimination on the part of local election officials. Future work ought to investigate whether and which of these factors are at play in reducing the impact of *Shelby County* in the largest counties.

[3] `https://evic.reed.edu/2022_leo_survey_demography/`

A.6.12 Genetic Matching

As a final approach, we use a genetic matching procedure (Sekhon, 2011) to match each treated county to one untreated county, using the same set of 2012 characteristics previously described. We conduct matching with replacement, breaking ties randomly. Using this approach, we can adopt the strictest assumption about the parallel trends: that the outcome variable for treated and (matched) control units would have evolved in parallel *unconditional* on any covariates. Table A5 indicates that—like entropy balancing—genetically matching treated and control counties results in a control set substantially similar to the treated group. We also present the results of the matching models in which the parallel trends assumption is conditional on covariates.

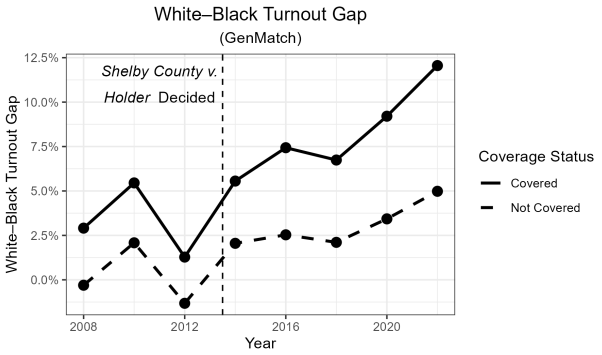
Figure A33: White–Nonwhite Gap, Genetic Matching, Parallel Trends Assumption Unconditional on Covariates



(a) Time Series

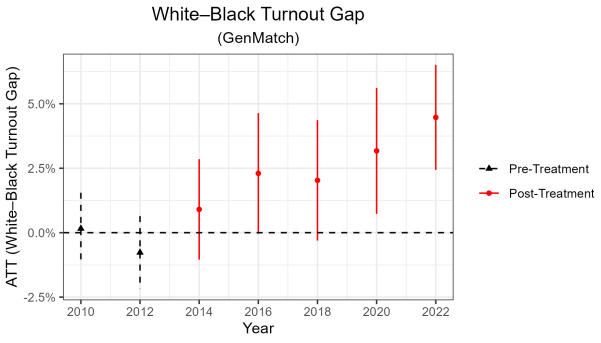
(b) Coefficients

Figure A34: White–Black Gap, Genetic Matching, Parallel Trends Assumption Unconditional on Covariates



Covered counties genetically matched to 1 uncovered county (with replacement) using the following covariates: population, share white, share Black, median income, median age, share with bachelor's degree or higher, 2012 Obama vote share.

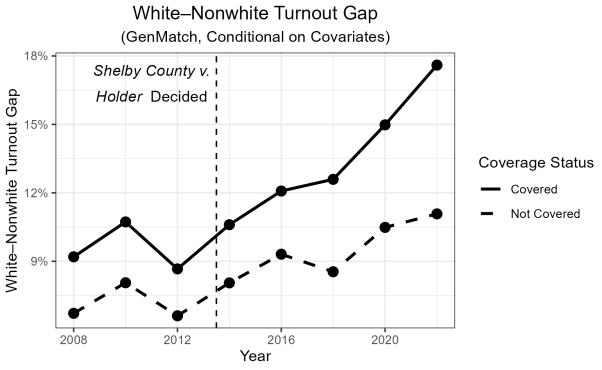
(a) Time Series



Model run at county level. Includes county and year FEs. Aggregated ATT is 2.6pts ($p < 0.05$). Covered counties genetically matched to 1 uncovered county (with replacement) using the following covariates: population, share white, share Black, median income, median age, share with bachelor's degree or higher, 2012 Obama vote share.

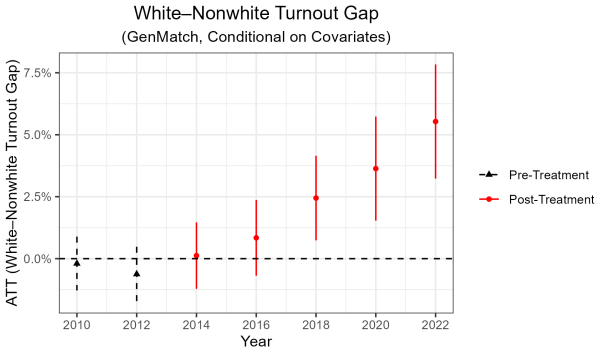
(b) Coefficients

Figure A35: White–Nonwhite Gap, Genetic Matching, Parallel Trends Assumption Conditional on Covariates



Uncovered counties entropy balanced using the following covariates: population, share white, share Black, median income, median age, share with bachelor's degree or higher, 2012 Obama vote share.

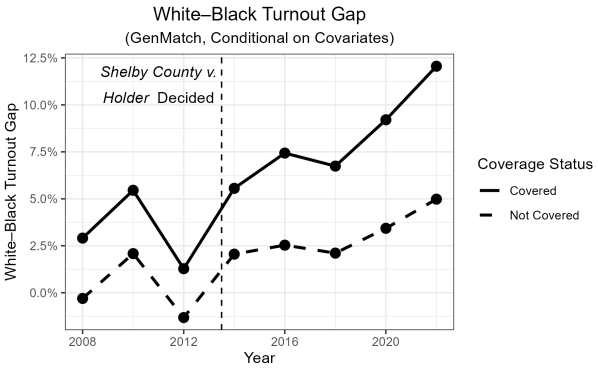
(a) Time Series



Model run at county level. Includes county and year FEs. Aggregated ATT is 2.5pts ($p < 0.05$). Uncovered counties entropy balanced using the following covariates: population, share white, share Black, median income, median age, share with bachelor's degree or higher, 2012 Obama vote share.

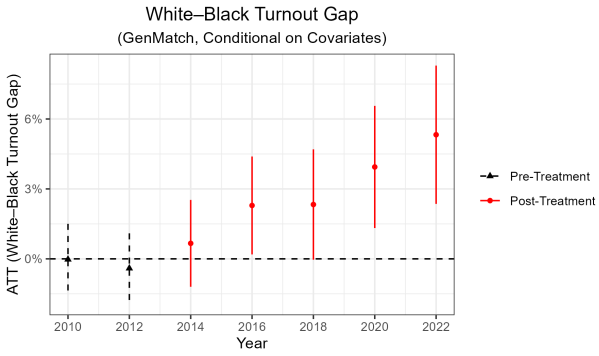
(b) Coefficients

Figure A36: White–Black Gap, Genetic Matching, Parallel Trends Assumption Conditional on Covariates



Uncovered counties entropy balanced using the following covariates: population, share white, share Black, median income, median age, share with bachelor's degree or higher, 2012 Obama vote share.

(a) Time Series



Model run at county level. Includes county and year FEs. Aggregated ATT is 2.9pts ($p < 0.05$). Uncovered counties entropy balanced using the following covariates: population, share white, share Black, median income, median age, share with bachelor's degree or higher, 2012 Obama vote share.

(b) Coefficients

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RESOURCE

Voting Laws Roundup: 2023 in Review

State legislatures enacted an almost unprecedented number of voting-related laws in 2023, with more of the same expected in 2024.

David Goldman/AP

PUBLISHED: January 18, 2024

Defend Our Elections
Election Integrity

Ensure Every American Can Vote
Vote Suppression
Voting Reform

This roundup looks back on voting laws enacted in 2023 and looks forward to the voting landscape in 2024 based on legislation already pending. In 2023, we once again saw an unprecedented volume of state legislation changing the rules governing voting. There remains a stark divide: 14 states passed restrictive voting laws while others moved to implement changes to make voting more accessible. All told, states enacted more restrictive laws and more expansive laws in 2023 than in any year in the last decade except for 2021, which was itself an unprecedented year. Early indicators for 2024 suggest more of the same.

Looking Back at 2023

which will be in effect for the 2024 general election.[2] At least one of these laws made it harder to vote in several different ways.

Voters in these states now face additional hurdles to reach the ballot box. Most of the restrictions limit mail voting, such as requiring additional information on a mail ballot application, shortening the window to request a mail ballot, or banning drop boxes.

At least 6 states enacted 7 election interference laws,[3] with at least 6 laws in effect for the 2024 elections.[4] Many create criminal penalties for election workers for minor mistakes such as not allowing a poll watcher to stand close enough to voters.

At the same time, at least 23 states enacted 53 expansive voting laws,[5] all but two of which will be in effect for the 2024 general election.[6] Many voters will now have access to a simpler process for registering to vote, greater access to absentee ballots, a simpler process for reclaiming their right to vote after a conviction, and/or increased access to assistance for voters who need it.

This year brings the first presidential election since lies about the 2020 election initiated a wave of restrictive voting laws and election interference laws. Voters in 18 states[7] face for the first-time restrictions that have been enacted since 2020. Because some laws passed in 2021 or 2022 either did not go into effect before the 2022 midterms or were temporarily blocked by a court but are now in effect, the number of states in which voters will face restrictions for the first time is higher than the 14 restrictive laws enacted in 2023. Voters in 27 states[8] will face restrictions in the 2024 election that they've never experienced in a presidential election before (some of these laws were in effect in the 2022 midterms). Also in 2024, 5 states[9] will have new election interference laws in place. For 13 states,[10] this will be the first presidential election year in which such laws are in effect (some of these laws were in effect in 2022).

Looking Ahead to 2024

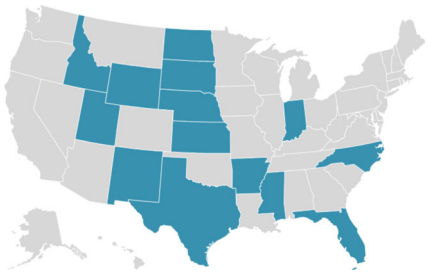
In some states, legislators were able to begin filing bills last December for consideration in this year's session, which is called "pre-filing." Additionally, many bills that were introduced but not passed last year are still before the legislature for consideration this year, or "carry over." Some of the pre-filed bills and carryovers may become law this year and impact voters; pre-filed bills in particular tend to be among legislators' top priorities for the year. As of December 31, 2023, 25 states had a pre-filed bill or a carryover that would make it harder to vote. The same number of states have expansive legislation, although the number of expansive bills is about twice as large. While the number of pre-filed and carryover expansive bills outpaces that of restrictive bills, voters in states passing restrictive laws will face new hurdles to vote regardless of what happens elsewhere in the country.

Looking Back at 2023

In 2023, we once again saw significant numbers of laws passed in states that changed the rules governing voting.

Overall, at least 14 states enacted 17 restrictive voting laws in 2023. Since our last roundup in **October 2023**, only seven state legislatures have had regular session and no restrictive laws have been enacted. Over the course of the year, at least 356 restrictive bills were considered by lawmakers in 47 states.

States That Enacted Restrictive Voting Laws in 2023



Source: Brennan Center analysis of publicly available data as of December 31, 2023.

Eleven of these laws make it harder to vote by mail.[11] Among the most restrictive, an omnibus voting law in North Carolina[12] shortens the period for returning mail ballots, eliminates ballot drop boxes, and makes it more likely that voters using same-day registration do not have their ballots counted.[13] This law has twice been challenged in court since it was enacted three months ago. Also of note is a Mississippi law[14] that makes it a crime for anyone but election officials, postal workers, family members, household members, and caregivers to help a voter return their mail ballot – a policy that can harm all voters but particularly those with disabilities or a limited ability to read or write. A federal judge blocked enforcement of this law as to voters with those conditions, but the state has appealed the decision. Depending on what happens on appeal, the law could be back in full effect by the 2024 elections.

Provisions of a Florida law that makes it more difficult for get-out-the-vote groups to register voters have been temporarily blocked by a federal court.[15] Two laws out of Idaho aimed at student voters are currently undergoing legal challenges. The first removes student IDs as permissible IDs for voting,[16] and the second tightens ID requirements for registering to vote and excludes student IDs from the list of allowable IDs.[17]

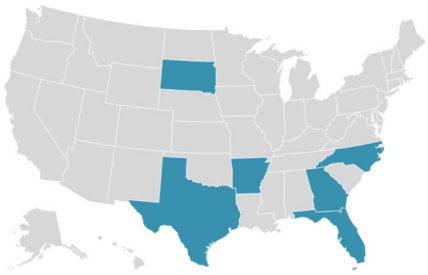
Restrictive Voting Laws Enacted in 2023

Arkansas	AR H.B. 1411	Makes it more difficult for voters to acquire a mail ballot
Florida	FL S.B. 7050	Imposes new requirements on get-out-the-vote groups and increases financial penalties for human error
Idaho	ID H.B. 124	Removes student IDs as an allowable form of ID for voting
	ID H.B. 340	Tightens ID and proof of residence requirements for registering to vote
Indiana	IN H.B. 1334	Imposes stricter ID requirements for acquiring a mail ballot and prohibits the sending of unsolicited mail ballot applications
Kansas	KS S.B. 106	Prohibits officials from providing mail ballots to voters who have not submitted an application
Mississippi	MS H.B. 1310	Requires a voter purge without adequate safeguards for eligible voters
	MS S.B. 2358	Makes it a crime in most instances to assist another voter in returning a mail ballot
Nebraska	NE L.B. 514	Imposes new photo ID requirements for in-person and absentee voting
New Mexico	NM S.B. 180	Shortens the mail ballot application deadline and makes it harder to get a replacement mail ballot
North Carolina	NC S.B. 747	Omnibus law that shortens the mail ballot return window, bans drop boxes, and restricts same-day registration
North Dakota	ND H.B. 1431	Requires voters who present non-driver ID to also show proof of citizenship
South Dakota	SD H.B. 1165	Bans ballot drop boxes and makes it harder for voters to acquire a mail ballot
Texas	TX S.B. 924	Allows some counties to consolidate polling places
Utah	UT S.B. 17	Adds new ground for voter challenges and enhances proof of residence requirements for certain voters
Wyoming	WY H.B. 279	Creates an ID requirement for people applying in-person for a mail ballot

Election Interference Laws

At least 6 states enacted 7 election interference laws in 2023. All 7 passed prior to our October roundup – when most state legislatures were still in session. Overall, at least 86 interference bills were considered in 23 states last year.

States That Enacted Election Interference Laws in 2023



Source: Brennan Center analysis of publicly available data as of December 31, 2023.

Interference laws in Arkansas, Georgia, and South Dakota impose criminal penalties on election workers for routine election administration or inadvertent errors. The Arkansas law[18] makes it a misdemeanor for election officials to give a mail ballot or a mail ballot application to a voter who hasn't requested it, while the Georgia law[19] expands the state's criminal ban on election officials accepting private funds for election administration. South Dakota's new law[20] imposes criminal penalties on poll workers for not making the process of canvassing mail ballots – election officials determining the official count – sufficiently open to poll watcher observance. The law does not define "open" (meaning election workers could be charged with a crime over differences of opinion regarding where watchers can stand). One interference law in Florida facilitates the state's efforts to prosecute people with past convictions who were misled by the state or confused about their eligibility to vote.[21] These laws reflect state legislatures' increased focus on criminalizing ordinary election-related activities.

North Carolina's interference law,[22] which threatens the certification process by restructuring boards of elections to increase the chances of deadlock, was temporarily blocked by a federal court in November.

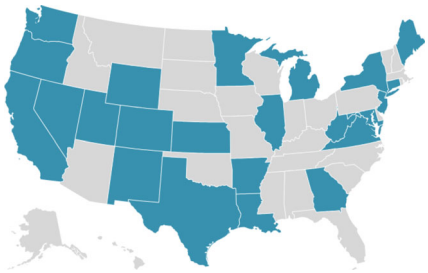
Election Interference Laws Enacted in 2023

Arkansas	AR H.B. 1411	Makes it a crime for an election official to send an unsolicited mail ballot
	AR S.B. 272	Enables the partisan state elections board to conduct targeted and standardless audits
Florida	FL S.B. 4-B	Enables prosecutions of people with past convictions who mistakenly voted or registered to vote while ineligible
Georgia	GA S.B. 222	Expands the law making it a crime for election officials to accept third-party funding
North Carolina	NC S.B. 749	Restructures boards of elections to increase the likelihood of deadlock on crucial tasks
South Dakota	SD H.B. 1165	Imposes criminal penalties on poll workers for not letting poll watchers be close enough to ballot counting
Texas	TX S.B. 1933	Gives the politically appointed secretary of state extreme oversight over Harris County's day-to-day election administration

Expansive Laws

Last year, at least 23 states enacted 53 expansive laws. This is an increase of six laws since our October roundup, although the number of states stayed the same as all the new laws came from Michigan. Lawmakers across all 50 states considered a total of 664 expansive voting laws in 2023.

States That Enacted Expansive Voting Laws in 2023



Source: Brennan Center analysis of publicly available data as of December 31, 2023.

Michigan enacted 12 expansive voting laws in 2023, the most of any state. While the number of laws doesn't always indicate the breadth of the voting-access reforms, Michigan's new laws put in place a wide range of major expansions. Of the six laws passed in Michigan since our last roundup, four expand access to voter registration. These laws extend automatic voter registration to new government agencies, [23] open up pre-registration to those as young as 16, [24] and widen access to online [25] voter registration and same-day [26] voter registration. The other two laws allow voters to apply online for a mail ballot [27] and repeal a prohibition on hiring transportation for taking voters to the polls. [28]

California, Connecticut, Minnesota, Nevada, and Washington were among the other states that passed multiple or significant pro-voter laws. Connecticut also passed a resolution to allow no-excuse mail voting, [29] which will appear on the general ballot for voter approval in November.

New York enacted six expansive laws. [30] Most notably, the state now permits any registered voter to vote by mail as opposed to only voters who meet certain criteria, such as having an illness or disability or being absent from their county on Election Day. [31] A group of elected officials, political parties, and voters **challenged** this new law as violating the state constitution. On December 26, 2023, a state judge **denied** their motion to temporarily prohibit the law's implementation. The case remains ongoing.

Expansive Voting Laws Enacted in 2023

Page 1 of 3 >

Arkansas	AR H.B. 1512	Eliminates the mail ballot application deadline for voters outside the United States
	AR S.B. 247	Allows those who cannot vote in person due to a religious observance to vote by mail
California	CA A.B. 292	Simplifies the process for unaffiliated voters to request a mail ballot for a primary election
	CA A.B. 545	Makes in-person voting more accessible to voters with disabilities
	CA A.B. 626	Allows voters to submit mail ballots at a polling place using in-person voting procedures
Colorado	CO S.B. 276	Expands student voting, voting on Indian reservations, and voter registration in jails
Connecticut	CT H.B. 5004	Establishes 14 days of early voting for general elections
	CT H.B. 6941	Enacts the Connecticut Voting Rights Act, containing wide-ranging voter protections
Georgia	GA S.B. 129	Extends state employees' paid time off for voting to include in-person early voting
Illinois	IL S.B. 2123	Allows 16-year-olds to pre-register, requires more vote centers, and expands curbside voting
Kansas	KS S.B. 221	Establishes a notice and cure process for absentee ballot signature mismatches
Louisiana	LA H.B. 449	Improves enforcement of laws guaranteeing accommodations for voters with disabilities
Maine	ME L.D. 886	Extends the absentee ballot application deadline for certain voters
Maryland	MD H.B. 410	Sets minimum number of polling places and protects polling place access for historically disenfranchised groups
Michigan	MI S.B. 259	Extends the mail ballot receipt deadline for uniformed or overseas voters
	MI H.B. 4570	Allows voters to apply for absentee ballots online
	MI H.B. 4697	Requires each municipality to have at least one drop box
	MI H.B. 4699	Allows voters to apply to be on a permanent absentee ballot list
	MI S.B. 373	Expands the list of acceptable photo IDs

Gubernatorial Vetoes of Restrictive and Interference Legislation

Like in 2021, in addition to a high volume of legislation, 2023 also saw a large amount of gubernatorial action on election-related legislation. In 2023, eight restrictive voting bills and three election interference bills were

became law due to legislative overrides (both in North Carolina), while the remaining instances reveal how close additional restrictive and interference bills were to becoming law. In four of the five states — Arizona, Kansas, North Carolina, and Wisconsin — Republicans control both legislative chambers while a Democrat holds the governorship.

Arizona Gov. Katie Hobbs (D) vetoed three restrictive voting bills and two election interference bills. One of the restrictive bills [33] would have required voters to either drop off mail ballots by 7 p.m. on the Friday before Election Day or, if they drop them off after that, to present ID for in-person voting and sign the electronic pollbook. A voter who lacks an acceptable ID would have to surrender their mail ballot and cast a provisional ballot. Under existing law, Arizonans can drop off mail ballots until 7 p.m. on Election Day without additional hurdles. Another vetoed Arizona bill would have made it a felony for poll workers not to allow partisan observers to "reasonably, comfortably, and clearly" view the signature verification process. [34]

Wisconsin Gov. Tony Evers (D) vetoed two restrictive voting bills. [35] One of the bills would have narrowed the definition for "indefinitely confined" to require that the voter needs help to travel and removed age as a qualifier. [36] The indefinitely confined status allows voters to be on a permanent mail voting list. The bill also would have added a separate application and photo ID requirement for voters seeking such designation and it would have removed every voter from "indefinitely confined" status who was added between March 12, 2020, and November 3, 2020.

As mentioned, North Carolina Gov. Roy Cooper (D) vetoed one restrictive voting bill [37] and one election interference bill, [38] but the state legislature overrode the governor's vetoes for both bills. These bills and the circumstances of their passage are detailed in our **last roundup**. Kansas Gov. Laura Kelly (D) vetoed a restrictive voting bill [39] that would have cut the mail ballot return window by three days.

In Wyoming, where Republicans have control of the legislature and the governor's seat, Gov. Mark Gordon (R) vetoed a restrictive bill [40] that would have barred the distribution of absentee ballot request forms except when requested by a voter.

Meanwhile, governors in two states vetoed four expansive bills. Nevada Gov. Joe Lombardo (R) vetoed three pieces of legislation. These bills would have provided for more voting materials in non-English languages, [41] required at least two accessible voting machines in each polling place instead of one, [42] and expanded the categories of acceptable ID. [43] A vetoed Arizona bill, [44] which contained restrictive provisions as well, would have removed the requirement that early voting must end the Friday before Election Day.

Notable too is the prohibition on guns near polling places and drop boxes that Nevada Gov. Lombardo vetoed. [45] It's not included in our tally of expansive laws.

Looking Ahead to 2024

Some states permit legislators to "pre-file" bills at the end of one year for consideration in the next. The pre-filed bills are not yet moving, but they are often among state lawmakers' top priorities for the next legislative session. Likewise, many states permit legislatures to "carry over" bills introduced but not passed in the first year of a session to the next, although these are not necessarily more likely to pass than other bills. At the

legislatures.

Lawmakers in 12 states have pre-filed a total of at least 85 voting-related bills for this year's sessions. Of the 25 states that carry over legislation into even-numbered years, each one carried over a voting-related bill into 2024.

As of December 31, 2023, at least 140 restrictive voting bills that were either pre-filed or carried over are pending in 25 states for consideration in 2024. Seven are pre-filed bills and the rest are carryovers. The number of carryovers being far greater than the number of pre-filings is consistent with past years. Compared to 2022 — the last even-numbered year — fewer restrictive bills were pre-filed or carried over this year. That year, at least 22 states pre-filed or carried over 165 restrictive bills as of December 7, 2021.[46]

Further, at least 20 election interference bills that were pre-filed or carried over are pending in 12 states. Of these, six bills were pre-filed and the remainder carried over from 2023. The Brennan Center started tracking interference legislation on January 1, 2022, so we can't compare this count with the number of pre-filed bills or carryovers that were before state legislatures at the beginning of 2022.

On the expansive front, as of the end of 2023, at least 295 bills that were pre-filed or carried over are pending in 25 states. Fourteen of these were pre-filed bills and the rest are carryovers. In 2022, the carryover numbers were slightly higher: at least 21 states plus Washington, DC, carried over 303 expansive bills. We did not track the number of pre-filed expansive bills that year.

Pre-filed Legislation

At the conclusion of 2023, at least 82 voting bills were pre-filed in 12 states for the 2024 session.

Of the pre-filed bills:

- At least 7 bills in 5 states[47] would make it harder for voters to cast a ballot
- At least 6 bills in 3 states[48] would allow for election interference
- At least 14 bills in 6 states[49] would expand voting access.

Five of the eight restrictive pre-filed bills would make it harder to vote absentee. Virginia has two restrictive mail voting proposals, one to shorten the absentee voting period from 42 days to 27 days[50] and another to shrink the window to 18 days.[51] A New Hampshire bill would eliminate religious, employment, or weather-related reasons for voting absentee, require all absentee voters to mark their ballot in front of an official, and require absentee voters to fill out an affidavit in the official's presence.[52]

On the other hand, pre-filed bills that would expand voting access cover several subjects. Two Florida bills would allow for more early in-person voting sites.[53] Missouri would allow more voters to participate in Election Day registration,[54] while South Carolina would increase early in-person voting hours[55] and registration opportunities while at the DMV (including for people pre-registering before their 18th birthday).[56]

counts of ballots, which is proven to be **error-prone and to cause certification delays**.[57] A fifth would allow counties to do full hand-counts.[58]

Other bills across the country would better secure our elections. Eight bills increase protections for election officials. These are in Florida,[59] Missouri,[60] New York,[61] and South Dakota.[62] Election workers have been leaving their jobs in large numbers due to threats and harassment. Such protections can ensure that experienced individuals remain on the job and help our elections run smoothly.

Carryover Bills

Of the legislation that will carry over into the 2024 state legislative sessions:

At least 133 bills in 22 states[63] restrict access to voting
At least 14 bills in 9 states[64] open the door to election interference
At least 281 bills in 22 states[65] expand voting access.

Of the 133 restrictive bills, 70 would curb access to mail voting, while 42 would impose stricter ID requirements for in-person voting or registering to vote. Kansas has one carryover bill[66] that would require voters to provide documentary proof of citizenship to register — a policy that was struck down by a federal court when the state enacted it before[67] — and another[68] that would eliminate no-excuse mail voting and require mail ballot applications and mail ballots to be notarized.

Ten of the states that will carry over a restrictive voting bill will also carry over at least one election interference bill. Of the 18 interference bills, 11 would create new criminal or civil penalties for election workers for mistakes such as not asking for or verifying a voter's photo identification. Notably, proposals in North Carolina,[69] Oklahoma,[70] West Virginia,[71] and Wisconsin[72] would impose civil or criminal penalties on poll workers for failing to allow partisan poll watchers increased latitude to observe election processes.

Of the 281 expansive carryover bills, 98 would make it simpler to register to vote, 71 would make it simpler to vote by mail, and 37 would restore voting rights to some people with past criminal convictions. While 25 states allow for carryover bills, New York alone has about one-third (92) of this year's expansive carryovers. Many of the New York bills would expand access to voting for members of language minority groups.[73] Several would establish Election Day voter registration.[74]

States to Watch: Wisconsin, Virginia, and Missouri

When it comes to pre-filed and carryover legislation for 2024, legislators in Wisconsin, Virginia, and Missouri have been among the most active.

state. While vetoes twice thwarted Wisconsin lawmakers' efforts to restrict voting last year, nine restrictive and three interference bills were actively moving through the Wisconsin legislature in the final months of 2023, which will all carry over into the new session.

A pair of bills — one restrictive and one interference — passed the Wisconsin State Assembly in November. The restrictive bill[75] would add new grounds for not counting mail ballots. The interference bill[76] would subject election workers to criminal penalties for not allowing poll watchers increased proximity to voters. Such legislation makes it challenging for election officials to remove or contain disruptive poll watchers and increases the risk of voter intimidation and harassment. Also of note, an interference bill[77] introduced in late December would dissolve the Wisconsin Elections Commission and give the state legislature — a political branch of government charged with policymaking — unprecedented control over routine election administration activities.

Lawmakers in Virginia pre-filed three restrictive voting bills. As discussed, two would shrink the period to participate in mail voting.[78] The third would remove forms of acceptable ID to vote, burdening voters who relied on those options to verify their identities.[79]

But other Virginia legislators are focused on making voting more accessible. A bill introduced in both chambers of the legislature would automatically restore voting rights to incarcerated people upon their release.[80] In contrast with the restrictive ID bill discussed above, a separate bill would add to the list of acceptable voter IDs.[81] Virginia has recently fluctuated between enacting restrictive and expansive policies depending on which party has been in power. When Democrats held both chambers of the legislature and the governor's mansion from 2020 to 2022, they passed several expansive laws. When Republicans took back one house and the governorship from 2022 to 2024, they sought to roll back some of these reforms. Now, the legislature is Democrat-controlled while the governor is a Republican. Whether Virginia's divided government moves in a restrictive or an expansive direction is a development to monitor this year.

In Missouri, lawmakers have pre-filed three election interference bills. One of the measures would mandate complete hand-counts and allow any voter to contest election results.[82] Another would likewise require full hand-counts of all ballots.[83]

Endnotes

1 AR H.B. 1411, FL S.B. 7050, ID H.B. 124, ID H.B. 340, IN H.B. 1334, KS S.B. 106, MS H.B. 1310, MS S.B. 2358, NC S.B. 747, ND H.B. 1431, NE L.B. 514, NM S.B. 180, SD H.B. 1165, TX S.B. 924, UT S.B. 17, WY H.B. 279, WY S.F. 153. Legislation is categorized as restrictive if it contains one or more provisions that would make it harder for eligible Americans to register, stay on the voter rolls, or vote as compared to existing state law.

2 MS S.B. 2358 has been partially blocked by a federal court as it applies to voters with disabilities, but the state has appealed. Portions of FL S.B. 7050 were temporarily blocked by a federal court, but some restrictive provisions remain in effect. The state has appealed.

3 AR H.B. 1411, AR S.B. 272, FL S.B. 4-B, GA S.B. 222, NC S.B. 749, SD H.B. 1165, TX S.B. 1933. Legislation is categorized as interference if it either threatens the people and processes that make elections work or increases opportunities for partisan interference in election results or administration.

5 AR H.B. 1512, AR S.B. 247, CA A.B. 292, CA A.B. 545, CA A.B. 626, CO S.B. 276, CT H.B. 5004, CT H.B. 6941, GA S.B. 129, IL S.B. 2123, KS S.B. 221, LA H.B. 449, ME L.D. 886, MD H.B. 410, MI H.B. 4567, MI H.B. 4568, MI H.B. 4569, MI H.B. 4570, MI H.B. 4697, MI H.B. 4699, MI H.B. 4983, MI S.B. 259, MI S.B. 367, MI S.B. 370, MI S.B. 373, MI S.B. 594, MN H.F. 3, MN H.F. 28, NV A.B. 286, NV S.B. 216, NV S.B. 327, NJ A.B. 5175, NM H.B. 4, NM S.B. 180, NY A.B. 4009, NY A.B. 7690, NY S.B. 1733, NY S.B. 1327, NY S.B. 5984, NY S.B. 7394, OR H.B. 2107, OR S.B. 166, TX H.B. 1217, TX S.B. 477, TX S.B. 1599, UT H.B. 37, UT S.B. 17, VA H.B. 1948, WA H.B. 1048, WA S.B. 5112, WA S.B. 5208, WV S.B. 631, WY H.B. 79. Legislation is categorized as expansive if it contains one or more provisions that would make it easier for eligible Americans to register, stay on the voter rolls, or vote as compared to existing state law.

6 MI H.B. 4983 and MI S.B. 594 do not take effect until June 30, 2025. The provisions of NM H.B. 4 that expand automatic voter registration do not take effect until July 1, 2025.

7 Arkansas, Florida, Idaho, Indiana, Kansas, Mississippi, Nebraska, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, South Dakota, Texas, Utah, and Wyoming.

8 Alabama, Arizona, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Utah, and Wyoming.

9 Arkansas, Florida, Georgia, South Dakota, and Texas. North Carolina would be one of these states, but its new interference law, S.B. 749, has been temporarily blocked by a state court.

10 Alabama, Arizona, Arkansas, Florida, Georgia, Iowa, Kansas, Kentucky, Missouri, North Dakota, Oklahoma, South Dakota, and Texas.

11 AR H.B. 1411, FL S.B. 7050, IN H.B. 1334, KS S.B. 106, MS S.B. 2358, NE L.B. 514, NM S.B. 180, NC S.B. 747, SD H.B. 1165, WY H.B. 279, WY S.F. 153.

12 NC S.B. 747.

13 This provision requires election officials to send an address verification notice to voters who register to vote the same day that they cast their ballots (even though such voters already presented photo ID and proof of residence). If the Postal Service returns the notice as "undeliverable" within ten days of the election, a voter's registration must be cancelled and their ballot rejected. This notice may be returned as undeliverable for eligible voters such as college students who must list a central university address on the registration form but can only receive mail that is sent to a more specific address such as a dorm room on that campus. When this occurs the voter is not notified or given the chance to contest it. Previously, a voter using same-day registration could only have their registration denied after two failed attempts to deliver an address verification notice and they'd have the opportunity to contest the rejection of their ballot at a hearing. North Carolina's new law could result in eligible voters being disenfranchised for reasons entirely beyond their control.

14 MS S.B. 2358.

15 FL S.B. 7050.

16 ID H.B. 124.

17 ID H.B. 340.

18 AR H.B. 1411.

19 GA S.B. 222.

20 SD H.B. 1165.

21 FL S.B. 4-B.

22 NC S.B. 749.

23 MI H.B. 4938.

24 MI H.B. 4569.

26 MI H.B. 4567.

27 MI H.B. 4570.

28 MI H.B. 4568.

29 CT H.J.R. 1.

30 NY A.B. 4009, NY A.B. 7690, NY S.B. 1327, NY S.B. 1733, NY S.B. 5984, NY S.B. 7394.

31 NY S.B. 7394.

32 Arizona, Kansas, North Carolina, Wisconsin, and Wyoming.

33 AZ S.B. 1595.

34 AZ H.B. 2305.

35 WI A.B. 494, WI S.B. 98.

36 WI A.B. 494.

37 NC S.B. 747.

38 NC S.B. 749.

39 KS S.B. 209.

40 WY S.F. 131.

41 NV A.B. 246.

42 NV A.B. 242.

43 NV A.B. 443.

44 AZ S.B. 1595.

45 NV A.B. 354.

46 No additional bills would have carried over, but we did not track whether any more bills were pre-filed for 2022 after our cutoff date of December 7, 2021.

47 Alabama, Arizona, New Hampshire, Oklahoma, and Virginia.

48 Florida, Missouri, and New Hampshire.

49 Florida, Missouri, New York, South Carolina, Virginia, and Washington.

50 VA H.B. 44.

51 VA S.B. 42.

52 NH H.R. 25.

53 FL H.B. 963, FL S.B. 780.

54 MO S.B. 926.

55 SC H.B. 4590.

56 SC S.B. 886.

58 FL H.B. 359.

59 FL H.B. 721, FL S.B. 562.

60 MO S.B. 926, MO S.B. 1235.

61 NY A.B. 8095, NY S.B. 7661, NY S.B. 7725.

62 SD S.B. 20.

63 Alaska, California, Georgia, Hawaii, Illinois, Iowa, Kansas, Massachusetts, Michigan, Minnesota, Nebraska, New Hampshire, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Washington, West Virginia, and Wisconsin.

64 Kansas, Minnesota, Nebraska, North Carolina, Oklahoma, Pennsylvania, South Carolina, West Virginia, and Wisconsin.

65 Alaska, California, Delaware, Hawaii, Illinois, Iowa, Kansas, Massachusetts, Michigan, Minnesota, Nebraska, New Hampshire, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Vermont, Washington, and Wisconsin.

66 KS H.B. 2043.

67 *Fish v. Kobach*, 309 F. Supp. 3d 1048, 1113 (D. Kan. 2018).

68 KS S.B. 260.

69 NC H.B. 772.

70 OK S.B. 995.

71 WV H.B. 2866.

72 WI A.B. 543, WI S.B. 560.

73 NY A.B. 90, NY A.B. 642, NY A.B. 1902, NY A.B. 3878, NY A.B. 3918, NY A.B. 3919, NY A.B. 3973, NY A.B. 6355, NY A.B. 7469, NY S.B. 4033, NY S.B. 6319, NY S.B. 6382, NY S.B. 6782.

74 NY A.B. 3512, NY A.B. 3921, NY A.B. 5007, NY S.B. 170, NY S.B. 2381, NY S.B. 6008.

75 WI A.B. 570.

76 WI A.B. 543.

77 WI S.B. 834.

78 VA H.B. 44, VA S.B. 42.

79 VA S.B. 45.

80 VA H.J.R. 2, VA S.J.R. 2.

81 VA H.B. 26.

82 MO S.B. 832.

83 MO S.B. 917.

ANALYSIS

States Have Added Nearly 100 Restrictive Laws Since SCOTUS Gutted the Voting Rights Act 10 Years Ago

The Washington Post/Getty

Many of the new laws are in states with a history of racial voting discrimination.


Jasleen Singh Sara Carter

June 23, 2023

Ensure Every American Can Vote

Vote Suppression

Ten years ago, the Supreme Court eviscerated a central component of the Voting Rights Act in *Shelby County v. Holder*. That decision removed the requirement for jurisdictions with histories of racial discrimination in voting to obtain federal approval for new voting policies — a process called "preclearance." Without this guardrail, voters lost a bulwark against discriminatory voting policies, and states previously subject to preclearance were free to implement discriminatory restrictions on voting access without advance checks. Many states did exactly that.

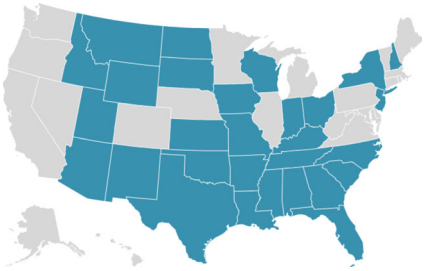
Along with a prior decision narrowly interpreting constitutional protections for voting rights, *Shelby County* also sent a message to the nation that the federal courts would no longer play their historic role as a robust protector of voting rights. In the years since, the Court has **repeatedly confirmed** this, signaling to states that they could pass restrictive voting laws without fear of legal consequence. (The Supreme Court's recent decision in *Allen v. Milligan* upholds the Voting Rights Act's protections against racial gerrymandering, not against voting restrictions.)

As a result, the country has witnessed a barrage of restrictive voting legislation over the course of the last decade, reaching a fever pitch after the 2020 election and showing no signs of abating. (While the trend of restrictive voting legislation began before Shelby County, its effects were largely mitigated by the preclearance process and **court decisions** that blocked or blunted new measures to curtail voting access.)

The Brennan Center has been **tracking and cataloging** this trend of restrictive voting legislation from its inception. Legislation is categorized as restrictive if it contains one or more provisions that would make it harder for eligible Americans to register, stay on the voter rolls, or vote as compared to existing state law.

Since *Shelby County* was decided, at least 29 states have passed 94 restrictive voting laws. While a few of these have been blocked by courts or repealed, most are still in effect, and at least one continues to operate in each of the 29 states.

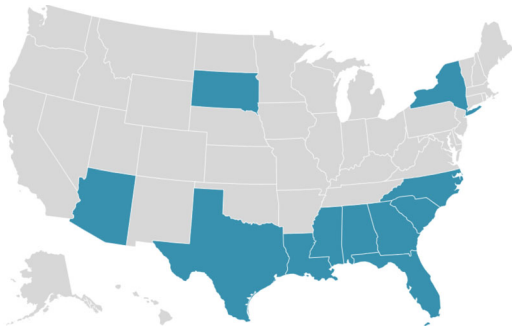
States That Have Enacted Restrictive Voting Laws Since *Shelby County v. Holder*



Source: Brennan Center analysis of publicly available data from 2013–2023.

At least 29 laws were passed in 11 states that had been subject to preclearance, either in whole or in part, at the time *Shelby County* was decided. In other words, if not for the Supreme Court's decision, approximately one-third of the restrictive laws passed in the last 10 years would have been subject to pre-approval by the Justice Department or a panel of federal judges, and many of them may have been barred from implementation. Indeed, several of those laws were later **struck down or enjoined** as racially discriminatory. But others continue to pose barriers to the ballot box.

States Previously Subject to Preclearance That Enacted Restrictive Voting Laws After *Shelby County v. Holder*



Note: This map only includes states that were previously subject to preclearance, in whole or in part, at the time *Shelby County v. Holder* was decided in 2013, and have passed restrictive laws since.
Source: Brennan Center analysis of publicly available data from 2013–2023.

Not all restrictive laws are created equal — some, like those passed in Iowa, Florida, Georgia, and Texas in 2021, are omnibus bills that include many restrictive provisions. Still, it is notable that at least 7 states have passed 5 or more restrictive laws since the *Shelby County* decision. Arizona, a state that was previously subject to preclearance, clocks in with the highest number of restrictive voting laws (8) passed in any one state since *Shelby County*. On the other hand, some states have enacted one or two restrictive provisions but, on balance, have expanded voting access more than they've restricted it in the past 10 years. Among such states are New Jersey, New Mexico, New York, and Utah.

Many of these new laws are racially discriminatory. There is **ample evidence** that these kinds of laws fall hardest on communities of color, and a number have been struck down by courts as racially discriminatory. The gaps between turnout rates for white voters and voters of color have grown in the years since *Shelby County*, **including in jurisdictions previously covered by preclearance**. Research also suggests that many of these laws may have been passed with **racially discriminatory purpose**, as some courts have also found.

Far from racial discrimination in voting being a specter of the past, as the *Shelby County* opinion presumed, there is ample evidence that it continues to play an active role in the continued suppression of voters of color.

The restrictive laws passed in the last 10 years target every aspect of voting, including making voter registration more difficult, curtailing early voting opportunities, closing polling places, and limiting voter assistance. However, a substantial portion of the restrictive laws passed since *Shelby* County coalesce around two major trends: strict voter ID legislation just after the decision and limitations on mail voting after the 2020 election.

Immediate and persistent focus on voter ID

The first wave of restrictive laws following *Shelby County* was largely focused on imposing unreasonably strict voter ID requirements. In fact, the very day that the Supreme Court released its decision, the Texas attorney general announced that a strict voter ID law previously blocked by preclearance for its discriminatory impact would become effective immediately. Federal courts later struck down the law as racially discriminatory under another provision of the Voting Rights Act.

Mississippi and Alabama also began to enforce photo ID laws that had previously been blocked under preclearance. The North Carolina legislature passed an omnibus voting bill that instituted a strict voter ID requirement and several other restrictive policies — a bill that a federal court later found "target[ed] African Americans with almost surgical precision."

This trend of instating stricter voter ID requirements or restricting acceptable forms of voter ID continued through 2017, with at least nine states post-*Shelby County* enacting new restrictive voter ID laws (including the North Carolina law discussed above) or implementing voter ID laws previously barred by preclearance.

Perhaps as a result of numerous successful legal challenges, strict voter ID laws became less common five years after *Shelby County*. But since 2021, some state legislatures have once again turned their focus to the policy. At least nine states have enacted at least 13 restrictive voter ID laws for in-person voting in the last three years, including three states that had previously done so in the years immediately following *Shelby County*.

There is a growing mountain of **evidence** that strict voter ID laws disproportionately impact voters of color. Strict voter ID requirements also place burdens on voters with disabilities and low-income voters who can face significant obstacles to obtaining photo identification.

Overall, at least 25 new laws implementing restrictive voter ID policies have been passed since *Shelby County*. (A number of these 25 laws rolled back voting access in other ways as well.) While a number of these laws were struck down in whole or in part for being racially discriminatory, many would likely never have been implemented under preclearance. The number of voters who were disenfranchised while lawsuits progressed and while many of these laws continue to be in effect — especially voters of color — is immeasurable.

Mail voting targeted after 2020

More recently, lawmakers seeking to restrict access to voting have focused on voting by mail. The United States has a **long history** of mail voting that dates back to before the nation's founding. In the immediate aftermath of *Shelby County*, very few restrictive laws targeting mail voting passed. In fact, many states actively expanded mail voting options. However, the lies about mail ballot voter fraud that were spread during and after the 2020 race, coupled with the role mail voting played in expanding voter turnout in 2020, prompted an extreme legislative backlash against mail voting. Since the 2020 election, 21 states passed 33 laws restricting mail voting access. Overall, 22 states passed 43 such laws since *Shelby County*. (A number of these bills restricted voting access in other ways as well.)

For any voter, and especially those who have travel obligations, health needs, transportation challenges, or job conflicts, restricting mail voting can hinder them from easily participating in democracy. Some of these new restrictions have a clear racially discriminatory impact. For example, the Brennan Center studied a 2021 Texas law requiring a voter to include their driver's license number or the last four digits of their social security number on mail ballot applications and mail ballots and requiring the number to match the individual's voter file data. During Texas's March 2022 primary, thousands of mail ballots and mail ballot applications were rejected, disproportionately cast by Latino, Asian, and Black voters. Overall, nonwhite voters were at least **30 percent** more likely to have an application or mail ballot rejected than white voters.

In short, *Shelby County v. Holder* opened the floodgates for restrictive voting laws. The Supreme Court's ruling was based on a claim that racial discrimination in voting was largely a thing of the past, but the story that has unfolded in the years since belies that claim. Over the last decade, voters have faced an unprecedented slew of restrictive and often discriminatory laws, and the courts have offered little in the way of protection.

As the Supreme Court noted in *Shelby County*, Congress can remedy this problem. And it should — by passing the John R. Lewis Voting Rights Advancement Act to restore the Voting Rights Act to its full strength, as well as the Freedom to Vote Act to set nondiscriminatory baseline national standards for voting and elections.

UPDATE: The number of laws restricting mail voting access has been updated since initial publication. Clarifications were also added, noting that some restrictive voting laws have been repealed or struck done and that certain states have passed both expansive and restrictive voting laws.

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The Newest Attack on the Voting Rights Act

A federal appeals court decision is so outlandish that the Supreme Court will almost certainly reverse it.

Jim West/Alamy

Michael Li

November 21, 2023

Gerrymandering & Fair Representation

Redistricting

It was only a matter of time before a new threat to the Voting Rights Act appeared on the scene. A federal appeals court launched an appalling attack on the landmark law on Monday. That's the bad news. The good news is that the decision is so unmoored from precedent that even the current ultraconservative Supreme Court is almost certain to reverse it.

In June, advocates were relieved when the Supreme Court **upheld** a lower-court decision finding that Alabama's congressional map violated the Voting Rights Act.

That ruling was and is rightly celebrated as a huge win. Many had feared that the Court's new radical supermajority would use the Alabama case as an opportunity to complete the work of carving away what

remained of the Voting Rights Act.

Instead, Chief Justice John Roberts wrote an opinion that reaffirmed the vitality of the nearly 60-year-old statute. As a result, for the first time in history, Alabama now has a second congressional district where Black voters can elect their preferred candidate.

But few observers expected conservative forces to surrender, and they haven't. In fact, by all accounts, their actions since reflect an even more emboldened and determined strategy.

On Monday, they drew blood when a divided panel of the U.S. Court of Appeals for the Eighth Circuit **ruled** 2–1 in a case challenging Arkansas's legislative maps that only the U.S. Justice Department — and never private citizens or citizen groups — can bring lawsuits under Section 2 of the Voting Rights Act. (The issue came up in the first instance in the case, *Arkansas NAACP v. Sanders*, only because a Trump-appointed lower court judge raised it on his own initiative.)

The opinion has generated outrage for good reason: it is not just wrong but shockingly so, radically out of step with the history of the Voting Rights Act and decades-old practices.

Cases brought by individual voters have long accounted for the overwhelming majority of Section 2 lawsuits. As Chief Judge Lavenski R. Smith noted in his dissent in the Arkansas case, "Over the past forty years, there have been at least 182 successful Section 2 cases; of those 182 cases, only 15 were brought only by the Attorney General [of the United States]." And of course, the Supreme Court just ruled in June in favor of Black voters in Alabama without raising the slightest suggestion that maybe, just maybe, the wrong parties were bringing the case.

What's more, Congress had full knowledge that individual voters were bringing claims. Between 1965 and 2006, Congress amended or renewed the Voting Rights Act five separate times. Not once did the fact that voters were bringing claims under Section 2 raise alarms or become an issue that Congress thought it needed to seriously debate. In fact, Congress regularly included cases brought by individual voters in the legislative record for renewals. Congress not only knew individual voters were bringing claims, it cited the practice with approval.

Under the unmoored theory adopted by the Eighth Circuit panel, voters of color facing a discriminatory law could only urge the Justice Department to take action. If the resource-constrained (and sometimes highly politicized) department declined to bring a case, minority voters would be out of luck.

The result would be catastrophic. Section 2 suits by "private attorneys general" have been essential to achieving fair representation and fair voting election practices at every level of government. Take Ferguson, Missouri. Before a suit by Black voters, the local school board in an increasingly diverse but troubled community had been nearly all white. As a result of changes, Black members are now a majority of the board. That result was possible because individual voters could bring Section 2 claims. Similarly, discriminatory voter ID laws in North Carolina and Texas have been struck down due to Section 2 lawsuits by individual voters. The list goes on and on.

Simply put, if the Arkansas opinion were to somehow become the law of the land, the Voting Rights Act would effectively cease to be a practical enforcement tool for much of the country.

But while the latest threat is real, there's reason to remain optimistic. The Eighth Circuit opinion is not unanimous and is very poorly reasoned. There's good cause to think it will be overturned, perhaps even quickly. That could come from the Supreme Court or perhaps the Eighth Circuit itself if the court decides to revisit the three-judge panel's decision with all of its judges sitting.

Nevertheless, the fact that the decision even exists is a timely reminder that the assaults on the Voting Rights Act, like the discriminatory policies that the law addresses, are far from over. The sad reality is that a law heralded as the single most effective civil rights legislation in American history continues to be viewed by many not as a guarantee of equality but as a threat.

The need for Congress to renew, strengthen, and adapt the Voting Rights Act continues to be as urgent as ever.

RELATED ISSUES: Gerrymandering & Fair Representation, Redistricting

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Michael Li, Gina Feliz December 19, 2023

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Partisan Gerrymandering Is Rampant this Cycle. Congress Needs to Act.

Jeffrey Collins/AP

The Freedom to Vote Act and the John R. Lewis Voting Rights Advancement Act would prevent extreme partisan gerrymandering and strengthen protections against racial discrimination.

Michael Li

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Gerrymandering & Fair Representation

Redistricting

*This piece was originally published in the **Washington Post**.*

With redistricting now finished in just over half the states, a misleading narrative has emerged that the gerrymandering hasn't been all that bad. By focusing on one narrow fact — that the overall distribution of

seats between the parties **might not change much** — this story misses the full, much grimmer picture.

To be sure, new maps might not significantly increase seats in the near term for Republicans (who already enjoy a large advantage as a result of aggressive gerrymanders of the 2010 maps). But the maps remain deeply pernicious gerrymanders — and, in many ways, are even worse than before. By shoring up last decade's gerrymanders, line drawers have breathed new life into distorted maps and ensured that elections in 2022 and beyond will be skewed, uncompetitive and deeply biased against voters of color.

With a showdown on the Freedom to Vote Act and John R. Lewis Voting Rights Advancement Act coming this month, it has never been more urgent that Congress act. Just ask voters in North Carolina and Texas. Under the congressional map passed by North Carolina's Republican-controlled legislature, Republicans could win 71 percent of the state's congressional seats with only 48 percent of the statewide vote. Republicans in Texas have engineered similar advantages. Texas Democrats would have to win 58 percent of the vote to be favored to carry more than 37 percent of the state's congressional seats. In other words, Texas could turn a dark shade of blue and Republicans would still have a two-to-one seat advantage. That hardly looks "not so bad" for Democrats.

It's important to remember that gerrymandering isn't just about gaining new seats — it can also be about insulating the seats you already have from competition. And one of the biggest redistricting stories this decade is how competition is being sucked out of our elections, especially in Republican-controlled states.

Again, consider Texas. Under the old Texas congressional map, there were 11 districts that Donald Trump won by 15 points or more in 2020. Under the new map, 21 of 24 Republican districts will be such super-Trump districts. Overall, in four of the most gerrymandered Republican states (Ohio, Texas, North Carolina and Georgia), the number of heavily pro-Trump districts will go from 27 to 39 after redistricting, an increase of 44 percent. (The number of super-safe Biden districts also goes up by three in these states as a result of Republican packing of Democratic voters.)

The "not so bad" narrative also, exasperatingly, turns a blind eye to the impact of the redistricting cycle on communities of color, who account for nearly all the population growth in places such as Texas. In state after state in this round of redistricting, Republican map drawers, in particular, are not only refusing to create new electoral opportunities for minority communities, in many cases they are actively dismantling them.

Take, for example, the redrawing of maps in Texas's Fort Bend County, outside Houston. Historically, almost all of the suburban county had been included in the 22nd congressional district. But the county, which was 62.6 percent White in 1990 became just 32 percent White by the end of last decade, and its politics had become increasingly multiracial. In 2018 and 2020 in the district, Indian American Democrat Sri Preston Kulkarni ran strongly in defeat at the head of a diverse coalition. To make the seat safe for Republicans, the Texas legislature carved up the 22nd, shoving heavily Asian communities into an adjacent district and bringing in largely White, rural communities. Rather than competing for the votes of a multiracial America, Republicans are undermining it with an attack on the power of suburban communities of color.

Democrats, of course, are not above gerrymandering. In Illinois, and possibly in New York, Democrats are moving to entrench their own power, though, nationally, Democrats control line drawing for only 75 seats compared to the 187 that Republicans control. Happily, a handful of states have moved away from extreme gerrymandering. In Michigan and California, independent commissions produced fair and competitive maps

that represent the changing country. These wins brighten the national picture, but we shouldn't let them obscure the gerrymandering that continues to threaten democracy in many states.

The Freedom to Vote Act and the John R. Lewis Voting Rights Advancement Act would prevent extreme partisan gerrymandering and strengthen protections against racial discrimination. Both have passed the House and command majority support in the Senate. President Biden stands ready to sign them into law. The only obstacle is the filibuster — a legislative tool that has been used too often to thwart civil rights and racial equity legislation. It is critical that the Senate not let this Jim Crow relic stop needed reforms.

Sure, the cycle could have been worse. But Americans deserve better than an "it could have been worse" democracy.

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APPENDIX B

ANALYSIS

Alabama Defies the Voting Rights Act

State lawmakers refuse to comply with a Supreme Court gerrymandering decision.

Rick Lewis/Alamy Stock Photo

Michael Li

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Gerrymandering & Fair Representation
Redistricting

*UPDATE: On September 5, a federal court **rejected** Alabama's latest voting map and said that it would create a new one that complies with the Voting Rights Act.*

Welcome to Massive Resistance, version 2023.

Black voters in Alabama won a major victory at the Supreme Court in June. The high court ruled that Republican lawmakers violated the Voting Rights Act when they redrew the state's congressional map after the 2020 census and failed to create a second Black district.

The ruling was sweet — in recent years, most voting rights cases at the Supreme Court have not gone well for advocates. This summer, in fact, is the 10th anniversary of the Court's infamous decision in ***Shelby County v. Holder***, which gutted an important provision of the Voting Rights Act that subjected states with a

history of discrimination to **extra scrutiny** when adopting new redistricting plans or changing their election laws. With that track record, most observers were preparing for the worst as a decision in the Alabama case drew near.

Instead, Chief Justice John Roberts's **5–4 opinion** not only affirmed the lower court's decision against Alabama but did so with vigor, strongly confirming the Court's earlier precedents in the area.

If you stopped watching there, you might be forgiven for thinking that Alabama, thoroughly chastened, would have quickly gone about redrawing its congressional map to add a second district "in which Black voters either comprise a voting-age majority or something quite close to it" (to quote from the trial court's **opinion** about what is needed to fix the map).

But no. Rather, in a move reminiscent of the state's open defiance of federal court rulings in the 1960s ordering desegregation, the Alabama legislature passed a map with one Black-majority district and a second district — supposedly fixing the problems found by the Court — in which Black voters constitute merely 40 percent of the population. The new map was speedily signed into law by Gov. Kay Ivey (R), who said in a **statement** that the legislature knew "our state, our people and our districts better than the federal courts or activist groups."

Well, spoiler alert: In a state where voting is as starkly racially polarized as Alabama, a district where only 40 percent of voters are Black will elect the white community's preferred Republican candidate time and time again. (Fun bonus fact: Alabama's Solicitor General Edmund LaCour, who is representing the state in court in litigation over the map, is apparently **moonlighting** as the state's map drawer.)

Last week, the lower court overseeing the Alabama case held a hearing to decide whether to approve the state's new map or order a court-appointed special master to redraw it. Another round of appeals to the Supreme Court is all but inevitable.

And the flouting of courts isn't just happening in Alabama. In Louisiana, where a federal court similarly ruled that the state needs to create an additional Black congressional district, lawmakers are taking steps to avoid redrawing the map by relitigating "concerns" about the constitutionality of the court's ruling.

So what's Alabama's (and Louisiana's) endgame?

Part of it is politics. With control of the U.S. House on the line in 2024, Republicans are fighting for every last gerrymandered seat. House Speaker Kevin McCarthy is **reported** to have personally called Alabama lawmakers, urging them not to pass a legally compliant map. It also has become clear that Republican elected officials and operatives aren't giving up on attacking the Voting Rights Act or on their vision of a "color-blind Constitution."

Ten years ago in *Shelby County*, Chief Justice Roberts wrote, "Things have changed in the South." In many ways, they have. But, sadly, Alabama and Louisiana illustrate some of the ways they haven't.