

TESTING *SHAW V. RENO*: DO MAJORITY-MINORITY DISTRICTS CAUSE EXPRESSIVE HARMS?

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The Supreme Court’s decision in Shaw v. Reno established an “analytically distinct” constitutional claim of racial gerrymandering for majority-minority districts drawn predominantly on the basis of race. The case was and continues to be controversial, because the precise nature of the injury caused by such districts has been a persistent source of debate. Shaw districts did not minimize a group’s representation, but rather they communicated an “expressive harm” due to signals they sent to the electorate and representatives that the jurisdiction relied too much on race in the construction of a district. Such districts, the Court argued, communicated racial stereotypes that individuals belonging to the same racial group were politically interchangeable, despite their many social and economic differences. This paper tests the “Shaw hypothesis” with recent survey data. We find no patterns in racial attitudes based on the shape and racial composition of a congressional district. We do, however, find substantial and expected gaps among racial groups concerning attitudes toward the practice of majority-minority districting, Section 5 of the Voting Rights Act, and job approval of the respondent’s representative.

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INTRODUCTION

In several settings in election law, public perceptions of a problem, independent of its actual existence, are constitutionally rele-

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vant. In campaign finance, for example, the appearance of corruption, even apart from actual corruption, has long been held a justification for restricting campaign contributions—so much so that the Department of Justice once submitted public opinion polls as evidence of public perception of the undue influence of large contributors.¹ Similarly, in litigation over voter identification requirements, the electorate’s perception of fraud independently justifies restrictions on voting, even if examples of actual voting fraud are absent.² Finally, in the context of racial gerrymandering, so-called *Shaw*³ claims, the claim of wrongful districting is predicated on the theory that the intentional creation of majority-minority districts (MMDs) sends a message of racial stereotyping to the voters of the district in violation of the Equal Protection Clause.⁴ We have published research undercutting the public opinion foundations in the first two contexts;⁵ with this paper we seek to do the same for racial gerrymandering claims.

To be sure, the public opinion-based argument in the context of racial gerrymandering is a bit different than in the other contexts. For campaign finance and voter ID requirements, public opinion or perceptions demonstrate the weight of the state’s interest—in other words, public attitudes are the problem that state action seeks to solve. In the racial gerrymandering context, assumptions about public opinion mechanics—that is, certain types of districts are presumed to cause people to hold certain beliefs—are the basis for the Supreme Court’s creation of the constitutional claim. Nevertheless, we think the Court’s misunderstanding of public opinion in the first two realms extends to the third. In this paper, we seek to demonstrate with heretofore unexamined survey data that no social science basis exists for the public opinion dynamic the Court describes.

This paper proceeds in four parts. Part I isolates the public opinion hypotheses stated or implied by the Supreme Court’s creation of the “analytically distinct” cause of action in *Shaw v. Reno* and its progeny. Part II describes the data and methods we employ to test the *Shaw* hypothesis. Part III presents the findings based on survey data measuring attitudes of racial resentment of residents across different types of districts, as well as their approval ratings of their representa-

¹ Nathaniel Persily & Kelli Lammie, *Perceptions of Corruption and Campaign Finance: When Public Opinion Determines Constitutional Law*, 153 U. PA. L. REV. 119, 120 (2004).

² Stephen Ansolabehere & Nathaniel Persily, *Vote Fraud in the Eye of the Beholder: The Role of Public Opinion in the Challenge to Voter Identification Requirements*, 121 HARV. L. REV. 1737, 1738–40 (2008).

³ *Shaw v. Reno*, 509 U.S. 630 (1993).

⁴ See discussion *infra* Part I.

⁵ See sources cited *supra* notes 1–2.

tives. Part IV presents related data concerning public attitudes toward the Voting Rights Act and the practice of creating MMDs.

We conclude that residents of MMDs are indistinguishable from residents of other districts in their answers to questions attempting to measure belief in racial stereotypes. This is true regardless of whether the MMDs are compact or non-compact, or whether the districts are drawn in areas previously covered by Section 5 of the Voting Rights Act (VRA).⁶ To the extent we observe statistically significant differences across districts, those differences are not among racial minorities, but among Whites, and can be explained by the relative conservatism of Southern Whites. Of course, we observe expected differences among racial groups in their responses to questions measuring “racial resentment,” as well as to questions concerning the VRA and the practice of drawing MMDs. However, contrary to the assumptions that undergird the *Shaw* cause of action, the data do not suggest variation among racial groups depending on the type of district in which they live.

I

SHAW V. RENO AND EXPRESSIVE HARMS

The Supreme Court’s 1993 decision in *Shaw v. Reno* established a new limit on the use of race in the redistricting process. The Court created an “analytically distinct claim”⁷ that allowed Equal Protection challenges to districts with boundaries that “rationally cannot be understood as anything other than an effort to separate voters into different districts on the basis of race.”⁸ Later cases explained that when race was determined to be the “predominant factor” in the creation of a district, strict scrutiny applied under the Equal Protection Clause, and the district was presumptively unconstitutional.⁹

The logic and theory behind *Shaw* generated considerable criticism and commentary in the decade or so during which *Shaw* claims regularly appeared on the Supreme Court’s docket. Much of that criticism revolved around the nature of the harm *Shaw* described. The harm was different than others recognized in redistricting because it

⁶ Voting Rights Act of 1965, Pub. L. No. 89-110, § 5, 79 Stat. 437, 439 (codified as amended at 42 U.S.C. § 1973c (2012)).

⁷ *Shaw*, 509 U.S. at 652.

⁸ *Id.* at 649.

⁹ *See, e.g.*, *Miller v. Johnson*, 515 U.S. 900, 917, 920 (1995). Only if a district was necessary to avoid a violation of the VRA might it survive strict scrutiny—a caveat we return to later in this Article and one the Court revisited this past Term. *See Ala. Legis. Black Caucus v. Alabama*, 135 S. Ct. 1257 (2015) (rejecting the state’s interpretation of Section 5 of the VRA as a justification for freezing in place the African American percentages in state legislative districts).

was uncertain exactly who was being injured.¹⁰ In a garden variety vote dilution claim, for example, racial discrimination in redistricting looks like other kinds of discrimination: The mapmaker intends to injure the racial group in question, and the districting scheme does so by limiting or canceling the “voting potential of racial or ethnic minorities.”¹¹ Similarly, if a city redraws its borders so as to excise all members of a racial group from its jurisdiction—as in the famous case of *Gomillion v. Lightfoot*¹²—then one can fairly say that the group was intentionally deprived of a benefit (*i.e.*, voting rights in the jurisdiction) on account of their race.

The claim recognized in *Shaw* was different than vote dilution or disenfranchisement by way of boundary drawing. Unlike the plaintiffs in the vote dilution case, the plaintiffs in the *Shaw* line of cases were not underrepresented. Whites held majorities in ten of the twelve North Carolina congressional districts (CDs) considered in *Shaw*, for example, despite the fact that they constituted roughly 78% of the population.¹³ Although one might plausibly think that Blacks were thereby underrepresented by the plan, the plaintiffs in *Shaw* did not make that claim,¹⁴ nor could they, given that by almost any measure Blacks had as much if not more influence than they did under the previous set of districts.¹⁵

Instead, the harm in *Shaw* was an “expressive harm,” as many have recognized.¹⁶ The harm ensued from the message a *Shaw* district sent, not the diminution of political influence experienced by one or another racial group.¹⁷ *Shaw* and its progeny cited classic race-discrimination cases that focused on the racial stigma fostered by cer-

¹⁰ See Samuel Issacharoff & Pamela S. Karlan, *Standing and Misunderstanding in Voting Rights Law*, 111 HARV. L. REV. 2285–92 (1998) (discussing how the injury suffered in *Shaw* cases departs from the Court’s standing doctrine in other contexts).

¹¹ *Johnson*, 515 U.S. at 911 (“[A] vote dilution claim alleges that the State has enacted a . . . voting scheme as a purposeful device . . . disadvantaging voters of a particular race, the . . . equal protection claim . . . in *Shaw* is that the State has used race as a basis for separating voters into districts.”).

¹² 364 U.S. 339 (1960).

¹³ *Shaw*, 509 U.S. at 634.

¹⁴ See *id.* at 638 (recognizing that a majority of the district court panel hearing the challenge took judicial notice of the fact that the original plaintiffs were White).

¹⁵ See *id.* at 659 (White, J., dissenting) (noting that, under the plan at issue, North Carolina had sent its first Black representatives to Congress since Reconstruction); see also *Shaw v. Hunt*, 517 U.S. 899, 912 (1996) (“[The plan] created the first majority-black district in recent history.”).

¹⁶ *E.g.*, Richard H. Pildes & Richard G. Niemi, *Expressive Harms, “Bizarre Districts,” and Voting Rights: Evaluating Election-District Appearances after Shaw v. Reno*, 92 MICH. L. REV. 483, 485 (1993).

¹⁷ *Id.* at 507–09.

tain types of racial classifications.¹⁸ Just as segregation in other contexts might lead racial minorities to develop lower esteem for themselves and their racial group, so too a *Shaw* district might communicate racial stereotypes that residents or witnesses of such districts might internalize.¹⁹

In a much-cited paragraph that described the theory behind a *Shaw* claim, Justice O'Connor wrote for the Court:

A reapportionment plan that includes in one district individuals who belong to the same race, but who are otherwise widely separated by geographical and political boundaries, and who may have little in common with one another but the color of their skin, bears an uncomfortable resemblance to political apartheid. It reinforces the perception that members of the same racial group—regardless of their age, education, economic status, or the community in which they live—think alike, share the same political interests, and will prefer the same candidates at the polls. . . . By perpetuating such notions, a racial gerrymander may exacerbate the very patterns of racial bloc voting that majority-minority districting is sometimes said to counteract.²⁰

Under this view, the intentional inclusion of racial groups into one district or another sends a racially essentialist message: that members of a racial group are politically interchangeable and that individuals can be politically defined by their race without looking to other relevant characteristics. As such, residents of these districts (and perhaps others) begin to think of politics in racialized terms. In addition, the Court posited that elected representatives from such districts would be more likely to view their responsibility as primarily to their racial group.²¹

¹⁸ See *Shaw*, 509 U.S. at 640, 644 (citing *Gomillion v. Lightfoot*, 364 U.S. 339 (1960); *Guinn v. United States*, 238 U.S. 347 (1915)).

¹⁹ As Justice O'Connor's majority opinion explained:

Racial classifications of any sort pose the risk of lasting harm to our society. They reinforce the belief, held by too many for too much of our history, that individuals should be judged by the color of their skin. Racial classifications with respect to voting carry particular dangers. Racial gerrymandering, even for remedial purposes, may balkanize us into competing racial factions; it threatens to carry us further from the goal of a political system in which race no longer matters—a goal that the Fourteenth and Fifteenth Amendments embody, and to which the Nation continues to aspire. It is for these reasons that race-based districting by our state legislatures demands close judicial scrutiny.

Id. at 657.

²⁰ *Id.* at 647–48.

²¹ The *Shaw* Court reasoned:

The message that such districting sends to elected representatives is equally pernicious. When a district obviously is created solely to effectuate the perceived common interests of one racial group, elected officials are more

Criticism of the *Shaw* decision came on many fronts. The tone of the decision—comparing pro-minority districting to apartheid²²—was one source of concern and alarm. Others criticized what generally seemed like an upending of the normal rules of standing, generalized grievances, and injuries in fact: Who exactly suffered as a result of the creation of a *Shaw* district? Minorities? Whites? Those inside the district? The polity as a whole?²³ Echoing a theme familiar to the redistricting context ever since *Baker v. Carr*,²⁴ many also worried about the lack of administrable standards for such claims: Given that all linedrawers know the race of the population when they draw the districts, when does race really become the *predominant* factor in the construction of a district, for which boundaries are usually the product of a multiplicity of factors?²⁵ Others challenged the notion that these districts were segregated or balkanizing at all, given that they were some of the most racially integrated districts in the country, but with minorities now as the majority.²⁶ Finally, some (including the dissenters) alleged the Court had adopted an implicit double standard—calling into question MMDs while seeing no constitutional problem with majority-White districts, many of which were also irregularly shaped.²⁷

To date, though, we are unaware of any attempt, like ours, to assess the empirical assumptions undergirding the *Shaw* theory of majority-minority districting and its psychological effects. *Shaw* and its progeny draw an analogy from the psychological processes at work in *Brown v. Board of Education*, wherein social science evidence (the famous “doll studies”) were quite influential in proving the psychologically damaging effects of segregated schools on African American school children.²⁸ For the most part, the Court reasons by analogy that

likely to believe that their primary obligation is to represent only the members of that group, rather than their constituency as a whole. This is altogether antithetical to our system of representative democracy.

Id. at 648.

²² *Shaw*, 509 U.S. at 647.

²³ See, e.g., Issacharoff & Karlan, *supra* note 10.

²⁴ 369 U.S. 186 (1962).

²⁵ See *Shaw*, 509 U.S. at 646 (“[R]edistricting differs from other kinds of state decisionmaking in that the legislature always is *aware* of race when it draws district lines, just as it is aware of age, economic status, religious and political persuasion, and a variety of other demographic factors.”).

²⁶ See Heather K. Gerken, *Second-Order Diversity*, 118 HARV. L. REV. 1099, 1120 n.51 (2005) (suggesting *Shaw* “offered the closest thing one can find to a normative vision in districting that privileges . . . diversity”); Pamela S. Karlan & Daryl J. Levinson, *Why Voting Is Different*, 84 CALIF. L. REV. 1201, 1211–12 (1996) (arguing that the Court erred in its presumption of representational harms).

²⁷ *Shaw*, 509 U.S. at 671–73 (White, J., dissenting).

²⁸ 347 U.S. 483, 494 (1954).

the creation of districts (albeit ones more evenly balanced than the completely segregated schools in *Brown*) must also have some stigmatizing effect.²⁹ In the case of districting, it is about the creation of political stereotypes concerning what minorities as a group believe.³⁰

We believe these opinion dynamics alleged in *Shaw* and its progeny provide some testable hypotheses. Most basically, the cases suggest that racial attitudes held by the population in MMDs (where race was the predominant factor in their creation) ought to be different than those held by people in other districts. What those attitudes are—that is, how to define the stereotypes—may prove difficult, but the most minimalist of the *Shaw* hypotheses suggests that attitudes should, in some way, vary between different types of districts.

We think *Shaw* suggests a bolder argument than the minimalist one just suggested, though. The *Shaw* theory implies a specific mechanism for attitudinal change. The reasons underlying a district—perhaps as expressed in the district's shape, location, and demographic breakdown, in addition to other evidence of intent—cause people to adopt certain racial stereotypes. The drawing of such districts communicates the message that racial group members are politically monolithic, and residents of such districts then adopt and inculcate that message.³¹

For this mechanism of attitudinal change to work, though, people need to know something about their district. Of course, very few people pay enough attention to the redistricting process to know the intricacies of the political bargain that led to the creation of a district. Perhaps such knowledge would be a sufficient, but not necessary, condition for stereotype adoption. However, for the *Shaw* theory to make sense, residents of such districts should probably know the demographic composition of their districts, the race of their representative, and maybe the shape or location of the district. To put the matter succinctly, the only way a *Shaw* district can communicate its message of racial stereotyping is if someone is paying attention—if a district is drawn in the forest and no one is there to experience it, there can be no expressive harm.

With that said, testing the *Shaw* hypotheses presents both conceptual and methodological challenges. First, *Shaw* districts are not randomly created throughout the country. They are usually drawn because of some prior or potential finding of a violation under the

²⁹ *Shaw*, 509 U.S. at 643–44.

³⁰ *Id.* at 647.

³¹ *Id.* at 647–48.

VRA,³² and they are likely drawn in an area characterized by racial polarization. Therefore, differences between districts could be the product of the reasons those districts were drawn, not the result of the line-drawing process itself. In other words, *Shaw* districts may be drawn in areas where racial stereotypes are prevalent, so it would be difficult to contend that the districts caused the belief in such stereotypes.

Second, survey data with sufficient sample sizes do not exist at the scale necessary (*i.e.*, large enough to detect CD variation) to evaluate the precise relationship suggested by *Shaw*. If we were to design the perfect survey question, it might ask the following: “Agree or disagree: African Americans—regardless of their age, education, economic status, or the community in which they live—think alike, share the same political interests, and will prefer the same candidates at the polls.” Yet such a loaded question is unlikely to evoke agreement from many respondents of whatever race. Therefore, we will need to rely on proxies for such attitudes that have been measured in surveys of sufficiently large scale that we can detect differences between districts.

Third, we need to be clear what we mean by a *Shaw* district. *Shaw* and its progeny did not imply constitutional suspicion for all MMDs, just those where race was the predominant factor in their creation. But how do we know that existing districts—which, of course, have not been struck down by a Court as being racially predominant—are the kinds of districts envisioned by *Shaw*? We use two different measures. The first looks at non-compact MMDs employing an often-used measure of compactness (the Polsby-Popper Score).³³ As *Shaw* itself ruled, “reapportionment is one area where appearances do matter.”³⁴ While later cases deemphasized district shape, they suggested:

Shape is relevant not because bizarreness is a necessary element of the constitutional wrong or a threshold requirement of proof, but because it may be persuasive circumstantial evidence that race for its own sake, and not other districting principles, was the legisla-

³² See, e.g., Ala. Legis. Black Caucus v. Alabama, 135 S. Ct. 1257, 1263 (2015) (noting that the MMDs in Alabama’s legislative redistricting plan were drawn to comply with Section 5 of the VRA); Daniel Hays Lowenstein, *You Don’t Have to Be Liberal to Hate the Racial Gerrymandering Cases*, 50 STAN. L. REV. 779, 780 (1998) (noting that the *Shaw* cases arose due to the creation of districts attempting to comply with the VRA).

³³ Daniel D. Polsby & Robert D. Popper, *The Third Criterion: Compactness as a Procedural Safeguard Against Partisan Gerrymandering*, 9 YALE L. & POL’Y REV. 301 (1991).

³⁴ *Shaw*, 509 U.S. at 647.

ture's dominant and controlling rationale in drawing its district lines.³⁵

Because shape might not pick up all districts where race predominated in the districting process, we also examine the differences between MMDs in areas covered by Section 5 of the VRA and other districts when they were drawn.³⁶ Virtually all *Shaw* claims have been lodged in those jurisdictions, and it seems likely that the anti-retrogression principle that constrained districting in those areas would be correlated with the use of race as the predominant factor (however defined) in the construction of such districts.

II DATA AND METHODS

This study combines survey data from the Cooperative Congressional Election Study (CCES)³⁷ and U.S. Census data on the demographic and geographic characteristics of CDs.³⁸ The survey data provide information on individuals' own demographics (race, income, education, and gender), party orientations, assessments of representatives, racial attitudes, and attitudes about the districting process. The Census data provide information on the racial composition of the district in which the survey respondent resides and the geographic compactness of that district.

A. *Survey Data*

The CCES is a nationally representative survey conducted annually over the Internet by YouGov.³⁹ A full description of the sampling methodology, response rates, and validation of the sample is offered in the Guide to the 2012 CCES.⁴⁰

The survey is conducted as a collaborative effort of many different research teams.⁴¹ Each team designs its own module, which contains questions asked to a sample of roughly 1000 persons and

³⁵ *Miller v. Johnson*, 515 U.S. 900, 913 (1995).

³⁶ Of course, no districts are now covered under Section 5, because the Court struck down Section 4 of the VRA. *See Shelby Cnty. v. Holder*, 133 S. Ct. 2612 (2013) (invalidating the coverage formula in Section 4(b) of the VRA).

³⁷ Stephen Ansolabehere & Douglas Rivers, *Cooperative Survey Research*, 16 ANN. REV. OF POL. SCI. 307 (May 2013).

³⁸ U.S. DEP'T OF COMMERCE, 2010 CENSUS CONGRESSIONAL DISTRICT SUMMARY FILE 1 (2013), available at www.census.gov/prod/cen2010/doc/cd113.pdf.

³⁹ Ansolabehere & Rivers, *supra* note 37 at 314.

⁴⁰ STEPHEN ANSOLABEHERE, GUIDE TO THE 2012 COOPERATIVE CONGRESSIONAL ELECTION SURVEY (2013), available at <http://hdl.handle.net/1902.1/21447> (last visited June 29, 2015).

⁴¹ *Id.* at 4.

comprises half of the questions asked to any group of 1000 respondents.⁴² This is called “Team Content.”⁴³ Each survey also contains questions asked of all respondents on each team’s survey, called “Common Content.”⁴⁴ In each study, thirty to fifty teams purchase a contract for their module.⁴⁵ Therefore, the combination of all of the team surveys into a single database yields a sample of roughly 30,000 to 50,000 responses to the Common Content questions.⁴⁶

The data used in this study come from the 2014 CCES, which, after pooling the Common Content from all of the team modules, contains responses for 56,200 respondents both before and after the 2014 election.⁴⁷ There is an attrition rate of 13% between the pre- and post-election surveys, and so there are 48,850 complete cases in the post-election survey.⁴⁸ For the tables and figures included below, this study uses the subset of self-identified White, Black, and Hispanic respondents, which comprises 52,285 of the 56,200 respondents.⁴⁹ The remaining cases are Asian, Native American, Mixed, Middle Eastern, and Other.⁵⁰

The CCES questions relevant to our inquiry are the following:

1. *Approval of Legislator*

Please indicate whether you approve or disapprove of the job that each of the following are doing.

Name of Current House Member

Name of Senior Senator

Name of Junior Senator

- 1 Strongly approve
 - 2 Approve
 - 3 Disapprove
 - 4 Strongly disapprove
 - 5 Never Heard
- Skipped

⁴² *Id.* at 7.

⁴³ *Id.* at 8.

⁴⁴ *Id.* at 7.

⁴⁵ *Id.*

⁴⁶ *See id.* at 7–13 (noting that most teams purchased 1000 person surveys, although some teams purchased additional cases).

⁴⁷ Stephen Ansolabehere & Brian Schaffner, *CCES Common Content, 2014*, <https://dataverse.harvard.edu/dataset.xhtml?persistentId=doi:10.7910/DVN/XFXJVY>. Summary tables detailing the calculations provided in this article are on file with the *New York University Law Review*.

⁴⁸ *See id.* (7347 of the respondents in the pre-election survey did not participate in the post-election survey).

⁴⁹ *See id.*

⁵⁰ *See id.*

Not Asked⁵¹

2. *Racial Resentment*

Do you agree or disagree with each of the following statements?

The Irish, Italians, Jews, and many other minorities overcame prejudice and worked their way up. Blacks should do the same without any special favors.

- 1 Strongly agree
 - 2 Somewhat agree
 - 3 Neither agree nor disagree
 - 4 Somewhat disagree
 - 5 Strongly disagree
- Skipped
Not Asked (post survey)⁵²

Generations of slavery and discrimination have created conditions that make it difficult for Blacks to work their way out of the lower class.

- 1 Strongly agree
 - 2 Somewhat agree
 - 3 Neither agree nor disagree
 - 4 Somewhat disagree
 - 5 Strongly disagree
- Skipped
Not Asked (post survey)

3. *Racial Identification*

What is the race or ethnicity of the following candidates or politicians?

- Name of House Candidate 1
Name of House Candidate 2
Name of Current House Member
- White
 - Black
 - Hispanic
 - Asian
 - Other
- Not Sure⁵³

This study also uses data from one of the Harvard research team's CCES 2012 modules, which includes responses from 1500 individ-

⁵¹ YouGov, CCES 2014 Common Questionnaire, at 19 (on file with the *New York University Law Review*).

⁵² Ansolabehere & Schaffner, *supra* note 47.

⁵³ YouGov, CCES 2014 Common Questionnaire, at 43 (on file with the *New York University Law Review*).

uals.⁵⁴ As with the Common Content, we again utilize only the respondents who self-identify as White, Black, or Hispanic, totaling 1400 respondents.⁵⁵ Though this module primarily includes questions about the courts and specific judicial opinions, the questions utilized in this study focus on particular aspects of the VRA. These questions were fielded during the post-election wave of the survey, which was conducted over the two-week period following the general election in November 2012.⁵⁶

Our analysis focuses on two questions concerning MMDs and the preclearance provision of the VRA.

LAW411: The Voting Rights Act protects all people against discrimination in voting. The law requires that states with large numbers of black and Hispanic voters create enough state legislative and U.S. House districts that are at least 50% black or Hispanic population to make it possible that those groups have an opportunity to elect representatives of their choice.

Do you approve of the creation of such districts?

- 1 Approve
- 2 Disapprove⁵⁷

LAW412: The Voting Rights Act requires that 13 states and many counties in other states with histories of election discrimination obtain approval from the Department of Justice or from a federal court of any new election rules and procedures. If one of these states or counties changes legislative district boundaries, voter registration laws, or other rules, the federal government must approve the change before those rules go into effect. This is called pre-clearance.

What do you think Congress should do about this provision?

- 1 Keep pre-clearance as it is
- 2 Repeal pre-clearance; the federal government should not have this power
- 3 Expand pre-clearance to all states; all states should first have federal approval of election procedures to guard against discrimination⁵⁸

B. Census Data and District Characteristics

Data from the U.S. Census Bureau provide demographic and geographic information about CDs.⁵⁹ Using the 2010 Census enumer-

⁵⁴ Harvard 2012 CCES Module (on file with the *New York University Law Review*).

⁵⁵ *Id.*

⁵⁶ ANSOLABEHRE, *supra* note 40, at 7.

⁵⁷ Harvard 2012 CCES Module, *supra* note 54.

⁵⁸ *Id.*

⁵⁹ U.S. DEP'T OF COMMERCE, 2010 CENSUS CONGRESSIONAL DISTRICT SUMMARY FILE 1 (2013), available at www.census.gov/prod/cen2010/doc/cd113.pdf.

ation, we have computed the racial composition of every CD in the United States. We classify districts as Majority-Minority if the Voting Age Population of the district is at least 50% Black, 50% Hispanic, or 50% Black plus Hispanic. There is one majority Asian CD in the United States—Hawaii 1—and one CD that is nearly majority Asian (49.4%)—California 17.⁶⁰

Compactness measures of all districts are constructed using the Polsby-Popper Index⁶¹ and shapefiles for all districts provided by the Bureau of the Census. This measure, one of many possible, was provided to us by Azavea, a geospatial analysis firm. Our results are nearly identical using an alternative indicator, the Reock compactness measure.⁶² Though not identical, these two measures are highly correlated. The Polsby-Popper compactness measure for U.S. House Districts in 2012 ranges from a low value (non-compact) of 0.05 to a high value (compact) of 0.65.⁶³

Prior to *Shelby County*,⁶⁴ Section 5 of the VRA covered the entire states of Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, and Texas, as well as substantial portions of North Carolina and Virginia.⁶⁵ Coverage of individual counties also affected districts in California, Florida, and New York.⁶⁶

The data on compactness are immediately informative about the effect of Section 5 coverage on the configuration of CDs. It is widely thought that this provision of the law itself makes for highly irregular districts. Professors Barabas and Jerit have found that compactness requirements in state laws were associated with fewer MMDs, and that Section 5 coverage was associated with more MMDs.⁶⁷ These relations suggest that there might be an association between compactness and MMDs required by the VRA.

⁶⁰ In analysis identical to that appearing in the forthcoming pages, we broke down our sample into majority-Black and majority-Hispanic districts, instead of simply MMDs. When we did so, we did not find substantial differences that affect the conclusions in this Article.

⁶¹ See Polsby & Popper, *supra* note 33, at 348–50 (explaining how the index, originally proposed by Schwartzberg, is measured).

⁶² Ernest C. Reock, Jr., *Measuring Compactness as a Requirement of Legislative Apportionment*, 5 *MIDWEST J. POL. SCI.* 70, 70–74 (1961).

⁶³ Data on file with the authors.

⁶⁴ *Shelby Cnty., Ala. v. Holder*, 133 S. Ct. 2612 (2013).

⁶⁵ Jurisdictions Previously Covered by Section Five, U.S. DEP'T OF JUSTICE, www.justice.gov/crt/about/vot/sec_5/covered.php (last visited Feb. 6, 2015).

⁶⁶ *Id.*

⁶⁷ Jason Barabas & Jennifer Jerit, *Redistricting Principles and Racial Representation*, 4 *STATE POL. & POL'Y Q.* 415, 422–24 (2004), available at www.jasonbarabas.com/images/SPPQ_2004_BarabasJerit.pdf.

Figure 1a presents the histograms of the Polsby-Popper compactness measure for all CDs and for those CDs in areas covered by Section 5. The two frequency functions—for Section 5 covered CDs and non-Section 5 covered CDs—look very similar. The simple correlation between Section 5 coverage of CDs and the Polsby-Popper compactness measure is only -0.05. This is a low level of correlation, but it is statistically significantly different from zero at the 0.01 level of statistical significance.⁶⁸ Figure 1b displays the same data for MMDs. In both histograms, Section 5 areas are shaded lighter than non-Section 5 areas. As Figure 1b demonstrates, many of the least compact MMDs occur in Section 5 covered areas, but a significant number are outside Section 5 areas as well.

FIGURE 1A. CONGRESSIONAL DISTRICT COMPACTNESS BY SECTION 5 STATUS

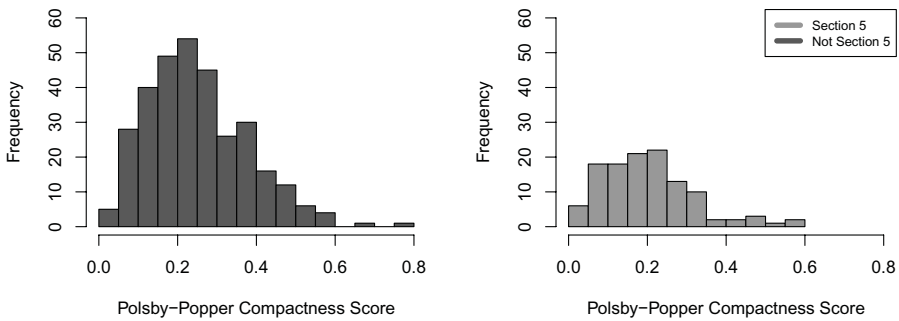
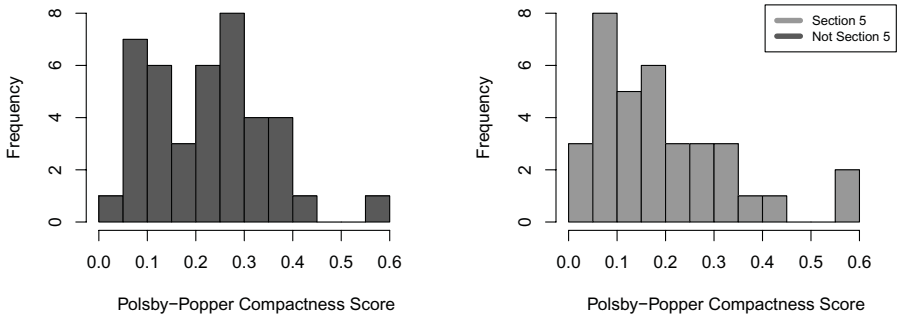


FIGURE 1B. MAJORITY-MINORITY DISTRICT COMPACTNESS BY SECTION 5 STATUS



⁶⁸ The t-statistic associated with the correlation coefficient of -0.14 with 435 observations is -3.709, which means we are 99% confident that the underlying correlation is different from 0.

III
RESULTS

A. *Racial Resentment Across Districts*

We begin by examining the differences across districts in respondents’ answers to the two questions assessing attitudes concerning race and social mobility. To review, Question A stated “Blacks should [overcome prejudice and work their way up] without any special favors.”⁶⁹ Question B stated “Generations of slavery and discrimination have created conditions that make it difficult for Blacks to work

TABLE 1. RACIAL RESENTMENT A

The Irish, Italians, Jews and many other minorities overcame prejudice and worked their way up. Blacks should do the same without any special favors.

	<i>District Type</i>	<i>Strongly Agree (1)</i>	<i>Agree (2)</i>	<i>Neither (3)</i>	<i>Disagree (4)</i>	<i>Strongly Disagree (5)</i>	<i>Avg.</i>	<i># of Respondents</i>
White	Majority White	0.45	0.22	0.17	0.09	0.07	2.13	31536
	Majority-Minority	0.42	0.21	0.17	0.10	0.09	2.24	3272
	Non-Compact MM	0.42	0.21	0.17	0.11	0.09	2.24	1311
	Compact MM	0.43	0.21	0.19	0.10	0.08	2.18	734
	Non-Section 5 MM	0.40	0.22	0.16	0.11	0.11	2.31	1895
	Section 5 MM	0.44	0.21	0.18	0.10	0.07	2.14	1377
	South	0.49	0.21	0.16	0.08	0.06	2.00	12163
	Not South	0.41	0.22	0.18	0.10	0.08	2.23	25101
	All Districts	0.44	0.21	0.17	0.10	0.08	2.15	37264
Black	Majority White	0.14	0.14	0.33	0.16	0.23	3.19	2633
	Majority-Minority	0.16	0.16	0.30	0.14	0.24	3.14	2024
	Non-Compact MM	0.15	0.16	0.31	0.15	0.23	3.14	863
	Compact MM	0.14	0.15	0.31	0.13	0.27	3.25	374
	Non-Section 5 MM	0.16	0.16	0.29	0.14	0.24	3.14	1106
	Section 5 MM	0.16	0.15	0.32	0.14	0.23	3.14	918
	South	0.15	0.15	0.33	0.15	0.22	3.13	2641
	Not South	0.14	0.14	0.29	0.16	0.26	3.26	2496
	All Districts	0.15	0.15	0.31	0.15	0.24	3.19	5137
Hispanic	Majority White	0.35	0.21	0.26	0.09	0.09	2.34	1434
	Majority-Minority	0.35	0.22	0.27	0.08	0.07	2.29	1208
	Non-Compact MM	0.38	0.20	0.27	0.08	0.07	2.27	426
	Compact MM	0.34	0.25	0.28	0.08	0.05	2.25	257
	Non-Section 5 MM	0.33	0.21	0.29	0.09	0.08	2.36	658
	Section 5 MM	0.37	0.23	0.26	0.08	0.05	2.21	550
	South	0.37	0.23	0.25	0.08	0.07	2.24	1178
	Not South	0.33	0.21	0.27	0.10	0.09	2.40	1905
	All Districts	0.35	0.22	0.27	0.09	0.08	2.34	3083

⁶⁹ ANSOLABEHRE, *supra* note 40, at 100.

their way out of the lower class.”⁷⁰ Both questions asked respondents to agree or disagree and then asked whether they did so strongly. Responses are scored from 1 to 5 with strong agreement being “1” and strong disagreement as “5.”⁷¹ We will discuss only the first question (Question A) in detail, and note where results for Question B differ in any significant way.

TABLE 2. RACIAL RESENTMENT B

Generations of slavery and discrimination have created conditions that make it difficult for blacks to work their way out of the lower class.

	District Type	Strongly Agree (1)	Agree (2)	Neither (3)	Disagree (4)	Strongly Disagree (5)	Avg.	# of Respondents
White	Majority White	0.11	0.20	0.15	0.20	0.34	3.46	31523
	Majority-Minority	0.15	0.23	0.14	0.18	0.30	3.25	3266
	Non-Compact MM	0.14	0.22	0.14	0.19	0.31	3.31	1307
	Compact MM	0.13	0.24	0.13	0.19	0.31	3.30	734
	Non-Section 5 MM	0.16	0.24	0.14	0.18	0.29	3.20	1895
	Section 5 MM	0.14	0.21	0.14	0.19	0.32	3.32	1371
	South	0.10	0.18	0.14	0.20	0.38	3.60	12167
	Not South	0.12	0.22	0.16	0.20	0.30	3.34	25081
	All Districts	0.11	0.21	0.18	0.20	0.33	3.42	37248
Black	Majority White	0.37	0.32	0.18	0.06	0.06	2.21	2635
	Majority-Minority	0.37	0.33	0.18	0.06	0.06	2.11	2023
	Non-Compact MM	0.36	0.35	0.17	0.07	0.06	2.10	862
	Compact MM	0.43	0.27	0.21	0.05	0.05	2.02	374
	Non-Section 5 MM	0.36	0.34	0.18	0.07	0.06	2.12	1106
	Section 5 MM	0.38	0.32	0.18	0.06	0.06	2.10	917
	South	0.35	0.33	0.19	0.06	0.07	2.16	2642
	Not South	0.40	0.32	0.16	0.07	0.05	2.04	2495
	All Districts	0.38	0.33	0.18	0.06	0.06	2.10	5237
Hispanic	Majority White	0.14	0.25	0.22	0.17	0.22	3.07	1429
	Majority-Minority	0.14	0.25	0.27	0.14	0.20	3.00	1209
	Non-Compact MM	0.14	0.22	0.26	0.16	0.22	3.10	426
	Compact MM	0.14	0.25	0.27	0.13	0.21	3.02	257
	Non-Section 5 MM	0.15	0.25	0.27	0.13	0.20	2.97	659
	Section 5 MM	0.13	0.25	0.27	0.15	0.20	3.03	550
	South	0.12	0.25	0.23	0.16	0.24	3.16	1176
	Not South	0.16	0.27	0.24	0.14	0.19	2.93	1903
	All Districts	0.14	0.26	0.24	0.15	0.21	3.02	3079

Clear differences can be seen between racial groups in their responses. Whites are more likely than either Blacks or Hispanics to agree with statements signifying self-help, meaning that Whites’ average scores are lower than average scores for Blacks or His-

⁷⁰ *Id.* at 101.

⁷¹ *Id.* at 100–01.

panics.⁷² On Question A, as indicated in Table 1, 65% of Whites agreed with the statement (44% of whom agreed strongly), for an average score of 2.15.⁷³ In contrast, only 30% of Blacks agreed, only 15% of whom agreed strongly, with an average score of 3.19.⁷⁴ Hispanics were closer to Whites than Blacks, perhaps because the question mentioned Blacks in particular. A majority (57%) of Hispanics agreed with the statement, with 35% agreeing strongly, and producing an average score of 2.34.⁷⁵

The differences in opinion between types of districts are somewhat difficult to interpret and are not consistent between the two questions measuring racial resentment. Among White respondents to Question A, statistically significant differences in average scores (about 0.23) appear between Southerners (2.00) and non-Southerners (2.23), and between those in MMDs in Section 5 areas (2.14) versus those in such districts outside of Section 5 territory (2.31).⁷⁶ The same pattern exists for Question B,⁷⁷ suggesting (to no one's surprise) that White Southerners and Whites in MMDs in Section 5 jurisdictions tend to hold more conservative racial attitudes (although the magnitude of the differences is still relatively small).

We do not see the same pattern for attitudes of Whites in compact and non-compact MMDs. On Question A, Whites in non-compact MMDs are somewhat more liberal in their responses than those in compact MMDs (2.24 as compared to 2.18).⁷⁸ Virtually no difference can be seen between them in Question B.⁷⁹ In short, the compactness of a MMD displays no consistent relationship to the attitudes of Whites in those districts.

Adherents to the *Shaw* theory might predict Black respondents in either Section 5 covered MMDs or in non-compact MMDs would hold different attitudes than those in other districts. We find no evidence for that pattern in the data from our racial resentment questions. The differences between Black respondents in different types of districts are not statistically significant. The small differences one might discern suggest those in non-compact MMDs might be slightly more conservative than those in compact MMDs. Section 5 status seems to

⁷² See *supra* Tables 1–2.

⁷³ See *supra* Table 1.

⁷⁴ See *supra* Table 1.

⁷⁵ See *supra* Table 1.

⁷⁶ See *supra* Table 1.

⁷⁷ See *supra* Table 2.

⁷⁸ See *supra* Table 1.

⁷⁹ See *supra* Table 2 (3.31 as compared to 3.30).

have no effect, even though Black Southerners seem slightly more conservative than Blacks outside the South.

B. Approval of the Representative

Approval provides a further gauge of the degree to which district structure affects representation. If residents of *Shaw* districts were distinct in the lack of approval for their representative, especially if such approval varied between racial groups, that might suggest some kind of race-based distortion in representation due to redistricting. We do not find much of that here. Some small differences exist, but in general, approval of one's representative does not vary in significant and systematic ways based on whether racial considerations predominated in redistricting.⁸⁰

TABLE 3. APPROVAL OF REPRESENTATIVES BY RACE OF RESPONDENT AND RESPONDENT'S PERCEPTION OF REPRESENTATIVE'S RACE

	<i>Perceived Race of MC</i>	<i>Strongly Approve</i>	<i>Approve</i>	<i>Disapprove</i>	<i>Strongly Disapprove</i>	<i>Never Heard of Rep.</i>	<i># of Respondents</i>
White	White	0.15	0.41	0.22	0.16	0.06	26858
	Black	0.12	0.38	0.20	0.23	0.06	1598
	Hispanic	0.15	0.37	0.21	0.20	0.08	1080
	Any/DK	0.12	0.37	0.21	0.15	0.15	40677
Black	White	0.10	0.38	0.26	0.13	0.14	2385
	Black	0.26	0.56	0.08	0.04	0.06	1367
	Hispanic	0.10	0.43	0.23	0.06	0.18	165
	Any/DK	0.13	0.39	0.18	0.08	0.22	6707
Hispanic	White	0.12	0.38	0.24	0.11	0.15	1363
	Black	0.17	0.44	0.12	0.10	0.17	150
	Hispanic	0.14	0.49	0.14	0.08	0.15	590
	Any/DK	0.10	0.36	0.18	0.08	0.28	3807

⁸⁰ See *infra* Tables 3–4.

TABLE 4. APPROVAL OF REPRESENTATIVE BY RACE OF RESPONDENT AND DISTRICT TYPES

	<i>District Type</i>	<i>Strongly Approve</i>	<i>Approve</i>	<i>Disapprove</i>	<i>Strongly Disapprove</i>	<i>Never Heard of Rep.</i>	<i># of Respondents</i>
White	Majority White	0.12	0.37	0.22	0.15	0.14	34430
	Majority-Minority	0.10	0.34	0.20	0.17	0.18	3545
	Non-Compact	0.11	0.36	0.22	0.14	0.17	9463
	Compact	0.13	0.38	0.21	0.15	0.12	11560
	Non-Compact MM	0.09	0.33	0.21	0.15	0.21	1409
	Compact MM	0.12	0.36	0.21	0.15	0.15	803
	Non-Section 5	0.12	0.37	0.22	0.15	0.14	31944
	Section 5	0.13	0.36	0.20	0.14	0.17	8733
	Non-Section 5 MM	0.10	0.35	0.20	0.18	0.17	2060
	Section 5 MM	0.10	0.34	0.21	0.16	0.19	1485
	All Districts	0.12	0.37	0.21	0.15	0.15	40677
Black	Majority White	0.08	0.32	0.24	0.11	0.25	3460
	Majority-Minority	0.19	0.47	0.12	0.04	0.18	2625
	Non-Compact	0.13	0.40	0.18	0.08	0.21	2270
	Compact	0.15	0.42	0.16	0.06	0.22	1299
	Non-Compact MM	0.18	0.48	0.12	0.05	0.17	1065
	Compact MM	0.19	0.46	0.11	0.03	0.21	491
	Non-Section 5	0.14	0.43	0.16	0.06	0.20	4130
	Section 5	0.11	0.33	0.22	0.10	0.25	2577
	Non-Section 5 MM	0.20	0.48	0.12	0.04	0.16	1465
	Section 5 MM	0.18	0.45	0.12	0.04	0.21	1160
	All Districts	0.13	0.39	0.18	0.09	0.22	6707
Hispanic	Majority White	0.08	0.33	0.21	0.09	0.29	1749
	Majority-Minority	0.12	0.38	0.15	0.07	0.28	1522
	Non-Compact	0.10	0.33	0.19	0.09	0.30	1054
	Compact	0.11	0.37	0.19	0.08	0.25	883
	Non-Compact MM	0.13	0.33	0.18	0.09	0.28	550
	Compact MM	0.09	0.43	0.14	0.09	0.25	404
	Non-Section 5	0.09	0.36	0.19	0.08	0.28	2550
	Section 5	0.10	0.34	0.17	0.10	0.29	1257
	Non-Section 5 MM	0.11	0.39	0.15	0.07	0.30	829
	Section 5 MM	0.13	0.39	0.15	0.08	0.25	693
	All Districts	0.10	0.36	0.18	0.08	0.28	3807

In 2014, a plurality of Americans approved of the job that their Representative in the U.S. House was doing. In the 2014 CCES, 49% of respondents approved of their representatives—12% strongly approved and 37% somewhat approved; 33% disapproved of the job their representative was doing—13% strongly disapproved and 20% somewhat disapproved. The remaining 22% of respondents had not heard of their representative and could offer no assessment of job performance.

Approval of the representative, of course, varies considerably depending on the characteristics of the voters and the representatives.

The *Shaw* Question ultimately concerns the effects of district structure and demographic composition on approval of one's representative. Do MMDs make Whites less supportive of their Representatives, holding constant party and other factors? Do such districts drive a wedge between Whites on one hand, and Blacks and Hispanics on the other? And, do minorities in MMDs express higher levels of support for their minority representatives?

Tables 3 and 4 present the levels of approval among racial groups. Table 3 divides each group according to what race the individuals thought their legislators were.⁸¹ Among White respondents, 56% of those who thought their representative was White approved of the job of that legislator; 50% of those who thought their representative was Black approved of the job of that legislator; and 52% of those who thought their representative was Hispanic approved of the job of that legislator.⁸²

Among Black respondents, 48% of those who thought their representative was White approved of the job of that legislator; 82% of those who thought their representative was Black approved of the job of that legislator; and 53% of those who thought their representative was Hispanic approved of the job of that legislator.⁸³ The difference between White and Hispanic representatives among Blacks is negligible, but Black representatives garner considerably more support.⁸⁴

Among Hispanic respondents, 50% of those who thought their representative was White approved of the job of that legislator; 61% of those who thought their representative was Black approved of the job of that legislator; and 63% of those who thought their representative was Hispanic approved of the job of that legislator.⁸⁵

To summarize, respondents from every racial group express higher approval for representatives of their own race. The gaps are greatest among Black respondents, whose approval of perceived Black representatives is thirty-four percentage points higher than it is for perceived White representatives and twenty-nine percentage points higher than it is for perceived Hispanic representatives.⁸⁶ Hispanic respondents' approval of perceived Hispanic representatives is thirteen percentage points higher than it is for perceived White representatives and two percentage points higher than it is for perceived

⁸¹ See *supra* Table 3.

⁸² See *supra* Table 3.

⁸³ See *supra* Table 3.

⁸⁴ See *supra* Table 3.

⁸⁵ See *supra* Table 3.

⁸⁶ See *supra* Table 3.

Black representatives.⁸⁷ For Whites, the differences in approval based on the perceived race of the representative are in the single digits.⁸⁸

These differences do not reflect district composition, geography, or other factors. The *Shaw* Question ultimately concerns whether the race-based rationale for a district interferes with its representation, exacerbates racial polarization, or promotes stereotypes.⁸⁹ It is nevertheless relevant to the *Shaw* theory that voters, especially Black voters, tend to express greater approval of representatives of their own race. Descriptive representation, one might say, has political significance: Voters might be more pleased with their representatives (on average) if they are put in districts likely to elect members of their racial group.

Table 4 breaks down approval ratings among racial groups by type of CD—compact versus non-compact, majority-minority versus others, and Section 5 versus non-Section 5. In general, all respondents have somewhat higher approval of their representative (around five percentage points on average) if they live in a more compact district.⁹⁰ However, the story is complicated: 47% of Whites in compact MMDs approve of their representative, as compared to 42% of Whites in non-compact MMDs;⁹¹ 52% of Hispanics in compact MMDs, but only 43% in non-compact MMDs, approve of their representative. However, a greater share of Hispanics in non-compact MMDs (13%) than in compact MMDs (9%) strongly approve. Blacks have slightly higher approval ratings of representatives in non-compact MMDs, as compared to compact MMDs, although the differences are negligible and not statistically significant.⁹²

With respect to Section 5 status, we observe a somewhat different pattern. No differences are observable among Whites in Section 5 MMDs versus non-Section 5 MMDs, but Blacks seem somewhat more approving (by about five percentage points) in non-Section 5 MMDs (68%) as compared to Section 5 MMDs (63%), while Hispanics are somewhat less approving by four percentage points (48% to 52%).⁹³ However, this somewhat lower approval that Blacks in Section 5 MMDs have of their representatives is characteristic of Blacks' attitudes in Section 5 areas generally, not with respect to MMDs in particular. Blacks in areas covered by Section 5 (most of which are in the

⁸⁷ See *supra* Table 3.

⁸⁸ See *supra* Table 3.

⁸⁹ *Shaw v. Reno*, 509 U.S. 630, 646–48 (1993).

⁹⁰ See *supra* Table 4.

⁹¹ See *supra* Table 4.

⁹² See *supra* Table 4.

⁹³ See *supra* Table 4.

South, of course) are systematically lower in their approval than in non-Section 5 areas—44% approval, as compared to 57%.⁹⁴ Indeed, Blacks' approval in Section 5 MMDs is markedly higher (63%) than in Section 5 districts in general (44%).⁹⁵ That pattern is hardly surprising, of course, given what we noted above—that Blacks (on average) tend to have higher approval of Black representatives—as well as the clear pattern in Table 4 that Blacks in MMDs tend to be more approving of their representatives than Blacks in majority-White districts (66% versus 40%).

None of the small differences between districts are meaningful once we control for all relevant factors in multivariate analysis (not presented here). Dramatic differences in representative approval, however, can be seen based on perceived race of the representative, MMD status, and location (*i.e.*, in a Section 5 covered region or not). In sum, to the degree the survey data tell any story, it is one unresponsive or at least inconsistent with *Shaw's* theory of racial attitude formation.

IV

APPROVAL OF THE VOTING RIGHTS ACT

Earlier we noted the survey questions from the 2012 Harvard Law CCES Module that asked respondents about keeping or expanding Section 5 of the VRA and about the policy of creating majority-minority CDs.⁹⁶ Simply put, the nation is divided on these issues. On the matter of creation of majority-minority CDs, the country is split nearly fifty-fifty.⁹⁷ On support for Section 5, roughly 36% support repeal, 36% support expansion, and 28% support keeping the law as is.⁹⁸

⁹⁴ See *supra* Table 4.

⁹⁵ See *supra* Table 4.

⁹⁶ See *supra* Part II.

⁹⁷ See *infra* Table 5.

⁹⁸ See *infra* Table 5.

TABLE 5. APPROVAL OF THE CREATION OF MAJORITY-MINORITY DISTRICTS (LAW411) AND PRE-CLEARANCE (LAW412) IN THE VRA

	<i>District Type</i>	<i>LAW411 Approve</i>	<i># of Respondents</i>	<i>LAW412 Keep</i>	<i>LAW412 Repeal</i>	<i>LAW412 Expand</i>	<i># of Respondents</i>
White	Majority White	0.44	880	0.27	0.40	0.33	774
	Majority-Minority	0.44	75	0.29	0.37	0.34	76
	Non-Compact MM	0.46	24	0.38	0.38	0.25	24
	Compact MM	0.50	22	0.17	0.39	0.43	23
	Non-Section 5 MM	0.47	38	0.39	0.26	0.34	38
	Section 5 MM	0.41	37	0.18	0.47	0.34	38
	South	0.43	364	0.23	0.45	0.31	363
	Non-South	0.45	592	0.30	0.35	0.34	591
	All Districts	0.44	956	0.28	0.39	0.33	954
Black	Majority White	0.84	64	0.39	0.09	0.54	57
	Majority-Minority	0.83	36	0.31	0.11	0.58	36
	Non-Compact MM	0.89	19	0.37	0.11	0.53	19
	Compact MM	0.88	8	0.25	0.12	0.62	8
	Non-Section 5 MM	0.91	23	0.30	0.13	0.57	23
	Section 5 MM	0.69	13	0.31	0.08	0.62	13
	South	0.80	56	0.39	0.09	0.52	56
	Non-South	0.87	46	0.28	0.13	0.59	46
	All Districts	0.83	102	0.34	0.11	0.55	102
Hispanic	Majority White	0.72	44	0.29	0.17	0.54	24
	Majority-Minority	0.69	26	0.36	0.28	0.36	25
	Non-Compact MM	0.88	8	0.50	0.12	0.38	8
	Compact MM	0.33	6	0.00	0.80	0.20	5
	Non-Section 5 MM	0.60	15	0.21	0.36	0.43	14
	Section 5 MM	0.82	11	0.55	0.18	0.27	11
	South	0.81	16	0.25	0.25	0.50	16
	Non-South	0.72	54	0.33	0.27	0.40	52
	All Districts	0.74	70	0.31	0.26	0.43	68
All Races & Districts		0.49	1128	0.28	0.36	0.36	1124

Clear racial differences can be seen concerning approval of MMDs: 83% of Blacks and 74% of Hispanics, but only 44% of Whites, approve of the creation of MMDs.⁹⁹ To be sure, opinion is not completely and perfectly polarized along racial lines—nearly half of Whites approve.¹⁰⁰ But the racial differences are about as clear on this issue as any other.

With respect to Section 5 of the VRA, the racial differences remain, but are less pronounced. In part, this may result from the three options offered to the respondent—“Keep,” “Repeal,” or

⁹⁹ See *supra* Table 5.

¹⁰⁰ See *supra* Table 5.

“Expand.” Focusing just on the share of each racial group supporting repeal of Section 5, one can see the racial differences most starkly: 39% of Whites support repeal, whereas only 11% of Blacks and 26% of Hispanics do so.¹⁰¹ The same pattern exists for the other response options, with Blacks most supportive and Whites least supportive of keeping and expanding Section 5.¹⁰²

Unlike with the questions on the common content of the CCES, the small sample size of the module (roughly 1150 respondents) does not allow us to estimate opinion at the CD level. From what we can gather, opinion does not vary significantly between majority-minority and majority-White districts. Nor are there large differences between compact and non-compact MMDs. Some large differences appear between Blacks in Section 5 MMDs and those in MMDs elsewhere, but the sample contains only thirteen respondents in the former category and twenty-three in the latter. In short, beyond the meaningful differences between racial groups, the evidence is insufficiently robust to suggest that district features have any effect on attitudes toward majority-minority districting or the VRA.

CONCLUSION

When the Supreme Court issued its decision in *Shaw v. Reno*, most of the heated banter surrounding it adopted a familiar frame akin to arguments about affirmative action and other policies concerning race and equal opportunity. Did the Court force a rule of colorblindness onto a redistricting process where it was not only inappropriate but also impossible? Did the Court too quickly reject the historical and compensatory justice arguments for such districts? Did it falsely equate districts that help minorities with those that might hurt them, in the service of some neutral principle that seems particularly out of place in the interest-group warfare that is the redistricting process?

What was missing in those early criticisms was a rigorous examination of the political and demographic data that could shed light on the veracity of the psychological theory that undergirded *Shaw*. The suggestion in *Shaw*, after all, was plausible enough: Voters in districts drawn on the basis of race might think differently about representation than those in other districts. Until this paper, though, the theory had not been tested.

¹⁰¹ See *supra* Table 5.

¹⁰² See *supra* Table 5.

Although the data have their limitations¹⁰³ and it is very difficult to test with precision the psychological dynamic suggested by *Shaw*, we find little evidence to bolster the Supreme Court's controversial conclusions in that case. Like many others, we detect racial differences in opinion concerning the presence or absence of equal opportunity, as well as some survey items measuring knowledge and approval of one's representative and opinion on the relevant policies furthered by the VRA. But these racial differences are not a product of the type of district from whence the voter comes.

On the critical question of whether district shapes interact with race to cement racial stereotypes, we find little support. This does not surprise us. The formation of racial stereotypes has deep psychological roots. Districting plans are simply not salient to most voters; there is deep ignorance about the shape of one's district and its demographic composition. The "insiders' game" that is redistricting—and redistricting litigation—may have dramatic effects, but those effects are not ones that shape the race-based worldviews of district residents in any systematic way.

¹⁰³ See discussion *supra* Part III.