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INTRODUCTION

As America bound up its wounds after the Civil War, there was at least some reason to hope that a real democracy could be possible. The 13th Amendment settled the question of slavery once and for all. The 14th Amendment unambiguously granted citizenship to the formerly enslaved, creating a bulwark against judicial decrees that had sought to deny Black people—whether free or not—the protections thereof.[1] Finally, the 15th Amendment outlawed the denial or abridgment of voting rights "on account of race, color, or previous condition of servitude." Taken together, the Reconstruction Amendments (along with the 19th Amendment, guaranteeing voting rights to women in 1920) held great promise for bringing everyone into American democracy, regardless of their race.

Even so, the nation's original sin cast a long shadow. Many of the people who had perpetuated slavery retained power in the South and sought to maintain supremacy over newly freed Black citizens by any means necessary.[2] Even with federal troops still garrisoned in the former Confederacy—in part to secure civil rights for Black Americans—racial violence convulsed elections there. When those troops began pulling out as Reconstruction ended, Southern states gradually closed off civic life to their Black citizens. Segregation degraded public accommodations and education, and restrictive voting laws guaranteed that Black voters would find it all but impossible to even *register* to vote, much less to cast a ballot.

For nearly a hundred years, Black voters in much of the South were locked out of the political process. By any reasonable count, thousands were killed during this period for trying to claim their voting rights. Others chose to fight in the federal courts. For the most part, they found little relief from either judges or the United States Congress. During this postbellum century, the federal government largely looked the other way, refusing to enforce the Constitution or federal statutes that clearly empowered it to secure Black Americans' voting rights. The South had its way, and for four generations

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of Black Southerners, the promise of the 15th Amendment remained unfulfilled.

In the wake of World War II, the Civil Rights Movement offered the promise of moving America toward multiracial democracy. Its leaders certainly wanted racial equality on all fronts, but obtaining the vote was central among their concerns. If they were able to influence policy via the ballot box, civil rights advocates reasoned, they would be able to steer government toward their desired ends. In 1957 Martin Luther King Jr. made this case plain in a speech delivered in Washington, DC:

> Give us the ballot, and we will no longer have to worry the federal government about our basic rights.
>
> Give us the ballot, and we will no longer plead to the federal government for passage of an anti-lynching law; we will by the power of our vote write the law on the statute books of the South and bring an end to the dastardly acts of the hooded perpetrators of violence.
>
> Give us the ballot, and we will transform the salient misdeeds of bloodthirsty mobs into the calculated good deeds of orderly citizens. . . .
>
> Give us the ballot, and we will place judges on the benches of the South who will do justly and love mercy, and we will place at the head of the Southern states governors who have felt not only the tang of the human, but the glow of the Divine.[3]

Eight years later, after skillful maneuvering both as opinion makers and as lobbyists, King and his allies saw this ambition fulfilled. Enacted in 1965—almost exactly a century after the ratification of the 14th and 15th Amendments—the Voting Rights Act (VRA) finally made good on the Reconstruction Amendments' promise. The doors to American polling places were thrown open to all potential voters, regardless of their race. The new law empowered the federal government to oversee registration of Black voters immediately. Moreover, Section 2 of the VRA offered powerful ongoing protection against racially discriminatory voter suppression and the dilution of minority representation for voters nationwide.

The VRA also employed a novel approach to ensuring that problematic jurisdictions could no longer circumvent constitutional protections in the longer term. In tandem, Sections 4(b) and 5 of the VRA mandated that states and localities with a history of racial discrimination in their voting policies "preclear" with the federal government *any* changes to their election practices.

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The preclearance condition effectively granted federal regulators active oversight of election administration in these areas and substantially reduced the need for the constant litigation that had historically slowed progress and frustrated civil rights advocates. Prior to the VRA, Black voters would have to prove discrimination on a case-by-case basis. Now the burden of proof was on jurisdictions to show that even facially innocuous changes would maintain racial equity in terms of ballot access and representation.

By any measure the Voting Rights Act was tremendously successful. Throughout the states of the former Confederacy, registration rates among Black voters surged nearly 20 percentage points in just three years, with the largest effects concentrated among the most egregious pre-VRA offenders.[4] In Mississippi, for instance, Black voter registration swelled to roughly 60% in 1968—up nearly ten times from the pre-VRA rate of just 6.7%.[5] In real terms, the VRA allowed more than a million Black Southerners to register and vote for the first time. Black participation in elections grew over the subsequent decades, reaching parity with white voters in 2008, when the first Black president was elected. Over the second half of the twentieth century, Congress extended the VRA's protections to other groups, eventually also protecting linguistic minorities as well. All the while, the Department of Justice (DOJ) and the federal judiciary maintained their vigilance over jurisdictions "covered" by the VRA's preclearance provisions, stopping laws whose effects were unlikely to be race neutral. This ongoing preclearance process was the linchpin of the VRA, allowing the federal government to ensure equal ballot access for all Americans. Until, suddenly, it was gone.

On June 25, 2013, by a 5–4 vote in *Shelby County v. Holder* (570 U.S. 529, 2013), the United States Supreme Court struck down Section 4(b) of the Voting Rights Act. That section contained the coverage formula that determined which parts of the country would be subject to the preclearance power of Section 5. The Supreme Court ruled that the coverage formula, conceived at the height of Southern efforts to disenfranchise Black voters, was antiquated and no longer reflected the covered jurisdictions' willingness to discriminate. The hypothetical federal preclearance power was left intact, but the list of jurisdictions required to preclear all their election changes was eliminated. The decision therefore effectively ended preclearance as well: If no jurisdictions were required to submit their laws for federal review, there was nothing DOJ examiners could do to stop problematic changes before they went into effect.[6]

In the wake of *Shelby County*, jurisdictions that formerly had to secure federal consent before changing election policies—comprising hundreds of

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counties across all or part of fifteen states—are free to do whatever they wish, constrained only by the threat of lawsuits. Stripped of the extraordinary power of Section 5, advocacy groups and the DOJ once again find themselves in a pre-1965 world in which litigation serves as the sole method of striking down policies that deny voters of color equal access to the ballot box. But even Section 2 of the VRA, which protects against discriminatory election policies nationwide and under which much of this litigation is brought, has been weakened in recent years. In 2024, for instance, the Court erected new, more restrictive barriers to bringing claims of racial discrimination in the drawing of electoral districts.[7]

The most far-reaching actions weakening Section 2 came in the 2021 case *Brnovich v. Democratic National Committee* (594 U.S. 647), and in the 2026 case *Louisiana v. Callais* (No. 24-109, slip op. (U.S. Apr. 29, 2026)). In *Brnovich*, the Court held that racially disparate voting rules do not necessarily violate Section 2 if the effects are "modest." This ruling necessarily means that fewer challenges alleging racial discrimination under Section 2 will succeed in the future. Litigators have apparently recognized this reality: In early 2025 *Bloomberg Law* reported a remarkable drop in cases citing Section 2 in the years since the *Brnovich* ruling.[8] Prior to *Shelby County*, voting rights litigators often referred to Section 5 as the shield that blocked discriminatory laws from ever being implemented and Section 2 as the sword used to strike down any such laws that *did* go into effect. And while Brnovich weakened Section 2's ability to strike down racially discriminatory laws making it harder to cast a ballot, *Callais* is likely to do the same thing for claims of racial vote dilution. Handed down in April 2026, *Callais* is likely to make proving that lawmakers discriminated against minority voters when drawing their maps more difficult than it has been in decades. In the words of Associate Justice Elena Kagan, *Callais* "renders Section 2 all but a dead letter." More than a decade after *Shelby County*, the shield is broken and the sword is dulled.

The hyperlocal nature of American election administration, virtually unique among developed democracies, further compounds efforts to find and halt problematic regulations. Countless policies—such as the siting of polling places or the drawing of school board districts—are developed at the county or even local level. Coupled with an ever-eroding capacity of local media in many areas of the country (and therefore fewer people asking questions about local governments' activity), the localized nature of election administration makes it functionally impossible for the DOJ or advocacy groups to even *know* about all the potentially problematic changes that jurisdictions have enacted

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since *Shelby County.* Even if they could know, resources for litigation are limited. City council district lines in a small town, even if drawn in a manner that dilutes the power of minority voters, may simply not make it through the triage process for election lawyers and interest groups looking to contest discriminatory election policies in the courts. In the wake of the *Shelby County* decision, then, efforts to protect minority voting rights are necessarily less centralized and are also likely to be both less expeditious and less effective than they were before the Court's decision.

If jurisdictions with a history of discriminating against minority voters began doing so again with federal oversight removed, we would expect substantial backsliding—or "retrogression"—of minority voting rights in the wake of *Shelby County*. That expectation guides the central line of inquiry in this book. For nearly fifty years, the VRA's preclearance procedure did its job, blocking policies that would burden minority voters—regardless of whether a given jurisdiction intended to do so. The VRA's victory over racial disenfranchisement was so total that it provided an opening for the *Shelby County* majority to posit that discriminatory election practices were a thing of the past. This assumption provides a testable proposition, and in the following chapters we engage a relatively simple overarching question: Has voting or representation become less racially equitable in jurisdictions formerly subject to preclearance since *Shelby County*?

Unfortunately, we find substantial evidence that they have. We show that *Shelby County* has been devastating for voting rights. Nearly everywhere we look and on every metric we can conceive, we find that the removal of federal preclearance has led to substantial backsliding in the extent to which minority voters enjoy equal representation and access to the ballot. Our examination of a wide range of state and local election actions—both those we are able to readily observe using data and those that to date have largely escaped media and scholarly attention—finds that they have materially undermined political representation for Americans of color. We estimate that hundreds of thousands of ballots have gone uncast by nonwhite Americans because of the forces unleashed by *Shelby County v. Holder*. And the effects of the decision appear only to be growing.

Our conclusions about the disastrous effects of the *Shelby County* decision shed light on broader processes at play in the American political system—and, specifically, on the implications of our highly federalized system of election administration. Fights like this one are hardly new; since its earliest days, there have been major disagreements about whether the decentralized nature

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of American electoral systems is a net positive. The lack of a single (federal) election administration is not without benefits.[9] However, this book makes plain that America's decentralized election oversight may also foster the proliferation of below-the-radar retrogressive policies.

In many ways, Section 5 offered a well-tailored balance to this federalism problem by ensuring federal oversight of a highly decentralized system. With this check on local autonomy gone, the system has deteriorated. And while the system might resist complete takeover by an antidemocratic regime, it also allows local actors to effect politics far beyond their home town. As political scientist Jacob Grumbach describes in *Laboratories Against Democracy*, "Antidemocratic interests need only to take control of a *state* government for a short period of time to implement changes that make it harder for their opponents to participate in politics *at all levels*—local, state, and national."[10] Our study of *Shelby County* both concurs with this conclusion and moves beyond it: While Grumbach rightly notes the importance of the 50 different state regimes, we argue that much of the backsliding is driven by actions taken at *even lower* levels—in the many thousands of counties and towns that are siting polling places, drawing school board districts, and maintaining voter rolls. The effects are all exacerbated by the decline of local media, making it harder than ever to track policy development among election administrators.

We trace the rise and fall of the Voting Rights Act, paying particular attention to how the demise of preclearance following *Shelby County* affected minority voting rights and the political power of minority voters. To understand the contemporary legal landscape around voting rights in the United States, however, we must first step back to examine the context in which the original 1965 Voting Rights Act was passed. In Part I, we therefore provide a political history of voting rights, moving more or less chronologically from the post–Civil War Reconstruction to 2013, when the Supreme Court decided the *Shelby County* case.

The Reconstruction Amendments did much in theory—and, until the end of Reconstruction in the late 1870s, in practice—to advance equal rights for minority citizens. However, as we explain in chapter 1, in the century after the Civil War, many state and local policies were designed to eliminate any hope of Black Americans gaining meaningful political power. While not a wholly Southern enterprise, these actions were heavily concentrated there. As the 19th

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century gave way to the 20th, Black Southerners found themselves shut out of equal public accommodations and prevented from registering to vote by a range of methods that were transparently contrived to circumvent the Reconstruction Amendments. Rather than use the new amendments to combat states' efforts to impede racial equality, the Supreme Court often acted as a willing enabler. Congress simply did nothing, and as the postwar century passed, the promise of true democracy in the Southern states flickered and died.

Things began to change after World War II, however, when Black veterans—fresh from a victory over the racist fascism of Nazi Germany—came home determined to claim their civil rights. With allies from across the United States, Black Southerners built one of the most effective social movements in the history of the world. Their collective action forced Congress to finally ensure that states fall in line. The late 1950s and early 1960s saw a flurry of congressional action shoring up protections for minority citizens' civil and voting rights, including the first federal civil rights laws passed in more than 80 years. The Civil Rights Acts of 1957 and 1960 gradually expanded the federal government's power to protect voting rights via litigation. The more robust Civil Rights Act of 1964 expanded federal regulatory capacity even more. The practical impact of these bills on voter access, however, ultimately proved negligible.

In 1965, in response to continued advocacy from civil rights leaders and the stewardship of President Lyndon B. Johnson, Congress finally faced the practical realities of ongoing minority voter disenfranchisement head-on. The VRA gave the federal government substantial power over states' election practices, and preclearance played the starring role. In passing it, Congress finally woke from its long slumber and showed itself willing to enforce the entire Constitution. Over time, the VRA would realize its potential as one of the most important pieces of legislation that Congress had ever enacted.

The 1965 version of the law was not Congress's final word on voting rights, however, nor was the VRA enacted without resistance from the states that would be subject to federal preclearance of their election practices. In chapter 2 we detail those challenges and how they led to the emergence of a new (and historically unlikely) ally for voting rights advocates: the US Supreme Court. In a series of decisions, the Court largely affirmed congressional authority to regulate state elections, upholding key elements of the VRA, including preclearance. Meanwhile, each time the VRA's required reauthorization came before Congress, its opponents failed in their efforts to hollow it out. To the contrary, the VRA only grew *stronger* over time, as reauthorizations expanded its scope. By the time the 2006 reauthorization rolled around, the VRA was

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barely even controversial, passing the Senate by a vote of 98–0. Its passage by such a wide margin would have been unthinkable just a generation before, and to many, voting rights looked more secure than ever.

One reason for the VRA's success was the vigor with which the Department of Justice enforced it. In chapter 3 we leverage unique data to better understand the VRA's scope. The DOJ maintained comprehensive records on covered jurisdictions' preclearance requests, which we use to provide a descriptive analysis of *where* the requests emerged (at the state, county, or local level), *what* jurisdictions wanted to change about their election policies, and *when* the requests were made. These data reveal not only how active the Department of Justice was when it came to preclearance but also how diffuse the requests that it processed were. The DOJ reviewed on average more than 400 individual submissions *every month*, containing an average of 851 proposed changes. The majority of these emerged not from highly visible state (or even county) policies but from local jurisdictions such as towns or utility districts. Although the DOJ rejected only about 0.1% of submissions in the later years of preclearance, we are able to glean information from the particular policies that jurisdictions proposed (and those that were rejected). These trends can tell us where to look for policy changes after *Shelby County* that may have been deemed problematic had they been subject to preclearance.

That information is important because chapter 4 reveals that as Congress grew increasingly comfortable with a robust Voting Rights Act, the opposite trend was taking hold at the Supreme Court. Fueled by years of appointments from Republican presidents, the Court was tacking undeniably to the right. The emerging majority looked askance at several aspects of the VRA; preclearance was among them. The coverage formula created two classes of states: those that had discriminated prior to 1972 (and were subject to preclearance), and those that had not and whose behavior with respect to election policies was constrained only by the threat of litigation. Absent evidence of ongoing racial disparities in turnout, these justices wondered whether the coverage classification could be justified. In *Shelby County*, after years of signaling a willingness to do away with the coverage formula, the justices finally made good. Underpinning their decision, as Chief Justice John Roberts wrote in the majority opinion, was a claim that while all agreed that racial disenfranchisement once haunted Southern elections, "things have changed." A dozen years since *Shelby County*, this is now a testable premise.

That point leads directly into Part II of the book, where we employ a range of data sources to determine the extent to which *Shelby County* has raised

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additional hurdles to voting or diluted the quality of representation for minority voters. Both the flow and the focus of this book changes in Part II in at least two important ways. First, we depart from the chronological organization of Part I; instead, each chapter in part II focuses on a particular aspect of the regulatory environment in the post–*Shelby County* era. We do not constrain these chapters to an examination of *just* the Voting Rights Act, nor do we consider election law changes *only* in formerly covered jurisdictions. Rather, we take a broad national look at the state of election regulation in the period since *Shelby County* was decided. We also do not claim to explore every possible research question in this area, as it is probably not possible for a single book to consider all changes to state and federal election laws over the past decade. Rather, Part II is an effort to address areas of high concern to political scientists, litigators, journalists, and the public.

Second, in Part II we shift the analytic approach, using novel data and advanced statistical techniques to identify the causal effects of ending preclearance. Freed of federal oversight, formerly covered jurisdictions were suddenly able to pursue various policies and other actions, including (but certainly not limited to) districting, voter purges, voter ID laws, and changes to mail ballot procedures. In Part II, we investigate the effects of these policies, as well as the extent to which the *totality* of the new policy environment that sprang up after *Shelby County* affected key outcomes.

By and large, we utilize an approach popular among social scientists called *difference-in-differences*. In effect, difference-in-differences asks whether outcomes for a group of units (such as counties, states, or individuals) to which something happened (or who receive a "treatment") differ relative to outcomes observed in units where no treatment occurred. Researchers leverage patterns over time in the two groups to draw conclusions about the effect of the treatment. We are, in short, looking for the *difference* between these groups in the *differences* they display in some outcome—such as turnout—over time.[11] At several points in Part II, this examination entails comparing jurisdictions subject to preclearance (the treated group) with jurisdictions that never had to submit changes for federal review (the control group) over a long period of time covering elections before *Shelby County* and after.

While this simplified description of our approach provides a decent explanation of how we proceed, it is also important to stress that the statistical methods we employ are considerably more complicated than merit explanation to a general reader. For instance, identifying which "untreated" units are the best comparisons for our treated units requires a great deal of care that

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exceeds the scope of a book intended for a broad audience. Nevertheless, we anticipate that many readers are still interested in the more statistically technical aspects of our analyses. We have therefore placed many of the details of our statistical models in the Methodological Appendix, which can be found online,* and where interested readers can learn much more about them.

At the same time, we present our findings in a way that all readers should find accessible, and we believe that our findings in Part II are important. For instance, in chapter 5, we examine trends in the racial turnout gap—that is, the difference in turnout between white and minority voters.[12] A high turnout gap indicates that white voters have turned out at higher rates than nonwhite voters, which is precisely the scenario that would have drawn attention from preclearance reviewers when Section 4(b) was in effect. We show that prior to *Shelby County*, the turnout gap in places covered by Section 4(b) and similar noncovered ones moved more or less in the same way; within both groups, the turnout gap tended to rise in some elections and decline in others. We might then assume that if *Shelby County* had not been handed down, the turnout gap in these two groups of counties would have continued to move in a similar manner. But, as our analysis reveals, that was not the case: Once *Shelby County* was handed down, the turnout gap grew much more quickly in places that were no longer protected by preclearance.

In other words, we find that the cumulative effect of changes that formerly covered jurisdictions made to their election laws after the Court's decision *caused* the turnout gap between white and minority voters to widen. It would be impossible for us to track every such change, but fortunately, that comprehensiveness is not necessary. Our methods are designed to capture the total impact of *all* changes to election policies nationally, so we do not need to point to a given policy in a given state to conclude that the widening turnout gap in formerly covered areas can be traced directly to *Shelby County*. We therefore argue that, contrary to claims that the justices made in rendering the *Shelby County* decision, there is still a tendency in the preclearance jurisdictions to enact policies that result in lower minority turnout.

In the remainder of part II, we investigate other particular areas of concern that have emerged in election administration since 2013. We are guided in these efforts by a recognition of Section 5's ability both to stop practices *known* to be discriminatory and to block new ways of discriminating against Americans

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of color. For instance, Section 5 did not simply stop attempts to make casting ballots more difficult for minorities. It also blocked efforts to diminish the power of votes that *are* cast through tactics like racial gerrymandering that dilute voters' political power.

In chapter 6, we therefore detail the effects that *Shelby County* had in the 2020 redistricting cycle, which was the first in decades to be completed without preclearance. Since *Shelby County* was decided, federal courts have struck down maps in several formerly covered states because they failed to produce sufficient opportunity for minority voters to elect representatives of their choice. In a number of cases, the problematic congressional maps were used in at least one election cycle—often even after federal judges deemed them likely illegal. We discuss these cases in detail before proceeding to a causal analysis at the local level. There, we show that formerly covered municipalities began systematically annexing whiter, unincorporated areas after *Shelby County*, thereby diluting the political power of nonwhite voters in those communities.

In chapter 7, we examine the practice of voter list maintenance. Making it difficult to register to vote has been a tactic used to disenfranchise minority voters for decades; here, we show that *staying* on the rolls has become more difficult in the aftermath of *Shelby County*. We detail state-level policies that require people to present documentary proof of citizenship before they may register to vote. We describe how these efforts have prevented few noncitizens from voting, while disenfranchising thousands of otherwise eligible citizens. We also discuss illegal voter "purges" in formerly covered jurisdictions that might have been thwarted by preclearance. Finally, we show that the *Shelby County* decision led to formerly covered jurisdictions purging voters at significantly higher rates than noncovered ones.

In chapter 8, we trace the emergence of state-level voter identification policies that have been enacted since *Shelby County*. In a more granular analysis, we also drill down into Texas, where voter ID has been a hot-button and heavily litigated policy area. One result of that litigation has been the creation of administrative records that essentially provide a list of voters who attempted to vote in that state without ID that complies with the Texas voter ID law. In line with previous work, we find not only that minority voters are more likely to lack ID but that once they attempt to vote without ID, these voters tend to stay away from the voting booth for years—with effects concentrated more heavily among voters who cite an enduring hardship that prevents them from easily obtaining identification. These results should give pause to anyone

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claiming that the effects of voter ID laws are race neutral or trivial. While we do not find that an overwhelming number of Texans attempted to vote without identification, that state's voter ID law did affect minority voters more, and the effects on their subsequent voting behavior can be substantial and long-lasting.

Finally, in chapter 9, we consider the effects of restrictions that have been placed on mail voting, particularly in the wake of the so-called Big Lie, following the 2020 presidential election. Prior to 2020, white Americans were more likely than minority voters to cast their ballots by mail. This pattern shifted in 2020, and the racial polarization by vote mode perhaps made restricting access to mail ballots an attractive tactic to systematically impede nonwhite voters. Here again, we focus on a law in Texas that implemented new identification and signature requirements for absentee voters after 2020—and, in doing so, created a lot of administrative data that we can exploit to examine the effects of these changes. We show that the restrictions on mail voting in Texas, which would formerly have been subject to preclearance review, fueled higher rates of rejected mail ballots in the 2022 primary (the first election in which they were in effect). Worse, we also find that rejection rates of both mail ballot applications and mailed ballots were significantly higher among nonwhite voters, and that experiencing a rejection ultimately led substantial numbers of minority voters to sit the election out. This pattern—a seemingly race-neutral policy that ultimately created more substantial burdens for minority voters than their white fellow citizens—is exactly the sort of device that states used to shape the electorate before the Voting Rights Act.

On the whole, our analysis in part II offers little in the way of good news for voting rights advocates. Nor does it provide validation for the majority opinion in *Shelby County*, which confidently held that the ruling would not result in backsliding toward the days when local election officials wielded their power to disadvantage minority voters. Whether we examine the total universe of policies enacted after *Shelby County* or place various individual ones under a microscope, we find evidence that relative to white voters, ballot access is growing more difficult for minority voters since 2013—and representation of minority communities is more unsettled. The "American Problem," long kept in check by a strong federal law and vigorous administration, once again stalks voting rights.

(continued...)

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