



MEASURING THE EFFECTIVENESS OF THE VOTING RIGHTS ACT: AN EXAMINATION OF PRECINCTS IN NORTH CAROLINA

Keywords: Voting Rights Act; Shelby County v. Holder; North Carolina; Precinct Consolidation; Election Administration; 2016 Election

This research did not receive any specific grant from funding agencies in the public, commercial, or not-for-profit sectors.

Conflicts of Interest: None

Abstract

Prior the decision in *Shelby County v. Holder*, 40 of 100 counties in North Carolina were subject to preclearance under Section 5 of the Voting Rights Act. Drawing of precincts in North Carolina in these counties was subject to Justice Department review, while the remaining counties in the state were not. The effect of this was that the precincts within the non-covered counties appear to show discriminatory effect, in that as the size of the African-American proportion of the registered voters in a precinct increases, so does the precinct size, while one sees the opposite effect in the covered counties. Furthermore, whenever the covered counties were not subject to preclearance, nine of them engaged in a mid-decade re-precincting that reduced the number of precincts, while three others double bunked precincts. As the proportion of the African-American registered voters in the precinct increased, so too did the likelihood of precinct consolidation.

I. Introduction

In 2013, a bitterly divided U.S. Supreme Court handed down the case of *Shelby County v. Holder* (2013) where a 5-4 majority held that the coverage formula for preclearance under the Voting Rights Act was outdated and therefore unconstitutional. Chief Justice Roberts stated that “our country has changed” since its passage. This effectively ended the role played by Justice Department in preclearing any changes to election rules and procedures in covered jurisdictions—largely concentrated in the South. While under coverage, racially discriminatory laws in these areas were blocked by the Justice Department, or knowing that they would not be approved, many were never attempted, while others were modified or withdrawn from consideration.

In her dissent, Justice Ginsburg mentioned that the Court acknowledged voting discrimination still exists, but terminated the remedy best suited to block discrimination. She also spoke¹ of types of “second generation barriers” as a reason that the current coverage formula should remain in place. Among these types of barriers were outright intimidation and violence against minority voters, discriminatory administration of elections, disparate treatment in registration and voting, minority vote dilution and racial gerrymandering, and bias against non-English speakers (Persily, 2007; National Commission on the Voting Rights Act, 2006).

Of all the states affected by the Voting Rights Act, North Carolina is unique in that only a sizeable portion of the state was subject to preclearance rather than the state in its entirety with 40 of 100 counties covered. Anything regarding voting and election laws done at the statewide level was subject to Department of Justice review, but at the county and local levels, only some

¹ Ginsburg read her dissent aloud from the bench.

would face the added scrutiny of preclearance. The non-covered counties would be able to implement whatever changes it wished to election rules and procedures (so long as they did not run afoul of other laws such as Section 2), while the covered counties would have to be very careful as not to raise the ire of the Justice Department. If the Voting Rights Act were successful in North Carolina, one would find evidence of the lack of discriminatory effects of election laws and procedures in the covered counties, while in the non-covered counties, one may see a discriminatory effect.

Gerken (2009) points out that election administration is highly decentralized in the United States, run by states and/or local jurisdictions. Decentralization in many policy areas has encouraged variation among things such as welfare reform, taxation, and education across the states, to help them create policies tailored to their particular area. But in terms of election administration, Gerken notes that there are many jurisdictions that are so small that they do not have the resources or expertise to adequately carry out their duties, yet elections are frequently administered in a highly partisan manner.

One of the primary tasks for election administrators at the county level is to divide the area into voting precincts, sometimes also called election districts or wards. Only some states provide guidelines or laws as to how this is to be done, particularly as they pertain to factors such as population or geographic size. A partisan local election board could decide to draw a precinct that would be so large that it would create long lines for the opposing party, while making it quite convenient for its partisans in other precincts to vote by keeping those precincts a reasonable size. This could potentially be done in a racially discriminatory manner as well. Some election boards simply never change existing precincts drawn in previous years ago if their populations had seen substantial change. They may fail for several reasons, including a lack of

expertise in their offices to change them, not wanting to have to submit new precinct maps for preclearance, or the possibility of additional costs for new precincts (paying for locations and training and staffing poll workers for them). This would be more of a sin of omission (by doing nothing) rather than one of commission (doing something), but nonetheless a problem.

North Carolina law (N.C. Gen. Stat. §163-19 and §163-30) with regards to election administration at every level across the state is dependent on only one election: the winner of the last gubernatorial election. The party winning that race controls the State Board of Elections by a 3-2 vote. Subsequently, that board appoints all 100 county boards of election, where the same party holds a 2-1 majority. This assures one party control of all election administration in the state, including the drawing of every precinct across the state. From 1993 to 2012, the party in control was the Democratic Party. During these years, the number of precincts increased in each election cycle. North Carolina was also routinely one of the nation's fastest growing states by population. However, this growth in precincts was not commensurate with growth in registered voters. This was somewhat mitigated in this period by additional opportunities to vote before Election Day by mail in absentee balloting and early in-person voting.

In the decade preceding the Republicans winning the gubernatorial election in 2012, only five of the counties covered by the Voting Rights Act decreased their number of precincts, while 12 of them increased their number of precincts. Most of these changes were made between the 2010 and 2012 elections following the decennial Census when counties were redrawing local district boundaries and would match the precincts to these new boundaries. Mid-decade re-precincting is not common immediately following the initial post-Census adjustment of precinct boundaries and was generally done to add precincts given the explosive growth in many parts of the state. However, after Republicans gained control of election administration in the state,

combined with the lifting of preclearance after *Shelby*, 13 counties reduced precincts, including nine counties in previously Voting Rights Act covered jurisdictions.

This article examines the effect of precinct size in terms of race. One should find little or no relationship with precinct size growing as the proportion of African-Americans increases within the precinct. This is largely true in judging all precincts across the state as a whole. However, in the three elections observed (1998, 2004, and 2012), when one separates the state by whether the precinct was in a county that was covered or not covered by the Voting Rights Act, one finds that there was a racially discriminatory effect for the non-covered counties, while there is no discrimination in the covered counties; there is even some indication that, in some situations, African-Americans have actually benefitted. Further, following the decision in *Shelby County*, the previously covered counties that saw precinct reductions that showed discriminatory effect. In those counties, as the proportion of African-American registered voters in that precinct increased, so do the likelihood that their precinct would be consolidated. This is also true in the full group of all the previously covered 40 counties.

The first section of this article will be a literature review regarding the calculus of voting and some general information on the Voting Rights Act. It then moves to discuss the Voting Rights Act, with specific application to North Carolina. The research design will then describe the models and the variables involved. This is followed by a discussion of the results of the analysis in 1998, 2004, and 2012, and finally examines the changes since *Shelby* and Republican control of election administration in North Carolina.

II. Literature Review

Downs (1957) tries to explain why some people choose to vote and others may choose not to vote in an election. He viewed it from the perspective that the costs of voting would

outweigh the benefits. Since there is a slim chance that the voter's individual vote would be decisive, and he saw that the costs of voting, through things such as the physical costs of getting to a polling place and potentially having to take off work to vote as being much more costly than the benefits the voter derives from voting. This is in addition to the costs a voter might take to educate themselves as to the positions of the candidates. In sum, it would be quite irrational for a person to actually turn out to vote.

Riker and Ordeshook (1968) took Downs' argument a few steps forward and were able to break down the calculus of voting into a simple equation: $V = pB - C + D$, where V is the likelihood the voter will vote, p is the probability of the vote mattering multiplied the benefit of the voter to vote based on one candidate winning versus the other (B), C is the cost of voting, and D the civic duty benefit a voter may feel from casting a vote. The D term was added by Riker and Ordeshook to the Downs framework. One can frame this equation as $V = pB + D > C$ to determine whether a person is likely to vote or not vote. Therefore, if the benefits plus the duty are greater than the costs, the voter will choose to vote, but if the costs are greater than the benefits plus the duty, the voter will choose not to vote. Others have worked to flesh out these variables as well (Wolfinger, 1980; Rosenstone and Hansen, 1993).

In regards to P one can see the potential closeness of an election mattering as to the calculus of a voter. A voter may assess this for a high profile race through public opinion polls for federal, state, or larger municipal races. At the local level (especially in a smaller community), it may be by word of mouth through friends, family, co-workers, or acquaintances discussing the race. Others have looked at this variable in terms of both an intensity and pivotal voter model, meaning voters may turn out in higher numbers when they feel more strongly about an issue or candidate, and when they think their vote may be more decisive (Coate, et. al. 2007;

Ledyard, 1984; Palfrey and Rosenthal, 1983 and 1985). The D term (civic duty) is also somewhat amorphous as well, and many have developed their own ways of testing it in their particular models (Kanazawa, 1998; Sanders, 1980; Verba and Nie, 1972).

However, lawmakers and/or election administrators have the greatest chance to effect the C term, through changes to voting and electoral laws to make voting more costly, or conversely, less costly. Smaller precincts mean less lines to wait in and shorter distances to travel to vote. Shorter distance to travel to a polling place has been found to be a factor in the likelihood to vote (Hapsel and Knotts, 2005). Convenience measures such as no-fault absentee voting and early voting give voters more options in how they may choose to cast their vote. Extended poll hours on both Election Day and for early voting provide more options as well. Making it easier to register to vote also cuts the cost. Political parties and candidates could strategically manipulate electoral rules to encourage or discourage certain voters from casting a vote by changing the costs of voting. Since high voter turnout is generally seen as positive, most people generally look favorably on measures to increase voter turnout, but negatively on those that decrease voter turnout.

Making voting more costly has often targeted certain groups of voters that the majority party fears could challenge their grip on power. In most of the South, lawmakers and election officials placed significant burdens on their African-American citizens to make it difficult or impossible for them to vote, even after passage of the 15th Amendment. Among the discriminatory methods were fraud, violence, poll taxes, literacy tests, grandfather clauses, the white primary, and restrictive or arbitrary registration practices (Kousser, 1974). Many counties where African-Americans were a majority of the voting age populations had few or zero African-Americans listed on their respective voter registration rolls (Issacharoff, et. al. 2012).

Congress sought to remedy this problem through the Voting Rights Act of 1965 and the 24th Amendment (which banned the poll tax). The Voting Rights Act banned literacy tests and any other racially discriminatory test or device across the country (U.S. Department of Justice). Further, it placed certain areas of the country under special scrutiny, known as preclearance (Section 5), which meant that any covered jurisdiction would be required to submit any and all changes to elections or voting laws or procedures to either the United States Department of Justice or a three judge panel in the United States District Court for the District of Columbia. Under the original Section 4(b) coverage formula, any jurisdiction that maintained any racially discriminatory test or device in the 1964 general election; and either had a registration or turnout level of below 50% in that general election would be subject to preclearance² (U.S. Department of Justice). This changed the burden of proof for covered jurisdictions for any voting or electoral changes they sought to make. They were required to prove any changes were not discriminatory before they were allowed to be implemented. This helped to upend the “whack a mole” strategy that voting rights advocates were fighting prior to enactment —spending a significant amount of time and resources fighting one discriminatory law only to have a new law spring up immediately to replace the one that was struck down.

This helped to reduce the cost of voting minority groups, especially in the covered jurisdictions. The act was amended further in 1970³, 1975⁴, and 1982⁵, and then renewed for 25

² Initially, the states of Alabama, Georgia, Louisiana, Mississippi, South Carolina, Virginia, and 40 of the 100 counties in North Carolina were in the coverage formula set out in Section 4(b).

³ The 1970 amendments renewed the Voting Rights Act for five years, and established uniform regulations for Presidential elections in terms of voter registration, absentee voting, and residency requirements. New covered jurisdictions were added.

⁴ The 1975 amendments added new groups to the coverage, including American Indians, and language minorities. It renewed the act for seven years. New covered jurisdictions, including Alaska, Arizona, and Texas were added to the coverage formula.

⁵ The 1982 amendments allowed for jurisdictions to more easily bail out of coverage under Section 4(a), but the primary objective was to legislatively overturn the Court’s decision in *Mobile v. Bolden* (1980) that required a

years in 2006. From 1965 to 2013, the Justice Department interposed hundreds of objections to proposed voting and electoral changes across the covered jurisdictions. Among the objections were issues such as redistricting, at-large elections versus districted ones, annexation (and de-annexation), consolidations, majority vote requirements.

Other objections by the Justice Department involved costs placed on a voter's ability to cast their ballot. Some of these objections dealt directly with polling site locations and sizes. This followed precedent from *Perkins v. Matthews*, 400 U.S. 379 (1970), in which the Court ruled that precinct place location falls squarely in the purview of Section 5. Justice Brennan, writing for the Court, stated, "Locations at distances remote from black communities or at places calculated to intimidate blacks from entering, or failure to publicize changes adequately might well have that effect. Consequently, we think it clear that §5 requires prior submission of any changes in the location of polling places." *Perkins*, at 388.

Prior to 2013, the Justice Department objected to precinct site and precinct size issues more than 35 times. Some of the objections dealt with precincts being located in places where African-Americans had traditionally been excluded from entering.⁶ Others had to with changing the locations of the polling site within a precinct so that it would be further away for African-Americans to travel to reach their polling site. In an objection to block the consolidation of two precincts in Martinsville, Virginia (Justice Department Determination Letter VA-1070), the Justice Department noted that many African-Americans tended to vote directly before or after work, and this would lead to longer lines, which discourage them from voting. They also discussed how many African-Americans, before the consolidation, could get to their polling

Section 2 discrimination claim to prove discriminatory intent. The new language required only a showing of discriminatory effect.

⁶ In 1970, the Justice Department, in LA-1290, they blocked a polling site change to a fraternal club in which African Americans were not normally permitted free access.

places without the need for public transportation and that many would face a substantial hardship if they now had to walk more than one mile to vote.

More recently, an issue regarding the cost of voting has been the length of lines at polling places. A bi-partisan commission appointed by President Obama found that more than five million voters waited more than an hour to vote, while another five million waited between a half an hour to an hour (Stewart and Ansolabehere, 2013). These disparities were not equal by race. African-Americans and Hispanics had to wait in line more than 30 minutes at twice the rate of whites⁷ (Stewart, 2013). It is also estimated that one million votes were “lost” (the person did not vote) due to long lines, and of these that chose not to vote, 15% cited long lines as a major factor in their decision not to vote (Stewart and Ansolabehere, 2013).

Expansion of early voting has been a recommendation to decrease the costs of voting. By having a substantial portion of the electorate voting before Election Day (either in person or mail), it would naturally mean less people would have to vote on Election Day itself. By the 2012 election, the majority of North Carolina voters cast their ballots before Election Day, with African-Americans casting 64.01% of their votes early in person versus 49.39% for whites. For mail-in absentee votes, the result was reversed (1.81% for African-Americans and 5.50% for Whites) (Gronke Report, 2016). This is a similar pattern one sees nationally where African-Americans prefer early in-person voting while whites prefer mail-in voting⁸ (Stewart, 2013: 13). With so many early votes in North Carolina, overall wait times dropped from 23 minutes per voter to 14 minutes between 2008 and 2012 (2013: 79-80).

⁷ Given that 93% of African-Americans and 71% of Hispanics voted for President Obama in 2012 versus 39% of whites that voted for him, one can expect this racial bias against minorities would also extend to those that identify (or register as) Democrats, as well as those that vote for Democratic candidates.

⁸ Nationally, in 2012, 11% of African-Americans cast mail-in absentee votes versus 21% for whites. For in person early voting, 28% of African-Americans took advantage of this versus 17% of whites.

Waiting in line imposes real monetary cost to voters. Americans that voted on Election Day spent 23 million total hours waiting in 2012, which yields a total economic cost estimate of \$544.4 million dollars (Stewart and Ansolabehere, 2013). In real terms to voters, waiting in line may mean having to take off work for a period of time resulting in a loss in wages potentially making voting be too costly. The North Carolina State Board of Elections commissioned a study on wait times and found that in 2014, which was a mid-term year when the ballot was much shorter and turnout much lower than in a presidential election, that 11 counties had precincts where the wait time was more than one hour. Most of these were in urban counties with large African-American populations (Evans, 2015).⁹

While voter turnout and costs of voting are widely studied in political science literature, as well as redistricting, issues regarding precinct size and re-precincting have largely been set aside. Brady and McNulty (2011) that found a drop in turnout the 2003 California recall election in Los Angeles County when—for that election—the county massively consolidated voting precincts that year in comparison to the 2002 election. Amos, Smith, and Ste. Claire (2017) examined the re-precincting of Manatee County Florida. Both of these papers found a significant drop-off in Election Day turnout that was not offset by other methods of voting such as mail-in absentee and early in person voting. Brady and McNulty (2011) found impacts hit younger voters and Democrats harder than others, while Amos, Smith, and Ste. Claire (2017) saw Hispanic voters being most affected by these changes in where they vote.

3.1 North Carolina and Voting Rights Act Coverage

⁹ In that same article, the spokesman for the State Board of Elections did note that tracking wait times is a difficult thing because some may not give a precise amount of time that they waited.

The State of North Carolina allows for several unique observations. It is the only state where the Voting Rights Act initially ~~only~~ covered only a significant minority of counties within the state, rather than the entire state.¹⁰ North Carolina also is one of the few states that records its voter registration individually by race, and is required by the Voting Rights Act to report that data. North Carolina's primaries are closed which means that voters must declare party affiliation at the time of registration. Voters who do not choose a party are listed as unaffiliated.

The initial Voting Rights Act coverage formula map shows an arc sweeping from Louisiana across the Deep South and then headed north to Virginia. The state missing from statewide coverage is North Carolina. No other ex-Confederate state with as high a proportion of African-Americans was not subject to full statewide coverage under Section 4(b). Virginia had a smaller African-American share than North Carolina, but was subject to full coverage

V.O. Key (1949) seemed to set North Carolina apart from many of its southern neighbors in terms of racial politics even before the modern civil rights movement. He described North Carolina as more presentable than its southern neighbors and noted the state held a more progressive reputation in its outlook in terms of race relations. As anecdotal examples, Key found its Congressional delegation as "cool in the hysteria that beset the region" (in regard to President Truman's civil rights recommendations); that the governor refused to applaud Sen. Tom Connally (D-Texas) referring to the program as a "lynching of the Constitution"; and gave President Truman his only support in the South during the 1948 Democratic National Convention (1984: 206-207, n. 5).

¹⁰ A significant number of jurisdictions in Virginia have bailed out of coverage under Section 3, but most of these are largely white counties (other than Fairfax and Prince William Counties) with smaller populations, largely in the Shenandoah Valley. However, Virginia was covered in its entirety in 1965, and no county bailed out until the mid-1980s. North Carolina was always subject to partial coverage.

This is not to say that North Carolina was a model for the nation in terms of race, but it stood out when compared with other southern states. Key found that North Carolina placed into law a reading and writing qualification for voting in 1900, which included a grandfather clause to accommodate illiterate whites. However, the state was more progressive in terms of education spending than its fellow confederates, with the lowest gap between white and African-American spending per pupil, as well as school attendance by race. With more parity of public education funding, less African Americans were illiterate than in other states, thus more were able to register and vote than elsewhere in the South. Thus, statewide voter turnout and registration was above the 50% threshold in 1964.¹¹

In part due to these factors, North Carolina never came under full coverage of the Voting Rights Act. Its voter turnout was far below that of the North, but was substantially higher than most of its southern neighbors. Initially, 40 of the 100 counties in North Carolina were entered into the coverage formula.¹² About 70% the covered counties fell east of the Fall Line, which is the separation of the Coastal Plain from the Piedmont regions. (See Figure 1). Many of the covered counties were those with high antebellum production of tobacco and cotton, of which slave labor was used extensively. These counties had among the highest proportion of slaves at the time before the Civil War. Despite many of these former slaves and their descendants leaving during the Great Migration, the concentration of African-Americans in the northeastern part of the state remains (Peirce, 1975).

¹¹ One may ponder this progressiveness when put together with North Carolina electing Sen. Jesse Helms (R), who displayed overt racist tendencies for five terms from 1972-2002. Among these were his “white hands” television ad in 1990 when running against African American Charlotte Mayor Harvey Gantt (Broder, 2001), and later bragging to supporters that he had made Carol Mosely-Braun (D-Illinois), the first African-American woman ever elected to the U.S. Senate, cry after singing Dixie to her on a Senate elevator. (Clymer, 1993).

¹² According to the Department of Justice, Wake County, home to the capital city of Raleigh and the second largest county by population, bailed out of coverage in 1967. Jackson County was added in 1975. In that case, discrimination was towards its substantial American Indian population (the Eastern Band of Cherokee Indians). Therefore, there are still 40 counties listed as covered jurisdictions.

[Insert Figure 1 here.]

Because of this difference in Voting Rights Act coverage, all of the variables at a precinct level can be separated by counties covered and those not covered. There are about twice as many residents living in non-covered counties than in covered counties.¹³ Table 1 shows a higher proportion of the covered counties are minority as compared to the others. In particular, African-Americans make up over 31% of residents in covered counties versus only 19% in counties not under coverage. In fact, 45% of African-Americans in the state live in covered jurisdictions, and within the non-covered jurisdictions, nearly 63% live in the largest four counties not covered by the Voting Rights Act¹⁴ (U.S. Department of Census).

County Type	White Alone	Black	Hispanic	Minority (those non-White Alone)	Totals
Voting Rights Act (40)	1,956,899 (57.63%)	1,064,871 (31.36%)	296,530 (8.73%)	1,438,851 (42.37%)	3,395,750 (33.81%)
Non-Voting Rights Act (60)	4,406,330 (66.29%)	1,283,320 (19.31%)	656,903 (9.89%)	2,240,722 (33.71%)	6,647,052 (66.19%)
Total (100)	6,363,229 (63.36%)	2,348,191 (23.39%)	953,433 (9.49%)	3,679,573 (36.64%)	10,042,802 (100%)

Table 1: Voting Rights Act Coverage by County, by 2015 U.S. Census estimates

3.2 Dependent and Independent Variables

¹³ When the coverage formula was put in place, 44.24% of the state's total population and a majority of African-Americans were under coverage (as measured by the 1960 Census). This share has decreased as population growth in the past 50 years has occurred disproportionately in the three major urban centers (Metro Charlotte [Metrolina], the Piedmont Triad, and the Research Triangle) to a much higher degree than many of the counties east of the Fall Line.

¹⁴ These counties are Mecklenburg (Charlotte), Wake (Raleigh-Cary), Forsyth (Winston-Salem), and Durham (Durham).

The first dependent variable is the size of each individual precinct by the number of registered voters as reported by county boards of elections to the State Board of Elections.¹⁵ Unlike many states across the country, North Carolina does not set a maximum number of registered voters per precinct, meaning that some precincts may be much larger than others, even within the same county. Some townships are quite small in population, meaning that some precincts are naturally small in size if counties choose to keep townships separate.¹⁶ In 2014, one precinct had as few as 29 registered voters. County boards of elections could combine these smaller townships, but that would increase the cost of voting for these rural voters. However, few have chosen to do so.

North Carolina has become a state where “super-sized” precincts have become more common. As of the most recent general election in 2014, 48% of voters lived in precincts with in excess of 3,000 registered voters. This is up from 43% in 2012 (Robertson, 2016). Other states do place limits on precinct size. New York’s limits are 950 registered voters (1150 with County BOE exception) (N.Y.S. §17-400-1-3(a)). Indiana limits (with a few exceptions) precincts to no more than 2000 active voters (I.C. §3-11-1.5-3). Nebraska limits precincts to 1750 voters casting a vote in the last general election (Neb. Rev. Stat. §32-903(1)). Illinois sets a strict limit of 800 registered voters per precinct with a recommendation of 600 voters per precinct (Ill. Comp. Stat. §10-5-11-2).

Because of the variation in coverage by the Voting Rights Act, the statewide samples can be taken as a whole and then separated by which counties were covered. The racial composition

¹⁵ While some may choose to use the terms “precinct” and VTD interchangeably, they are not interchangeable. While many of them overlap perfectly, VTDs are a Census created term that reveals what counties send them following each decennial census. In some cases, counties may have less VTDs than precincts, but others may have more. Generally, most changes from re-precincting after the data is submitted is not reflected to match up the precincts and VTDs perfectly.

¹⁶ All of North Carolina’s counties are divided into townships, but cities have overlaid on top of them.

of the precinct's registered voters is the primary independent variable. North Carolina reports its voter registration by race, which was collected from the North Carolina State Board of Elections. They collect this at the individual, precinct¹⁷, VTD, and county levels.

However, the way in which the Board of Elections reports racial data has changed in recent years. For 1998, it was separated into categories of White, Black, American Indian, and Other. Each precinct column adds up to the same number as the registered voters in the precinct, meaning everyone in that precinct in placed into one of those named categories. By 2004, additional categories for Asian, Multi-Race, and Undesignated were added. This remained the case in 2012, but the Latino number was in a separate category this year.

While the primary dependent variable is precinct size for the first model, the second model requires a different dependent variable. When Republicans took control of the county boards of elections, it was roughly the same frame time as the *Shelby* decision after which several counties reduced their number of precincts by combining them into new larger precincts. The dependent variable for testing whether the combining of precincts was racially discriminatory is whether (in the 2012 precincts) that precinct was combined (1) or kept intact (0). This is tested within counties covered by the Voting Rights Act where one saw a reduction in precincts after 2012, as well as in all Voting Rights Act-covered counties. The model for this is a bi-variate logistic regression since one is testing the effects of the precinct consolidations rather than the intent behind them.

4. Data and Discussion

¹⁷ The 1998 and 2004 data was directly reported at the county and VTD levels. However, by 2014, it was reported in a combination form- it reported a count by precinct/VTD of those that fit into party, racial, ethnic, and age ranges, which required the data to be aggregated to party and racial numbers.

4.1.1 1998 Mid-Term Election

The first election of voter registration data available at the precinct level is for the 1998 mid-term election. While there was only one non-judicial partisan race on the statewide ballot that year, it was the highly competitive race U.S. Senate election between Sen. Lauch Faircloth (R) and his challenger, the wealthy trial attorney John Edwards. It was also the last election conducted before the state implemented in-person early voting. Only mail absentee voting was available in 1998, and was not widely used. Only about 60,911 of voters utilized this, or 3.03 percent of the voters that year, and among them, 60.78% for Faircloth (N.C. Board of Elections).

In an analysis of all 2,609 precincts, there is no statistical difference in terms of race and precinct size when observing the precincts in all 100 counties in the regression model using precinct size by the number of registered voters as the dependent variable and the black proportion in the precincts as the independent variable. However, when one separates the counties by Voting Rights Act coverage, there is a significant difference between the covered counties and those without coverage. In the non-covered counties, as the proportion of registered black voters in a precinct increases, so does the precinct size. However, this is the opposite in the covered counties. While the mean value of precinct size is slightly higher in non-covered jurisdictions (1,677 vs. 1,788), it still does not change the evidence of non-covered jurisdictions increasing in size as the proportion of black registered voters in that precinct increased, while one saw the reverse in the covered jurisdictions. This can be demonstrated clearly in Figure 2.

[Insert Figure 2 here]

Registered Voters by Precinct	All Precincts	Covered Precincts	Non-Covered Precincts
1998 Black Proportion	-6.37 (78.92)	-242.44 (123.2)*	290.68 (109.84)**

Constant	1750.04 (23.55)***	1745.45 (45.84)***	1747.87 (27.88)***
Adjusted R-Squared	-0.0004	0.0031	0.0035
N	2609	917	1692
2004 Black Proportion	-79.85 (87.72)	-445.17 (136.98)**	310.72 (123.03)*
Constant	2008.91 (27.16)***	2050.63 (53.22)***	1987.75 (31.70)***
Adjusted R-Squared	-0.0001	0.0099	0.0030
N	2751	960	1791
2012 Black Proportion	-38.61 (73.46)	-569.11 (104.55)***	494.13 (104.55)***
Constant	1653.32 (73.46)***	1751.43 (44.96)***	1609.11 (29.76)***
Adjusted R-Squared	-0.0003	0.0293	0.0111
N	2756	949	1807

Table 2: Model: Bi-Variate Regression of Registration Data of Precinct Size and Race in 1998, 2004, and 2012
P<.05*, *p*<.01**, *p*<.001***

4.1.2 2004 Presidential Election

The first election in which North Carolina implemented early voting was in 2000, when 393,152 voters took advantage of one-stop early voting. By 2004, that number had doubled (North Carolina State Board of Elections). Another change was that early voting in 2000 heavily favored Republican candidates, but it shifted in favor of Democratic candidates in 2004 by a narrow margin (Tietleman and Moore, 2004). Early voting in 2004 was also expanded from the initial four period of days in 2000 to 10 days. North Carolina's population also continued its rapid pace of growth, particularly in the state's urban centers. However, the mean number of persons voting on Election Day was 867, down slightly from 888 in the 2000 Presidential Election¹⁸. However, some of the largest precincts continued to grow in size. The largest precinct

¹⁸ The number of precincts grew from 2700 to 2752 in these four years, a 1.9% increase, but this did not keep pace with the increases in population or registered voters.

in terms of Election Day turnout in 2000 was 3,174, but that grew to 3,659 in 2004. Of the 100 largest precincts, the mean of those grew from 2,148 voters to 2,297 voters.

[Insert Figure 3 here]

In the 2004 election, there was a similar pattern in counties covered by the Voting Rights Act and those that were not covered in terms of the size of precincts by registered voters. As the proportion of African-Americans in a non-covered jurisdiction precinct increases, so does the size of the precinct by the number of registered voters. The opposite is observed in the covered jurisdiction precincts. This is similar to the findings of in the 1998 registration data, but with a wider divergence between the covered and non-covered jurisdiction precincts as the proportion of the African-American voters in the precinct decreases or increases.

4.1.3 2012 Presidential Election

The 2012 presidential election marks the last statewide election before the *Shelby* decision. In that year, North Carolina voters increased their usage of early voting, especially among African-American voters. 71% of African Americans voted early, compared with only 52% of whites. *North Carolina National Association of the Advancement of Colored People (NAACP) v. North Carolina*, 831 F.3d 204 (4th. Cir. 2016); *cert. denied* 137 S.Ct. 1399 (2017). With racial polarization in North Carolina, the early vote disproportionately favored Democrats with these racial numbers. Early voters favored President Obama that year by about eight points, but Election Day voters favored Romney by 13 points. (North Carolina Board of Elections). This election also saw the highest number of registered voters in history to that date. The mean precinct size in this election year had risen to 2,431 registered voters (up from 1,749 in 1998), and up to a mean of 4,514 in the hundred largest precincts. In terms of super-sized precincts, 346

of them contained in excess of 3,000 registered voters. If one used Indiana's statute in terms of precinct size, 782 of them would exceed 2,000 registered voters and needed to be split.

The 2012 election also proved to be good for Republicans. In addition to a narrow win for Romney, they won the governor's office for the first time in 24 years with the election of former Charlotte Mayor Patrick McCrory. They also captured a super-majority (3/5) of both chambers of the General Assembly for the first time since Reconstruction. With the McCrory victory, it meant that Republicans would control the State Board of Elections, and therefore all 100 County Board of Elections in 2013.

[Insert Figure 4 here]

The 2012 registration numbers show a pattern similar to those in both 1998 and 2004 in that in the overall group of precincts, race has no significant impact on precinct size. However, as was demonstrated in previous years, as the black proportion in precincts in non-covered counties increases, so does precinct size; while in the precincts in covered jurisdictions, the opposite effect is shown. The 2012 data also shows an acceleration in the divergence between the covered and non-covered precincts. This is despite little change in the mean precinct size differences (by Voting Rights Act coverage) in the observed years.

4.2 Post-GOP Control and *Shelby*

4.2.1 Cleveland and Pasquotank Counties

In terms of combining of precincts, the first place this fight started was in Cleveland County in Western North Carolina on the edge of the Charlotte Metro area. Despite a Democratic registration edge, at the federal level, it has a strong Republican lean, with Romney and McCain both winning 59% of the vote, but it has shown willingness to support Democrats at the state

level, and many of its local officials are Democrats (North Carolina Board of Elections). It has a population of almost 100,000 residents, of which is about 75% white and a bit over 20% are African-American. Its county seat, Shelby,¹⁹ is much more diverse: 53% white and 41% African-American. Prior to the *Shelby* decision, the county was a covered jurisdiction under the Voting Rights Act. In 2012, the county had 26 voting precincts for 63,561 registered voters, among whom 43,340 persons that voted in that year's presidential election (N.C. Board of Elections). This averages to 2,541 registered voters per precinct and 1,667 voters that turned out to vote per precinct. The largest precinct that year was Rippy, which had 3,541 registered voters and a 65.5% voter turnout rate.

However, after the Republicans gained control of the Cleveland County Board of Elections, they proceeded to cut the number of precincts from 26 to 21. Two rural precincts in the southwestern part of the county were consolidated, and the City and Township of Shelby saw its number of precincts cut in half, from eight to four²⁰. This led to the creation of six precincts larger than the largest precinct in 2012 in terms of registered voters.

In regards to Cleveland County and the Voting Rights Act, it seems intriguing that less than a month after coverage was lifted, a party line vote of the Board of Elections consolidated precincts that happened to correspond to the location of most of the African-Americans in the county, and passed over that community's strenuous objections (Phipps, 2014). The county had not tried to do this while under supervision, indicating that the Voting Rights Act may have been quite effective in stopping changes such as this. The Cleveland County chapter of the NAACP

¹⁹ The City of Shelby is mentioned extensively by V.O. Key as the base of a several prominent Democratic politicians before WWII.

²⁰ It seems much of the change was in the incorporated City of Shelby, which had roughly five precincts and lost three of its precincts.

strongly objected to the precinct mergers in the City of Shelby and even considered a lawsuit (DePriest, 2014).

Given the fact that preclearance was no longer an issue, some counties may have followed the events in Cleveland County in an effort to enact the same type of practices. In fact, in Cumberland County, a majority-minority county home to the state's sixth largest city of Fayetteville, the Republicans in charge of the Board of Elections have recently proposed trying to decrease the 77 precincts in that county (*Fayetteville Observer*, 2014).²¹ An intriguing question following this consolidation was whether any additional counties would follow. It turns out that several other counties did.

One county did go forward with the most severe reduction of precincts within the covered counties: Pasquotank. This county leans towards Democratic and is located in the northeastern part of the state along the Virginia border. According to the Census, the county is 57% white and 38% African-American. However, its county seat, Elizabeth City, which accounts for nearly half of the county's population, is 54% African-American and 39% white. During coverage under Section 5, there were three letters blocking certain changes. Two of the changes involved the method of elections for Elizabeth City (NC-1225 and NC-1280). The other change (NC- 1100) was the moving of a precinct in Elizabeth City by the County Board of Elections, which was found to make voting more difficult for African-Americans. It turns out that is one of the precincts (4A) was consolidated after *Shelby*.

Pasquotank County is also home of Elizabeth City State University, a historically black college. Local Republican officials had a record of challenging students at this university from

²¹ The discussion about reduction of precincts in Cumberland County is particularly interesting. The county added twelve new precincts in 2012 to try to reduce the number of precincts that were incredibly large, including one with nearly 9,000 registered voters, and two with over 30,000 total residents on or near Fort Bragg. In partisan terms, the county produces one of the largest raw vote margins in favor of Democrats in the state.

voting. Their chair even challenged an African-American student from trying to run for the city council (Israel, 2013). The local Republican-controlled Board of Elections backed this challenge, but the State Board of Elections unanimously overturned this decision. That student was subsequently elected to the Elizabeth City Council (Berman, 2013). This strategy, along with precinct consolidations in the county, led to the 2016 precinct “SOUTH” in Elizabeth City (made formerly of Precincts 4A and 4B), which includes the entire university, to see a 51.29% drop in African-American turnout from 2012 to 2016.

In 2015, the Pasquotank County Board of Elections decided to make a drastic reduction in their number of precincts. They would go from 13 to nine, which equates to a 31% reduction, which was the largest in the covered counties in North Carolina. It happens to be that all the reductions occurred in Elizabeth City, where eight precincts were reduced to four. Of these eight precincts, five of them were majority African-American by registered voters. These changes were passed in a party line vote of the Board of Elections, with strong objections from both Democrats and the NAACP (Daily Advance, 2016). This change appears to have had real consequences for African-American voter turnout, which dropped nearly 16% from its levels in 2012 when examining data from the State Board of Elections. This was the largest drop in African-American turnout in the 12 counties with changes, and one of the largest in the state.

County	% County Black (alone) 2016	Precinct /Sites 2012	Precincts 2016	Precincts/ Sites 2016	African-American Turnout 2012	African-American Turnout 2016	Change in African-American Turnout	% change in African-American Turnout
Beaufort	25.1%	21	21	20	6001	5394	-607	-11.25%
Caswell	32.7%	10	9	9	4135	3767	-368	-9.77%
Cleveland	20.8%	26	21	21	10339	9269	-1070	-11.54%
Craven	21.8%	27	26	26	10741	9875	-866	-8.77%
Halifax	53.5%	25	23	22	14183	13244	-939	-7.09%
Jackson	2.5%	15	14	14	305	432	+127	+29.40%

Martin	42.7%	13	13	11	5535	4878	-657	-13.47%
Nash	40.4%	27	24	24	19055	18161	-894	-4.92%
Pasquotank	36.6%	13	9	9	7400	6232	-1168	-18.74%
Person	26.9%	14	11	11	5571	5241	-330	-6.30%
Robeson	24.2%	42	39	39	14439	12212	-2227	-18.24%
Wayne	32.5%	30	30	29	17954	16223	-1731	-10.67%
Total		263	240	235	115658	104928	-10730	-9.28%

Table 3: Black Population of Affected Counties, Precincts and Sites in 2012 and 2016, and African-American voter turnout statistics by County. Data provided by North Carolina State Board of Elections.

4.2.2 Effect of Combining Voting Rights Act Precincts: Post-Shelby

Boards of Elections in nine of the 40 Voting Rights Act coverage counties reduced their total number of precincts following *Shelby County*. These counties were Caswell, Cleveland,²² Craven, Halifax, Jackson, Nash, Pasquotank, Person, and Robeson. This was a reduction of 23 precincts,²³ or about a 12% decrease overall in the polling sites available to voters in these counties.²⁴ All of them were subject to Voting Rights Act coverage, and are majority white, with the exception of majority black Halifax County, and Robeson County, where no group constitutes a majority. Seven of the counties have African-American populations about the statewide average. Except for Halifax County,²⁵ each of them have also seen population growth over the past two decades.

These county boards of elections reduced the number of precincts by the process of consolidation. This was done in a several ways, but the primary method was to take two

²² Data from the State Board of Elections show that Cleveland and Jackson Counties reduced their precincts before the 2014 elections, and the other counties followed suit after that election.

²³ The reductions were Caswell: 10 to 9; Cleveland: 26 to 21; Craven 27 to 26; Halifax 25 to 23; Jackson: 15 to 14; Nash: 27 to 24; Pasquotank: 13 to 9; Person: 14 to 11; and Robeson: 42 to 39. Total reduction: 199 to 166.

²⁴ Five other counties made changes- Alexander (16 to 10), Allegheny (7 to 4), Caldwell (21 to 20), Lincoln (28 to 23), Randolph (40 to 22) reduced precincts, however, were never under Voting Rights Act coverage, meaning they were free to do so as they wished before *Shelby County* without Justice Department approval. These counties are all at least 89.20% White and voted between 66.9% to 74.4% for Romney in 2012. Only a few of the precincts in these counties (in Lincoln and Randolph) have precincts where in which the black percentage exceeds 10%.

²⁵ The further reduction of two precincts in Halifax County are particularly peculiar given the county had already reduced precincts following the Census in 2011, which was precleared by the Justice Department.

precincts that existed in 2012 and combined them into one. Another method was to do the same, except to three precincts, while a less common way was to cut up a precinct and disperse it between more than two precincts. By comparing precinct maps used in 2012 from those used in the 2016 election, precincts that remained the same were coded as a 0, while those that were combined into larger precincts were coded as a 1. In all cases, there was not simply a slight movement of precinct lines, but that two or more precincts were combined into one new larger precinct. In order to determine whether there was some relationship between the likelihood of a precinct to be combined as a result of the racial composition of that precinct, a logistic regression is utilized as the model with whether the precinct was combined as the dependent variable, and the proportion of registered voters in the precinct that are African-American as the independent variable. In a second model, one adds in three additional counties: Beaufort, Martin, and Wayne. These counties did not formally consolidate precincts, but reduced the number of polling locations by putting two precincts in one location.

There is also another way to look at these reductions in the previously covered counties. In addition to the nine counties tested in the first model, three other counties²⁶ did not officially consolidate precincts, but did reduce their number of polling site locations. This means that the precincts on paper remained separate, but the voters in two precincts voted at the same location. While this would mean two separate election boards in that location, it does increase the cost of voting for voters that would have to travel to vote in a different precinct. These three counties were Beaufort, Martin, and Wayne Counties, and amounts to an additional five precincts locations being eliminated to the 23 consolidated precincts. This total reduction in precincts or polling locations in these 12 counties is around 11%.

²⁶ In addition to these three counties, Halifax County also combined the location of two precincts in Roanoke Rapids.

The results are striking. Within this sample of the 12 counties, 55 precincts (21%) were combined or saw precinct site reductions, while 208 were not. The mean black proportion of these precincts is around .42, but of the precincts not affected, the mean was .31. Of the 63 precincts in which African-Americans compose a majority of registered voters, 21 of those precincts were combined or saw precincts paired in the same location (33%). In contrast, of the corresponding 63 precincts with the smallest share of African-American voters (below 14.5%), only eight of those precincts were combined. Logic would dictate that if a county wanted to combine precincts, it would be because smaller precincts should be combined because they are relatively small, and should be consolidated to save money for polling sites and poll workers. However, that does not appear to be the case here. Of the 30 smallest precincts in the sample, seven were combined, but in the 30 largest precincts, five were combined.²⁷

When applied in a logistic regression as previously described, the results point to race as driving factor where precincts were consolidated, and thus increasing the costs of voting for those voters. As Figure 5 shows, black voters were targeted, even to the point that as the 4th Circuit noted in *North Carolina National Association of the Advancement of Colored People (NAACP) v. McCrory* (4th Cir. 2016) stated, “[to] target African-Americans with almost surgical precision”. As the proportion of African-American voters increases in a precinct, so does the probability that in these counties that the board of elections will consolidate that precinct to make it larger in size. Table 5 shows the model statistics, and points to a very discriminatory effect in three of the four models. Precincts that are majority black are more likely than not to be combined or have two precincts vote in the same location.²⁸

²⁷ In a logistic regression where the independent variable is changed to precinct size, the results show in the twelve counties no statistical or substantive relationship between the two.

²⁸ Using a conditional fixed effects test by county, the results are similar, with the z value rising to 4.01 (coefficient 4.527, standard error 1.129), with a log likelihood of -67.918.

Combined	Counties with Precinct Consolidations	Counties with Precinct Consolidations and Precinct Site Reductions	All VRA Counties Consolidations	All VRA Counties Consolidations and Precinct Site Reductions
Black Proportion	2.0164 (.7364)**	1.8936 (.6521)**	.9649 (.5804)	1.0692 (.5268)*
Constant	-1.94.64 (.3298)***	-2.0199 (.2982)***	-3.3657 (.2818)***	-3.1959 (.2581)***
Log Likelihood	-102.5608	-130.6070	-179.7712	-208.0240
Pseudo R²	.0359	.0316	.0074	.0095
N	199	263	949	949
Counties	9	12	40	40

Table 4: Model: Bi-Variate Logistic Regression of 2012 Registration Data by Precinct for the Nine Counties with Precinct Consolidations post-Shelby in Model 1, Twelve Counties with Precinct Consolidations and Precinct Site Reductions in Model 2, and all 40 VRA Counties in Models 3 and 4

$P < .05^*$, $p < .01^{**}$, $p < .001^{***}$

[Insert Figure 5 here]

When changing the sample to all the counties previously covered by the Voting Rights Act prior to *Shelby*, the results are still unequivocal that there is a substantially higher likelihood that a majority African-American precinct would be consolidated while a majority white precinct would not. In the previous decade, while under coverage of the Voting Rights Act, 19 of the 40 counties made mid-decade changes to their precinct maps. However, of these changes, 13 were to increase precincts in the county, while only six were to decrease precincts in the county. In addition, most of the reductions were made in 2008 and 2010 as the precincts after the Census had time to increase or decrease. Meanwhile, in the previous decade (2006), only three counties had made precinct reductions, all of which were precleared by the Justice Department.

[Insert Figure 6 here]

A critical question comes to how these changes affected voter turnout among African-Americans. The State Board of Elections data shows that African-American turnout declined by

57,714 votes, despite an increase of more than 40,000 in registration by that group over this time-period. This amounted to a statewide decline in African-American voter turnout of -5.84 percent. However, Fraga, et. al. (2017), using data from Catalyst, found an African-American statewide voter turnout decline of -7.1 percent. Those authors also estimate that if turnout rates among whites, African-Americans, and Latinos would have remained constant from 2012 levels, Trump's margin of victory in the state would have declined from 3.7 percent to only 0.9 percent.

As was demonstrated in Table 3, all but one of the affected counties saw a drop in African-American voter turnout when analyzing data from the State Board of Elections, and the lone county with an increase consists of only a tiny percentage of that group. The total drop in African-American turnout among those 12 counties was 9.28 percent. However, when one reduces this sample to only the affected precincts, which saw 55 precincts reduced to 32 precincts, and 27 polling locations, the turnout drop rises to 12.05%. In examining the 2016 version of these precincts, turnout among African-Americans dropped in all but three of those 32 precincts. These three precincts with increases include three of the four precincts with the fewest number of African-American registered voters. In turn, the four precincts with the largest declines in African-American turnout, were overwhelmingly made of that group in terms of registered voters.

In these counties, overall raw turnout declined slightly from 2012 to 2016, while the state saw an increase overall of 236,000 voters. The number of votes cast for the Democratic candidate for President declined by 10.3% in the 12 counties where precincts were reduced using data from Dave Leip's U.S. Election Atlas and the State Board of Elections when comparing the elections in 2012 and 2016. In the remaining 88 counties, there was a 1.4 percent increase for the Democrats. These numbers may stem from the high levels of racial polarization

in the state, which is even more pronounced in the Section 5 counties. Hasen (2017) wrote about this “conjoined polarization”, where questions of whether the motivation for the discriminatory behavior was based on partisanship or race was irrelevant given that they are so highly correlated.

4.3 Changes to early voting in 2016

Following the decision in *Shelby*, the North Carolina General Assembly passed a sweeping bill signed by Governor McCrory that made substantial changes to electoral laws. It included a strict photo identification law, end of golden week, end of pre-registration for 16- and 17-year-olds, end of same-day voter registration, end of out-of-precinct voting, and a reduction of the days of early voting from 17 days to 10 days. However, there was a caveat that counties had to offer the same number of hours of early voting as in 2012 (Blake, 2013). Large portions of this law were rejected in *North Carolina NAACP v. McCrory*, by a three judge panel of the 4th Circuit, which the Supreme Court denied certiorari thus leaving that decision stand. The Court found that the General Assembly had targeted younger voters and minority groups (particularly African-Americans) with “almost surgical precision”. They ruled that the law had been enacted with discriminatory intent and thus violated Section 2 of the Voting Rights Act.

While the plaintiffs saw this as a clear victory, Republicans in North Carolina interpreted the decision differently in terms of early voting. Eliminating the provision requiring the same number of hours of early voting led some counties to reduce early voting. The executive director of the State Republican Party, Brad Woodhouse, sent directives to county boards of elections encouraging them to cut the amount of early voting. The chair of the Mecklenburg County Board of Elections even stated that she “was not a fan of early voting” when the board voted to cut 238

hours of early voting (Morrill, 2016). Charlotte, home to the highest proportion of the state's African-American population—is in Mecklenburg. Some counties, such as Durham and Wake have resisted calls to cut early voting, even over the objections of State Republican leaders. The same executive director even asked the Wake County Board of Elections to name his cousin the Chair of the Board after they refused to cut early voting (Specht, 2016). Proposed cuts to early voting, particularly in Democratic and minority areas had become known as the “Woodhouse Rules”. They argued that while they may have been reducing the opportunities for minorities to exercise early voting, they were really interested in discriminating against Democrats (Campbell, 2016).

In an October meeting of the North Carolina State Board of Elections, which has the final say on early voting schedules if a local board was not unanimous, the results were mixed. Most of the counties that had Sunday early voting were able to maintain it and several counties saw the number of hours of early voting increased. GOP plans for restrictive early voting were rejected in the two largest counties (Mecklenburg and Wake) (Campbell, 2016). However, they did not add Sunday voting to counties that previously did not offer it in 2012, and eliminated it in three counties, including Forsyth, home to the fourth highest number of African-Americans in the state (Campbell, 2016). In three other counties, they reduced it from two to one Sunday (Rodriguez, 2016). Further litigation challenging plans in Forsyth, Guilford, Mecklenburg, Nash, and New Hanover counties was pursued unsuccessfully with the 4th Circuit panel was pursued unsuccessfully challenging plans in Forsyth, Guilford, Mecklenburg, Nash, and New Hanover Counties (Blythe, 2016). Of these counties, all but Guilford contain super-sized precincts and over one-third of the super-sized precincts are located in the remaining four counties. This challenge was rejected on October 19 (Blythe, 2016). Part of the rationale was based on the

doctrine from *Purcell v. Gonzales* (2006) that states that courts should refrain from altering election laws in close proximity to Election Day.

Florida saw a problem in 2012 when it scaled back the number of days of early voting, while the number of precincts declined. Wait times increased from 29 to 45 minutes. Some precincts in Miami had instances of several hour wait times, even after the polls closed at 7:00 P.M. For this and other reasons, voters in Florida were the least likely in any state to report that things had very well or okay at their polling place (Stewart, 2013). With African-Americans more likely to utilize early voting, one could surmise that with their precincts being larger in terms of registered voters, they would tend to be most affected. Further, North Carolina has also eliminated straight ticket voting, which is likely to increase wait times given the length of that state's ballot (Engstrom and Roberts, 2016).

One also saw long lines in the Arizona Presidential Primary when the Maricopa County Recorder cut the number of precincts in that county for the primary. Many voters waited for hours to vote (Pitzl, et. al. 2016). Arizona was also a state lifted from Voting Rights Act coverage by *Shelby*. There was a great deal of public backlash against the County Recorder, Helen Purcell, who had served in the position since 1988, and who had never had an opponent for reelection until this year. In response to this—plus an investigation by the Justice Department and a lawsuit by the Democratic National Committee—she was defeated for reelection. (Sanders, 2016).

5. Concluding Remarks

While an ever-increasing number of voters are utilizing early voting schemes such as early in person and mail in absentee voting, most people still vote on Election Day in their respective precincts which are drawn in North Carolina by each County Board of Election, subject to approval by the State Board of Election. Precincts can be manipulated to make it easier or harder for certain voters to cast a ballot by either increasing or decreasing the costs of voting. One particular method is to measure how large precincts are in terms of registered voters. If one puts too many voters in a precinct, it leads to longer lines, which increases the cost to vote and could have the effect of depressing turnout.

While many people would expect that there would be partisan implications in this process, as is the case in redistricting of legislative lines, it can also have racial implications. Packing of minority voters into disproportionately large precincts can potentially violate the Voting Rights Act if one can show a discriminatory impact on those voters. North Carolina's split nature of coverage under Section 5 of the Voting Rights Act makes it a particularly interesting state to study its impact, pre- and post-*Shelby*. If the Voting Rights Act—in terms of precinct size—was effective, one should see either no relationship between the African-American proportion of registered voters and precinct size, or a negative one in the covered jurisdictions.

This article finds that in terms of precinct size, the Voting Rights Act was effective in the covered counties in North Carolina, given that in 1998, 2004, and 2012, as the proportion of registered African-American voters increased, precinct size declined as measured by the number of registered voters in that precinct. The opposite effect was found in the precincts in the non-covered counties, in that as the African-American proportion of the precinct increased, so did the size of the precinct. This is evidence that the Voting Rights Act was effective where it was in

place in North Carolina. It also seems to indicate that more counties within North Carolina should have been in the coverage formula for that state. Chief Justice Roberts ruled in *Shelby* that the coverage formula was outdated because racial discrimination in voting been remedied in the covered jurisdictions. He was wrong. The coverage formula simply prevented those places from implementing discriminatory laws and rules. In North Carolina, when covered counties were given a chance to implement laws and rules that discriminated against African-Americans, they did so.

When North Carolina was freed from oversight by the Justice Department, it moved forward with several measures that the 4th Circuit found to target African-American voters at the statewide level, including strict photo identification, reduction in early voting, elimination of straight ticket voting, ending pre-registration of 16- and 17-year-olds, as well as ending Golden Week. At the county level, without preclearance to worry about, nine of the 40 covered counties took the unusual step of mid-decade reduction of precincts. In past decades, the major reason for a mid-decade re-precincting was to add precincts in counties with rapid population growth. In these nine counties with precinct consolidation, evidence shows that African-American voters were targeted with surgical precision. In precincts where they made up a large proportion of the registered voters, they were more likely to be subject to consolidation, thus making their precincts significantly larger and potentially increasing the costs of those voters to cast a ballot. Many of these counties had histories of racial discrimination in voting and when they no longer had to worry about preclearing these changes, they reverted to their old ways.

The 2016 election saw a significant drop in African-American turnout in North Carolina. Though it can be blamed on numerous things from precinct sizes, early voting changes, or the absence of President Barack Obama's name from the ticket, it is currently estimated that 155,000

fewer African-Americans voted in 2016. This is only slightly higher than the margin by which Hillary Clinton lost the state and was enough to have flipped statewide races for Superintendent of Public Instruction, Insurance Commissioner, and two seats on the Court of Appeals.

However, the 2016 was more of a mixed bag of results. While Republicans won supermajorities in the General Assembly, Democrats won a few important offices. Attorney General Roy Cooper (D-Nashville) narrowly unseated Gov. Patrick McCrory (R-Charlotte). Democrats also held onto the Attorney General's office with St. Sen. Josh Stein (D-Raleigh). While it is technically non-partisan, Judge Robert Morgan defeated an incumbent on the North Carolina Supreme Court so that Democratic aligned judges control that body 4-3.

With the Democratic win for Governor, it should have meant that their party would regain control over election administration in the state. However, in a lame duck session originally called to deal with disaster aid for Hurricane Matthew, Republicans passed bills designed to weaken Cooper's powers and to make election boards have equal number of members, but where Democrats would chair them in odd years, and Republicans in even ones, when elections are held. However, the North Carolina Supreme Court ruled in favor of Governor Cooper and against the Republican General Assembly on this plan, meaning that Democrats will control the State Board of Elections and thus all the 100 county boards of elections. *Cooper v. Berger*, 2018 WL 691837 (N.C. 2018).

So what can be done to remedy these new problems post *Shelby* in terms of the law? One solution is for Congress to pass a new coverage formula which would preferably increase the coverage within North Carolina to cover counties that were previously uncovered that were the drivers of the large precincts in relation to African-American voters, or be subject to statewide coverage. However, with Republicans remaining in control of both houses of Congress and

recalcitrant House Judiciary Chairman Robert Goodlatte remaining in power, this seems extremely unlikely. His term is limited under Republican rules at the end of this Congress. His potential successors by seniority, Rep. Steve Chabot (R-Ohio) and Rep. Darrell Issa (R-California) do not appear to be sympathetic either. A Democratic majority in the House following the 2018 election could help to revive this with Rep. John Conyers (D-Michigan) as the next likely chairman, but gerrymandered congressional districts make a Democratic takeover more difficult. Even if this happens, Republicans are likely to retain Senate control, and a bill would face a potential Trump veto.

One could look for the Court to overturn *Shelby*, but given that Scalia was replaced by the very conservative Neil Gorsuch instead of the left of center Merrick Garland, that seems very unlikely unless Anthony Kennedy has a change of heart on the case. One also has to consider that there has been great speculation in legal circles that Kennedy will retire at the end of the Court's next term. Replacing Kennedy with another Trump appointee would likely pull the Court even further to the right on issues of voting rights. While his decision to join with the four liberal justices in a racially gerrymandering case in *Alabama Legislative Black Caucus v. Alabama*, 575 U.S. ____ (2015), was seen as a positive sign for voting rights advocates, Kennedy did not sign on with the liberals for a challenge to a racially gerrymandered U.S. House seat in North Carolina in *Cooper v. Harris*, 581 U.S. ____ (2017).

Finally, Section 3(c) of the Voting Rights Act contains a provision known as "bail-in", in which a federal court can place a jurisdiction under preclearance supervision for a particular period of time that is specified in the court order. The Fourth Circuit is being urged to consider this option in *NAACP v. McCrory*. With this additional evidence, perhaps it might reach the opposite conclusion and place North Carolina under supervision for a period of time. The

problem here is that the supervision would be overseen by the Justice Department of Jeff Sessions, who has had a troubled past on race when he was a U.S. Attorney in Alabama. Since he has taken over the Department of Justice has changed positions on voting rights cases before several federal cases, including ones in Texas having to do with voter identification and redistricting.

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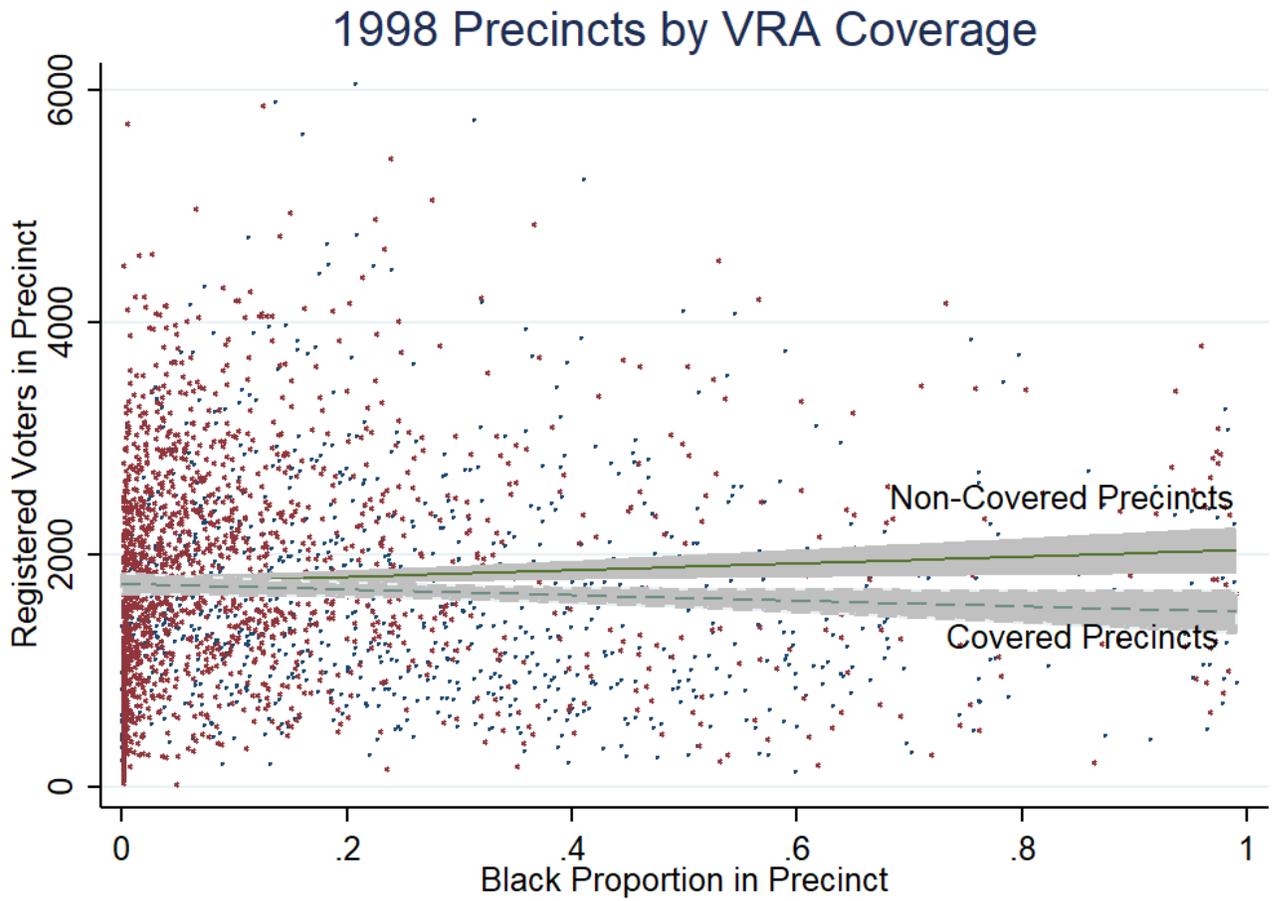


Figure 2: 1998 Precinct Size by Race and Voting Rights Act Coverage, Red dots are non-covered, blue are covered precincts.

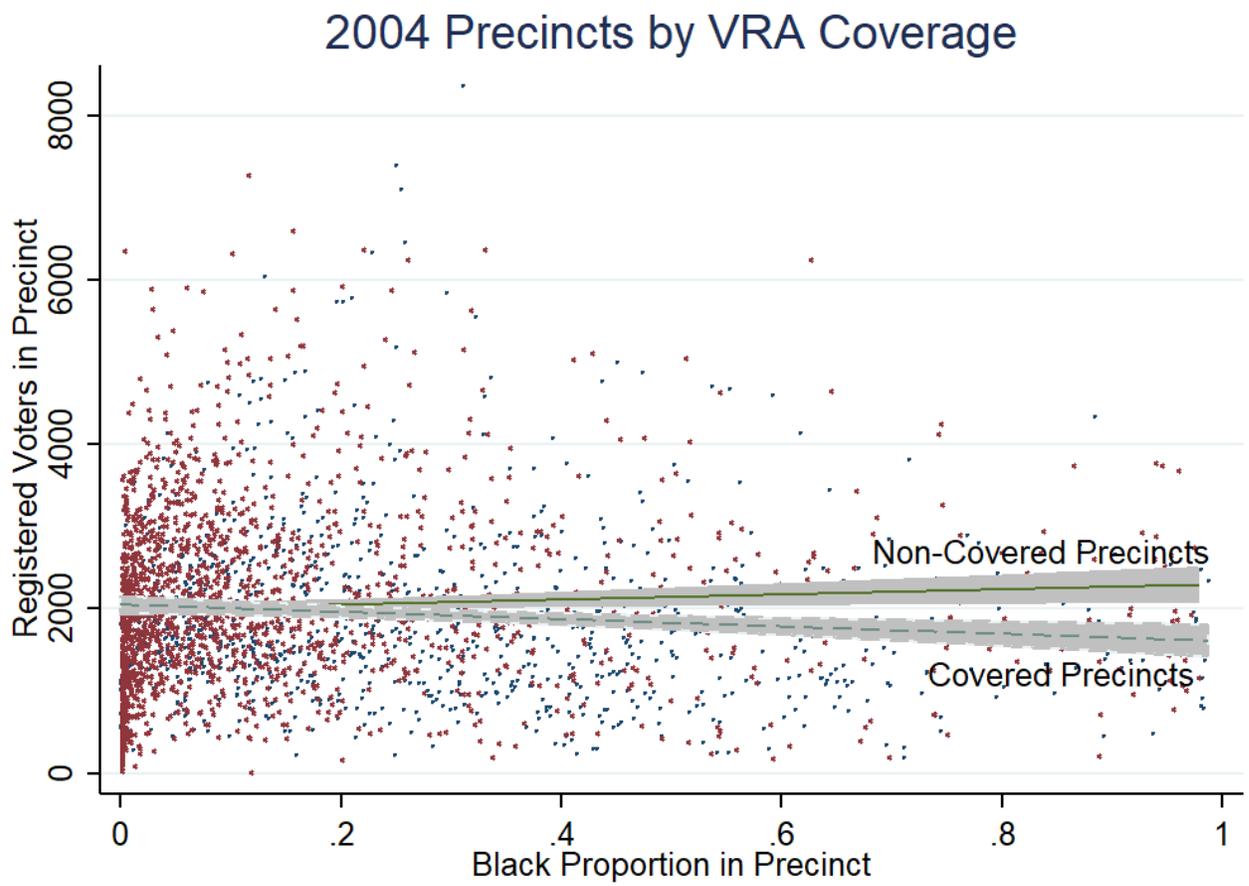


Figure 3: 2004 Precincts by Voting Rights Act Coverage

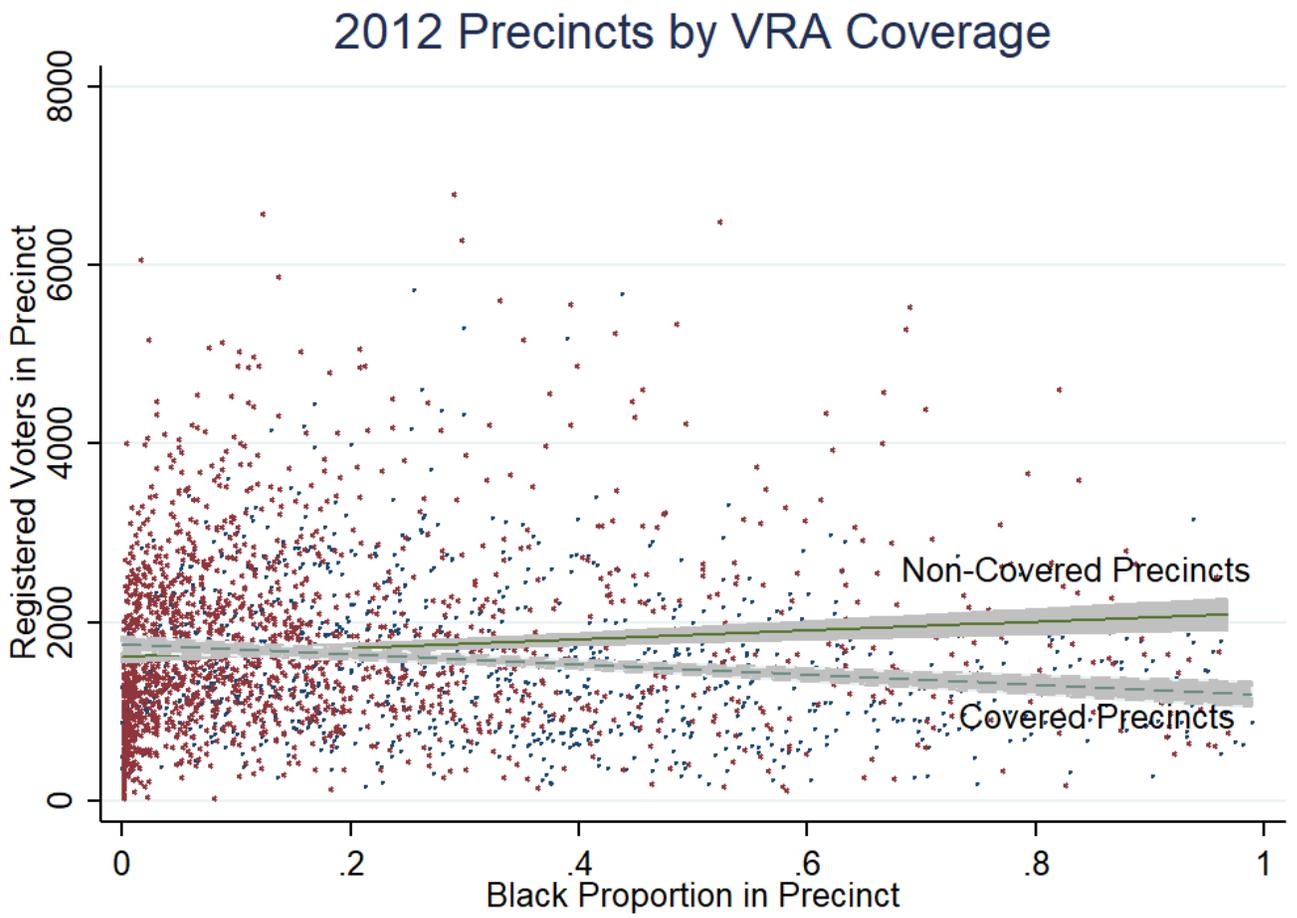


Figure 4: 2012 Precincts by Voting Rights Act Coverage

Post *Shelby County v. Holder*

VRA Counties with Precinct Reductions

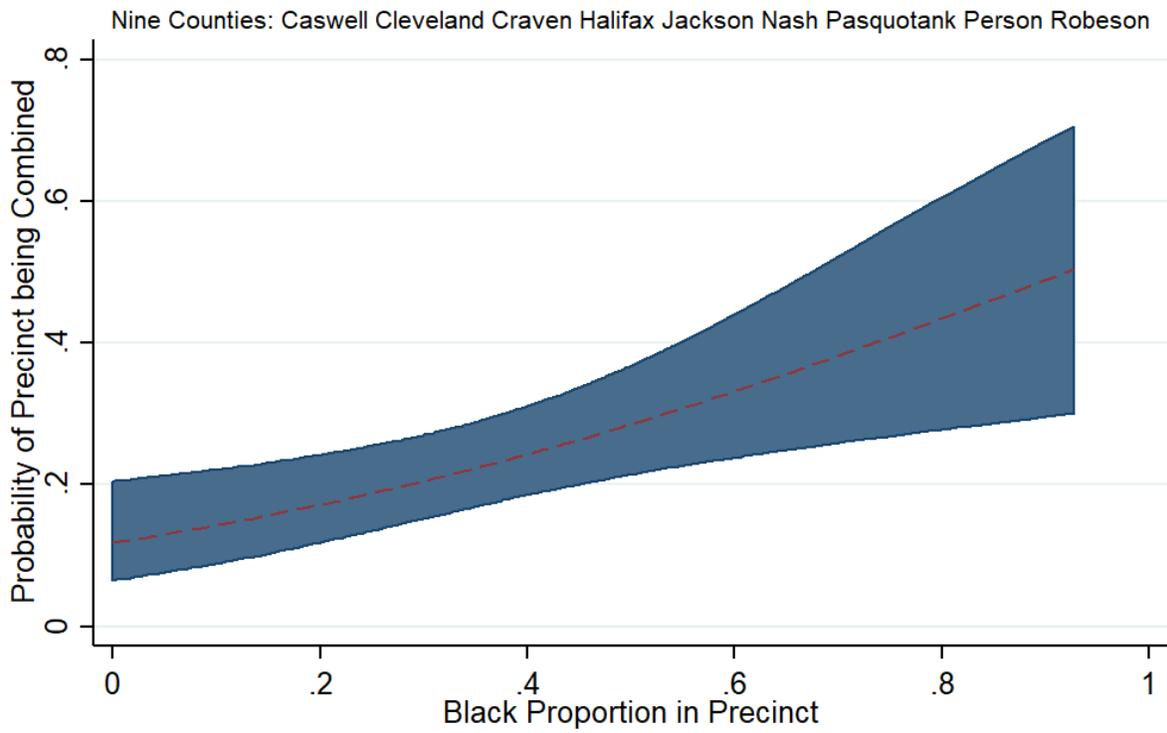


Figure 5: Likelihood of a Precinct Consolidation in Caswell, Cleveland, Craven, Halifax, Jackson, Nash, Pasquotank, Person and Robeson Counties after *Shelby County*. Out of sample prediction.

Post *Shelby County v. Holder* VRA Counties with Precinct Site Reductions

Twelve Counties: Beaufort Caswell Cleveland Craven Halifax Jackson Martin Nash Pasquotank Person Robeson Wayne

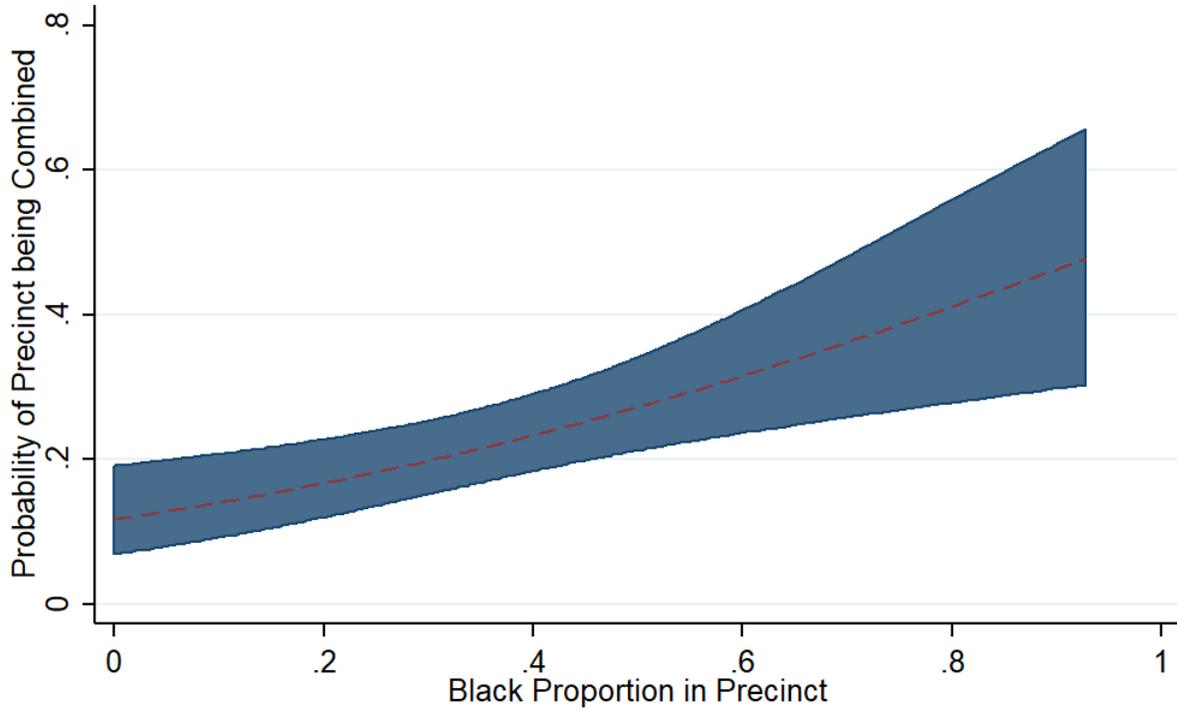


Figure 6: Likelihood of a Precinct Consolidation in twelve counties: Beaufort, Caswell, Cleveland, Craven, Halifax, Jackson, Martin, Nash, Pasquotank, Person, Robeson, and Wayne Counties, with precinct consolidations or precinct site reductions. Out of sample prediction.

Post *Shelby County v. Holder*
All Section 5 Counties

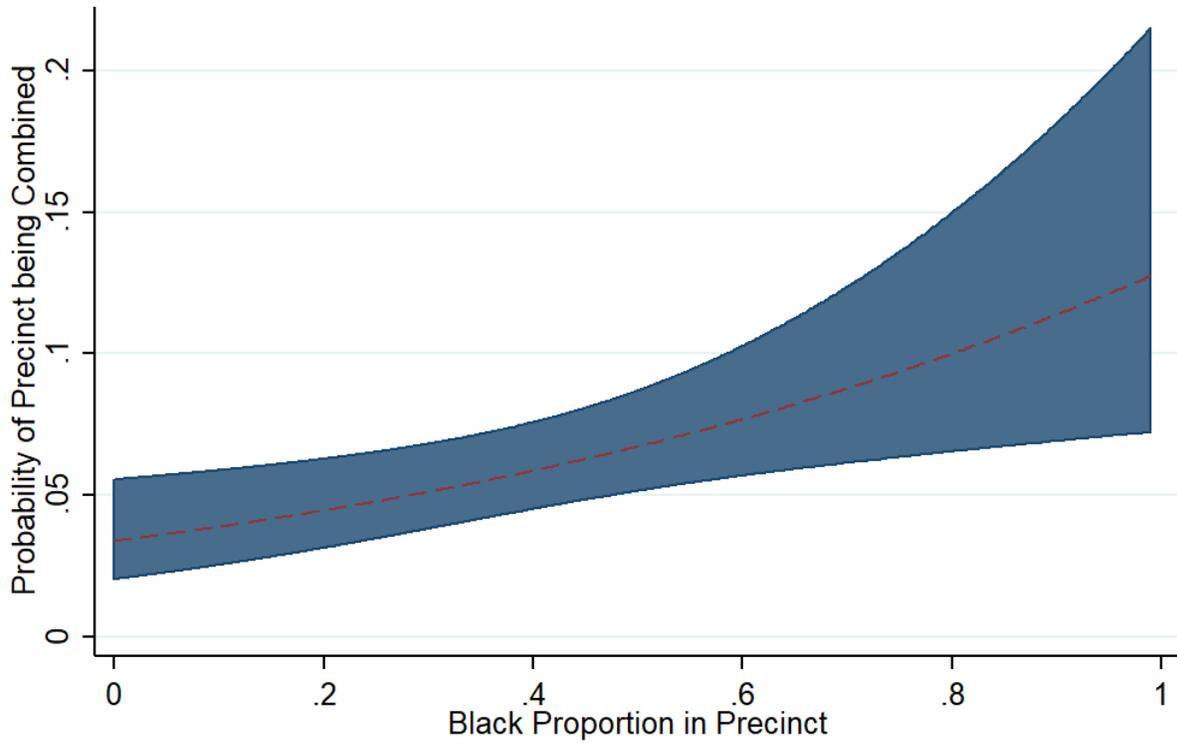


Figure 7: Likelihood of a Precinct Consolidation or Precinct Site Reduction in all previously covered counties after *Shelby County*. Out of sample prediction.