XENOPHOBIC CONSPIRACY THEORIES
AND THE LONG ROOTS OF JANUARY SIXTH

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I
INTRODUCTION

On January 6, 2021, insurrectionists stormed the U.S. Capitol.¹ The insurrectionists supported President Donald Trump’s false claims that the 2020 presidential election was stolen through election fraud.² One of the central claims underlying what white nationalists called the “Stop the Steal” campaign was that foreign voting companies manipulated the vote tallies to help Joe Biden win the election.³

Trump and his supporters turned to courts to advance this conspiracy theory. Rudy Giuliani and Sidney Powell, two of Trump’s lawyers, spread variants of the claim.⁴ In one lawsuit filed in the Northern District of Georgia, Trump alleged that Dominion Voting Systems, an election technology supplier, made “old-fashioned ‘ballot stuffing’” invisible through their computer software.⁵ The


complaint maintained that Dominion was developed by Hugo Chávez, the former President of Venezuela and a man now deceased, to steal elections in Venezuela.岄 Giuliani and Powell also advanced their false claims on television. Giuliani, for example, rambled on Fox and Friends that the election fraud was:

> beyond what people think, including a very, very dangerous foreign company that did the votes in twenty-seven states, a company that’s not American, a company that’s foreign, a company that has close, close ties with Venezuela and, therefore, China and uses a Venezuelan company software that’s been used to steal elections in other countries.岄

On Newsmax, Powell attacked Dominion Voting Systems as well as Smartmatic, another election technology supplier used in 2020.岄 Powell spread lies that Dominion was “a descendant” of Smartmatic’s technology, that Venezuela’s vote counting scheme was “exported” to the U.S., and that these voting companies were used to commit election fraud.岄

Still, the 2020 Presidential election was certified after the insurrection.岄 The federal Election Infrastructure Government Coordinating Council Executive Committee debunked the conspiracy theory that foreigners interfered with the election to aid Biden.岄 In fact, the Committee proclaimed that “[t]he November 3rd election was the most secure in American history.”岄 Nonetheless, many Americans still believe that foreigners helped rig the Presidential election in Biden’s favor.岄

These bogus claims of foreign subversion of U.S. voting machines were part of a larger web of conspiracy theories which falsely depicted Biden as an agent for foreign actors. As Democrats attempted to unite to defeat Trump, for example, Mark Levin, a Breitbart News contributor, declared that the Biden-Sanders Unity Task Force Recommendations “amount[ed] to a ‘communist manifesto’ that would destroy America.”岄 Some turned squarely to U.S. foreign
policy to scaremonger. In an interview with Hugh Hewitt, radio show host and constitutional law professor, President Trump warned, “If I don’t win the election, China will own the United States. You’re going to have to learn to speak Chinese, you want to know the truth.” Christian nationalists relied on religion to propagate conspiracy theories about Biden during the campaign. One theory smeared Biden for allegedly being the puppet of Democrat George Soros. Soros is Jewish, grew up in Hungary, and is now a U.S. billionaire philanthropist and investor. This conspiracy theory invoked the anti-Semitic and nativist trope that wealthy Jews are part of a cabal that controls global affairs. Others attacked Biden, who is Catholic, for being too much like Pope Francis. Francis, like Biden, offered progressive readings of scripture, including a stinging theological rebuke of Trump’s immigration policies. Here, multiple conspiracy theories intersected and promoted the notion that under Biden “[d]eep-state China and deep-state America will converge with their Vatican enablers to do the devil’s work on Earth.”

Vice President Kamala Harris was also the victim of false conspiracy theories on the 2020 campaign trail. One of the most prominent theories was that Harris was ineligible for the vice presidency because of her parents’ national origins. President Trump explained, “I heard it today that [Harris] doesn’t meet the requirements. And, by the way, the lawyer that wrote that piece is a very highly qualified, very talented lawyer.” Trump was referring to John Eastman, a

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19. Id.

20. Id.

21. See supra note 17.

22. Id.

23. Id.


retired law professor and former clerk to U.S. Supreme Court Justice Clarence Thomas. Eastman asserted that Harris might not be a native-born U.S. citizen. He argued that because neither of her parents were naturalized citizens at the time of Harris’ birth, Harris was ineligible to become President or Vice President. Trump and Eastman revived birtherism, a conspiracy theory that Trump had peddled years earlier against President Barack Obama. Although Obama was born in Hawaii, the birthers alleged that Obama was born in Kenya and thus ineligible to become U.S. President.

What ties all of these false beliefs together—that Biden stole votes using Venezuelan voting technology, co-authored a “communist manifesto,” would facilitate foreign subversion if elected, and chose a foreigner as his vice presidential candidate? Each of these false beliefs is a xenophobic conspiracy theory.

This Law & Contemporary Problems Issue explores how the theme of “two Americas” re-emerged in fresh ways after the January 6 insurrection. This article, in turn, examines the current polarization in U.S. politics by considering how white nationalists have historically used xenophobic conspiracy theories to render some Americans as un-American, suppress votes, and undermine efforts to make the polity more inclusive. Xenophobia is a form of prejudice based on the perception of the other as being foreign or holding foreign values. It renders the other as other and as being outside of a community or nation. Conspiracy theories are unsubstantiated beliefs that a covert but influential group has caused

attacks-fact-check/index.html [https://perma.cc/LV69-MKY6].


33. Id.
Anyone, regardless of background, can believe or propagate a conspiracy theory, and conspiracy theories divide societies. This article explores a specific type of conspiracy theory: a white nationalist one that spreads misinformation (or worse) and results in U.S. voting rights advocates and diverse campaigns and voters being cast as foreigners in their own country.

The xenophobic conspiracy theories at the heart of the “Stop the Steal” campaign did not emerge from a vacuum. White nationalists have long spread false, xenophobic conspiracy theories, and this practice hit a fever pitch after the U.S. Supreme Court’s groundbreaking decision in *Brown v. Board of Education*. During the Cold War, segregationists weaponized fears that Soviet communists had infiltrated the civil rights movement and were using movement leaders—like Martin Luther King, Jr. who coined the phrase “two Americas”—to subvert U.S. democracy. United States civil rights activists were overwhelmingly anti-communist but this often was of little avail. White nationalists readily deployed xenophobic conspiracy theories against civil rights activists, and they were able to do so because blacks have historically been rendered as noncitizens, un-American, and others. White nationalists more than a half century later were able to sell the false, xenophobic conspiracy theories around Dominion and Smartmatic so easily, because these theories are a very familiar voter suppression tool. The “Stop the Steal” campaign flows from a distinct political genealogy. And so, while many Americans were astonished that millions of their fellow citizens believed that foreigners had subverted the 2020 Presidential election, they should have been far less surprised. United States history demonstrates that xenophobic conspiracy theories are nothing new.

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34. See David S. Han, *Conspiracy Theories and the Marketplace of Facts*, 16 FIRST AMEND. L. REV. 178, 190 (2017) (arguing that conspiracy theories are not just patently false statements, but also contain the premise “that the public is being manipulated by nefarious powers-that-be”).

35. See id. at 180–81 (describing the variety of conspiracy theories and examples of their ability to cause social harm).

36. Misinformation is false or inaccurate information, and is often shared widely with others, regardless of one’s intent to mislead. Disinformation is misinformation created to be deliberately deceptive. Meira Gebel, *Misinformation vs. Disinformation: What to Know About Each Form of False Information, and How to Spot Them Online*, BUS. INSIDER (Jan. 15, 2021), https://www.businessinsider.com/misinformation-vs-disinformation [https://perma.cc/FNV6-VQQ5].

37. 347 U.S. 483 (1954) (declaring that racially segregated public schools were “inherently unequal” and violated the equal protection clause of the Fourteenth Amendment).


39. See Carol Anderson, *Eyes Off the Prize: The United Nations and the African American Struggle for Human Rights, 1944-1955* 166-67 (2003) (documenting how white supremacists sought to discredit civil rights activists through red baiting). Roy Wilkins, NAACP Executive Secretary, explained why the NAACP passed resolutions against communist participation in the organization staring in 1950. “We were having enough trouble getting Congress to consider even the most elementary civil rights legislation; the last thing we needed was to give ammunition to red baiting Southern congressmen and senators, who would have loved nothing better than to paint us pink.”
One might ask how Trump’s accusations of election interference differ from Hillary Clinton’s actions in 2016 or Joe Biden’s actions in 2020. They differ greatly. Trump actually welcomed Russian influence in the 2016 Presidential election.40 Clinton, on the other hand, condemned Russian influence in the election.41 The “Stop the Steal” campaign attempted to invalidate votes in the 2020 Presidential election. Biden fought to end voter suppression.42 Trump resurrected birtherism to discredit Harris and her diverse ticket. Trump’s ticket was not diverse, and Biden did not peddle a false, xenophobic conspiracy theory to discredit Trump’s ticket. The differences are stark. Trump’s efforts come from a well-worn, white nationalist playbook. Neither Clinton nor Biden are white nationalists, nor do they use white nationalist tactics to undermine U.S. elections.

This article, in turn, merges two significant bodies of literature in a unique way. The first body of literature examines concerns over foreign influence in U.S. politics conventionally understood.43 This scholarly area has blossomed since the 2016 elections.44 The second body of literature is very well established and documents the history of voter suppression in the United States.45 It is a literature that unfortunately has new relevance and is in conversation with voting rights

40. Philip Bump, Donald Trump’s Falsehood-Laden Press Conference, Annotated, WASH. POST (July 27, 2016), https://www.washingtonpost.com/news/the-fix/wp/2016/07/27/donald-trumps-falsehood-laden-press-conference-annotated [https://perma.cc/C2ZJ-RRPR]. During the campaign, allegations emerged that Clinton had deleted 30,000 emails from a private email account she used when she served as Secretary of State. Trump stated, “Russia, if you’re listening, I hope you’re able to find the 30,000 emails that are missing. I think you will probably be rewarded mightily by our press.” Id. Evidence has emerged demonstrating that the Russian government interfered with the 2016 Presidential election to benefit Trump, and though Trump stated that he hoped the Russians would engage in unlawful election interference, Department of Justice Special Counsel Robert Mueller did not establish that the Trump campaign coordinated with the Russian government to interfere with the election. U.S. DEP’T OF JUST., REPORT ON THE INVESTIGATION INTO RUSSIAN INTERFERENCE IN THE 2016 PRESIDENTIAL ELECTION 1–2 (2019), https://www.justice.gov/storage/report.pdf [https://perma.cc/Q6MS-5BGE].


42. See Jack Brewster, Biden Secures Electoral College Victory After Unprecedented Attempt by Trump to Invalidate Vote, FORBES (Dec. 15, 2021), https://www.forbes.com/sites/jackbrewster/2020/12/14/biden-secures-electoral-college-victory-after-unprecedented-attempt-by-trump-to-invalidate-vote/?sh=1162ca296f14 [https://perma.cc/D5UD-UYCC] (detailing then President-elect Joe Biden’s remarks before the Electoral College confirmed his victory: “We, the people, voted. Faith in our institutions held. Now it’s time to turn the page.”).

43. The Framers, for example, were particularly anxious about potential British and French influences in U.S. political life. In turn, they authorized the Foreign Emoluments Clause to prevent foreign corruption and influence of U.S. officeholders. See Bianca Spinosa, Comment, Interpreting Emoluments Today: The Framers’ Intent and the “Present” Problem, 78 MD. L. REV. 998, 1004–08, (2019) (reviewing the historical context leading to the Foreign Emoluments Clause). While this article explores concerns over foreign interference in U.S. politics, it differs from the Framers’ efforts to control potential foreign meddling. The Framers did not create the Foreign Emoluments Clause to suppress votes or inflame white nationalist politics.


45. See, e.g., CAROL ANDERSON, ONE PERSON, NO VOTE: HOW VOTER SUPPRESSION IS DESTROYING OUR DEMOCRACY (2018).
activists’ claims that Trumpism has unleashed “Jim Crow 2.0.” Joining the two bodies of literature demonstrates how white nationalists have historically relied on xenophobic conspiracy theories to disenfranchise subordinated communities. Moreover, it will offer today’s voting rights advocates more nuanced ways to place the current assault on voting rights in historical context.

Part II of the article chronicles the racial hopes produced and the unexpected racist backlash that emerged due to the Court’s decision. White supremacists seized Cold War fears of foreign subversion and the era’s deep racism and propagated conspiracy theories that the civil rights movement was un-American. Part III examines how these xenophobic conspiracy theories that flourished after Brown shaped landmark voting rights lawsuits, federal voting rights legislation, and a Presidential campaign. Part IV examines lessons we might learn today from this civil rights history, as racist backlash has again followed racial progress.

II

RACIAL POLARIZATION IN THE WAKE OF BROWN V. BOARD OF EDUCATION

In 1954, many commentators believed that Brown spelled the end of racism in America. It did not. This Part explains the increased polarization in U.S. racial politics after Brown. It also details how and why some segregationists shifted to more covert and nuanced forms of racism in Brown’s wake.

A. White Counter-Mobilization During The Cold War

Bold headlines blanketed U.S. newspapers after Brown. Leading Southern newspapers like the Atlanta Constitution announced, “Court Kills Segregation in Schools.” In the North, the Chicago Tribune declared, “Segregation Outlawed.” The nation’s most circulated newspapers were replete with snapshots of smiling NAACP lawyers, stock photos of Chief Justice Warren, and


47. Many popular and academic conversations on the current voting rights struggle have failed to recognize, for example, how racism and anti-communism have historically intersected to disenfranchise voters of color. More broadly, even in thoughtful articulations of the ties between voter suppression past and present, xenophobia’s historic role in voter suppression remains under-theorized. See, e.g., Jason Morgan Ward, Georgia’s Voter Law Is Called “Jim Crow 2.0” for a Reason, N.Y. TIMES (Mar. 31, 2021), https://www.nytimes.com/2021/03/31/opinion/georgia-voting-law.html [https://perma.cc/79WY-NL9H]. Moreover, it is beyond the scope of this article to determine whether the current attack on voting rights is actually “Jim Crow 2.0.” This article, however, find parallels between white nationalists today and during the civil rights movement, one part of the Jim Crow era. It also identifies important historical discontinuities in white nationalism over time, many of which should alarm current voting rights advocates.


endearing images of the *Brown* plaintiffs.50 For many Americans in the wake of *Brown*, the Court’s landmark ruling signaled that there were brighter days ahead in U.S. race relations.51

The positive response to *Brown* was most pronounced in black communities. In Harlem, black news writers rejoiced, “May 17th! Great Day for NAACP” and “Supreme Court Outlaws School Bias,”52 and in Los Angeles, black publishers exclaimed, “School Bias Outlawed!”53 In Montgomery, Alabama, a city which would soon become a movement center, black journalists printed stirring articles entitled, “Supreme Court Could not Turn Back Clock to 1896 Decision”54 and “The Decision of a Century.”55 Four days after *Brown*, civil rights lawyer and activist Pauli Murray published an op-ed in the *New York Times* that underscored the cultural and historical significance of this moment of jubilee.56 “I think I can now understand for the first time how my great-grandfather felt when he, a former slave, read the Emancipation Proclamation,” Murray exulted.57 She added that the Court’s unanimous decision had not only done “much to heal a deep wound” but it had also raised America’s human rights profile globally in the process.58 “On May 17,” Murray proudly proclaimed, “the United States stood taller and with greater dignity in the eyes of the world than at any other time in the twentieth century.”59

Some even put *Brown*’s significance in messianic terms. Dr. Horace Mann Bond—a historian who helped the NAACP develop the legislative history of the Fourteenth Amendment during the *Brown* litigation and who was the president of Lincoln University, Thurgood Marshall’s alma mater60—cried out in response to the *Brown* ruling, “Mine eyes have seen the glory of the coming of the Lord!”61 For blacks throughout the country, *Brown* was the most significant Court victory of all time, and America was at last living up to its promise.62


57. Id.

58. Id.

59. Id.


62. *See, e.g.*, *College Presidents: Hail High Court School Decision*, PITT. COURIER, May 29, 1954, at 30 (cataloguing the reactions of several college presidents most impacted by the *Brown* decision).
To be sure, the Warren Court was clear that *Brown*’s desegregation mandate only applied to segregation in public schools. Nonetheless, many Americans read *Brown* as a much broader commentary on the future of U.S. race relations. There was reason to believe this narrative. Washington, D.C., the centerpiece of American democracy and the city which had been an integral part of the school desegregation litigation, decided not only to desegregate the city’s public schools after *Brown* but also the city’s public recreation facilities. Prominent black editorialists declared that *Brown* now “opens other avenues of inquiry, the chief of which is, if school segregation is inherently unequal, is not separate seating in public transportation and disenfranchisement in tax-supported institutions also inherently unequal?” They maintained, “The South must learn that the clock of progress will never swing backward, and that any attempt to create a ‘Disunited States of America’ to perpetuate segregation will be resisted by all means.”

Even Thurgood Marshall, the nation’s leading civil rights litigator, forecast that there would be minimal resistance to *Brown* and that *Brown*’s logic would be exported to areas outside of public schools. As civil rights lawyers and activists packed the NAACP’s national headquarters to celebrate the Court’s ruling, Marshall announced to journalists that “by the time of the 100th anniversary of the Emancipation Proclamation . . . in 1963, segregation in all its forms [will] have been eliminated from the nation.”

The prospect of racial progress, however, was quickly dashed. U.S. racial politics became more polarized after *Brown*. Many whites denounced the Court and its watershed decision in the vilest terms. The Former Grand Dragon of the Ku Klux Klan “advocated the shipping of most Negroes ‘up North’ as a means of getting around the recent U.S. Supreme Court decision . . . .” James Eastland, U.S. Senator from Mississippi, shot “that the South ‘will not abide by nor obey this legislative decision by a political court.’” He stressed that states still retained police powers and said that “an attempt to integrate schools in the South

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63. *Brown v. Board of Educ.*, 347 U.S. 483, 495 (1954) (“We conclude that in the field of public education the doctrine of ‘separate but equal’ has no place.”).
64. On the day after the Court’s ruling, the *Washington Post*, for example, boldly editorialized that *Brown* “will prove, we are sure . . . a profoundly healthy and healing one. It will serve—and speedily—to close an ancient wound too long allowed to fester. It will bring to an end a painful disparity between American principles and American practices.” *Emancipation*, WASH. POST, May 18, 1954, at 14.
68. *Id.* at A8.
‘would cause great strife and turmoil.’”74 White supremacists viewed *Brown* as a declaration of war on the South.

But others, just as determined to oppose *Brown* but perhaps savvier than their peers, used less inflammatory language in public to convey their resistance. They reached for more nuanced framing to communicate their bigotry at a time when the legal and social terrain around race was rapidly changing. Georgia Governor Herman Talmadge, for instance, said that while he disagreed with the Court’s ruling, he did not oppose school desegregation because he was a white supremacist.75 According to Talmadge, he simply believed in racial separatism, and he went on record emphasizing to reporters, “I have never used that term ‘white supremacy’ in my life.”76 It was far from true. Just several years earlier, Talmadge had campaigned under the banner of white supremacy, and there was no shortage of documented examples of Talmadge appealing to “white supremacy.”77 But at a juncture when the Court was seeking to end state-sanctioned racial animus, Talmadge eschewed the language of white supremacy. Talmadge maintained that he “wouldn’t say any one race is specifically inferior,” because there were superior beings in every race.78 He added that “if the ‘good Lord’ had wanted one race and one color, he would have ‘put them in one place,’” rather than putting ‘white in Europe, black in Africa, red in the Americas and yellow in Asia.”79 Talmadge offered no explanation of how whites from Europe or blacks from Africa arrived in the United States or how indigenous lands miraculously became white-controlled—that reading of scripture was not

74. *Id.*

75. *Calm Talmadge Calls School Rule “Judicial Brainwashing,”* BALT. SUN, June 7, 1954, at 7. Here, it is also important to note that while *Brown* polarized Southern politics, as Klarman rightfully argues, many of the ways in which white supremacy changed during this period has been under-theorized. Talmadge’s move to reject the white supremacist label and adopt a racial separatist label exemplifies the evolution of the white supremacist lexicon. *See also infra* note 427. Some white supremacists during the twenty-first century have similarly rejected being identified as white supremacists and instead refer to themselves as white nationalists. *Id.* This article uses the terms “white supremacist” and “white nationalist” interchangeably, because white nationalism is an attempt to rebrand and mainstream white supremacism.

76. BALT. SUN, *supra* note 75, at 7.

77. *See Talmadge Opens Bid at Lyons Next Saturday, ATLANTA CONST.,* May 12, 1946, at 12A (reporting that Talmadge “continued to wave the banner of white supremacy” during a radio broadcast during the gubernatorial race); *Talmadge’s Temporary Victory Celebrated, NEW J. & GUIDE,* Feb. 1, 1947, at A3 (stating that during Talmadge’s contested gubernatorial race, Klan leaders in Georgia led a political tour of the state “in the name of ‘klan, white supremacy and Talmadge’”); *Race Segregation Rule Seen for Georgia Polls, ATLANTA CONST.,* Sept. 13, 1947, at 1 (stating that Talmadge “says white supremacy will be the big issue” during his 1948 gubernatorial race); *White Supremacy in Peace or by Force—Talmadge, CHI. DEF.,* Aug. 14, 1948 (noting that during a political rally Talmadge declared that “[w]e’re going to have white supremacy in Georgia by peaceful means if possible, by force if necessary.”); *Talmadge Leads in Georgia, CHI. TRIB.,* Sept. 9, 1948, at 1 (“Herman Talmadge, one of Georgia’s foremost champions of white supremacy . . . .”).

78. *BALT. SUN, supra* note 75, at 7.

79. *Id.*
present. For Talmadge, the Court’s exercise in judicial “tyranny” in Brown had simply “washed away the customs of centuries.”

At the same time, segregationists turned to red-baiting as a way to oppose Brown. Americans during the Cold War were fixated on the threat of communist, or colloquially “red,” subversion of the United States. Redbaiting became a powerful tool to discredit a person or a cause and render an opponent un-American. Fear of foreigners had always been a lynchpin of white supremacy, and the red-baiting gave new, “colorblind” language to segregationists seeking to render civil rights “un-American.”

Redbaiting was especially harsh in the South. White Southerners had long held that blacks were content with their lot during slavery until northern interlopers, like federal officials, carpetbaggers, communists, socialists, and abolitionists, exposed slaves to foreign ideologies. Segregationists recycled this refrain to discredit desegregation efforts, claiming that like earlier “outside forces,” blacks and their white northern allies again wanted to undermine the “Southern way of life.” Cold War politics, in other words, posed severe problems for desegregationists in the South, because the fear of foreign ideologies that became so central to U.S. Cold War policy dovetailed with a long history of Southern racism.

Segregationists also mobilized the Constitution to red-bait throughout this period. Some opposed Brown by linking ideas about foreignness to the Tenth Amendment, and this argument gained the most traction in the South. During the Civil War and Reconstruction, many white Southerners believed that “federal interference” was “foreign interference.” They conceived of themselves as being part of a nation within a nation and that the Civil War had been a war of Northern aggression, or even a war between the states. For segregationists, states’ rights were the primary legal defense that protected the South against the federal government’s racial overreach. During the civil rights movement, expansive readings of the Tenth Amendment served a similar function for segregationists. States’ rights advocates argued that in Brown the federal government had intruded upon states’ authority to regulate public education.

80. Id.
82. Id. at 27.
83. Id. at 4–5.
84. Id. at 2.
85. Id.
86. Id.
87. Id.
88. Id. at 1–3.
89. Id.
90. Id. at 3.
91. Id.
92. Id. at 48–53.
Others made even more outlandish constitutional claims around foreign subversion and began to decry the Court’s decisions regarding the rights of communists. They contended the Court’s blatant disregard for states’ rights and the separation of powers in *Brown* was part of a broader judicial trend towards totalitarianism.

The turn of events over a relatively brief historical moment left many Americans perplexed. Racist backlash followed a racially progressive Court decision. The optimism which caused many to predict the end of American racism died as segregationists closed public schools, led and condoned racist mob violence, and retooled their cultural and legal arguments to thwart racial justice. America was more polarized after *Brown* than before the Court’s anti-racist proclamation. Though this result was counter-intuitive for some, allegations of foreign interference were central to this development.

### B. Xenophobic Conspiracy Theories And The Remaking of The U.S. Electorate

Civil rights advocates and segregationists agreed and were right about one thing: *Brown* proved to affect more than public schools. The case also sparked clashes in politics. Segregationists soon surged forward. Southern legislatures formed “state sovereignty commissions,” fashioned after the House Un-American Activities Committee (HUAC), and tasked them with investigating potential communist subversion in the state. Most states that constituted these commissions initially used them to evade school desegregation, but their missions swiftly spread to other areas. State sovereignty commissions, for example, led both vast purges of black voters and extreme appeals to whites to dominate the electorate. They declared that communists had illegally registered black voters

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93. *See, e.g.*, *Ex-Justice Says Court Needs Curb*, CITIZENS’ COUNCIL, June 1956, at 3. In the article published by the White Citizens’ Council, a white supremacist organization, segregationist, and former U.S. Supreme Court Justice James Byrnes argued that *Brown* brought “joy to Communists and their fellow travelers who want to see all power centered in the Federal Government.” *Id.* at 3. He added that *Brown* was part of a “frightening” trend of recent Court decisions “giving aid and comfort to Communists by weakening security measures of the states.” *Id.*


95. *See, e.g.*, John Pennington, *Dixie Integration Opinions Simple and Final: ‘Never,’* ATLANTA CONST., Dec. 1, 1957, at 1C (underscoring how the era’s desegregation battles “ha[d] built between the races a rift that grows wider and wider” and how this turn of events led to “suspicion, bewilderment, distrust between the races—and some admitted hatred”).

96. KLARMAN, supra note 71, at 385.

97. WOODS, supra note 81, at 85–86.

98. *Id.* at 97.

and maintained that their efforts prevented “voter fraud” and ensured that all “qualified” citizens were voting citizens.100

State sovereignty commissions innovated red baiting by launching new media offensives to advance xenophobic conspiracy theories. They argued that there was a “paper curtain” at the Mason-Dixon Line.101 The Iron Curtain was an imagined ideological barrier which divided the West from communist Eastern Europe during the Cold War.102 State sovereignty commissions and their supporters borrowed from this Cold War metaphor. They contended that, like Eastern European communists, Northern media outlets were subversive, denied freedom of press, and misinformed readers about U.S. race relations.103 According to white supremacists’ conspiracy theory, “practically all of the Northern press” had a liberal media bias and misrepresented Southerners as “ignorant, prejudiced, backward and bitter people.”104 State sovereignty commissions, in turn, developed inventive media strategies to tell Southern segregationists’ side of the race story, expose the allegedly “subversive influences” behind desegregation, and reshape public opinion on issues of civil rights and civil liberties.105 In 1958, for instance, the Mississippi State Legislature appropriated $250,000 to fund its state’s sovereignty commission.106 The commission hired a public relations director to help rebrand the state’s image and enlisted lobbyists in Washington to defeat “‘dictatorial’ civil rights legislation.”107

New groups of segregationists also emerged during this period. Perhaps most infamously, the Citizens’ Councils of America (Citizens’ Council) formed on July 11, 1954 in Indianola, Mississippi—less than two months after Brown—as part of backlash to the Court’s decision.108 The organization is now notorious for white supremacy, and it should go without saying that the Citizens’ Council was an abhorrent organization. However, what’s important to note here is that the Citizens’ Council emphasized that the organization was not a white supremacist organization.109 They instead stressed that they simply believed in states’ rights

100. Id.

101. See, e.g., 1150 Attend Dinner Honoring Rainach, SHREVEPORT J., Nov. 25, 1959, at 3 (reporting on a gubernatorial candidate arguing that southern states needed “to use advertising to pierce the paper curtain”).


105. Id.


108. Council Movement Spreads as Nation Reacts to Danger, CITIZENS’ COUNCIL, Aug. 1956, at 1 (explaining that “the May 17 decision of the United States Supreme Court against segregation” left white Southerners “stunned at the prospect of a complete overthrow of their customs and traditions. . .”).

109. See Thomas R. Waring, South’s Views Presented at Williams, CHARLESTON NEWS AND COURIER, Mar. 10, 1957, at 5C (emphasizing that the organization was not one for white supremacists).
and sought “to guard both whites and Negroes” against the forces of racial strife. According to Citizens’ Council, the organization aimed to protect society from racial agitators like federal officials and the NAACP and “to protect the rank and file of Negroes from the wrath of ruffian white people who may resort to violence” during desegregation efforts. In fact, Citizens’ Councilors refuted any notion that they had ever “created an atmosphere that incite[d] murder and lynching.” The organization’s founders, middle and upper class whites who sought to distance themselves from poor whites, maintained that they were “in no sense architects of an American Fascist movement” but rather “firm supporters of the Republic and Jeffersonian democracy.” The Citizens’ Council was, for some critics of the organization, the “uptown Klan.” In other words, the Citizens’ Council attempted to express their bigotry in more refined and stealth ways than segregationists did in the past.

The Citizens’ Council harnessed anti-communism and soon developed a powerful arsenal to redbait those seeking to make the political process more inclusive. The organization recruited and won the memberships of leading segregationist politicians in an attempt to add legitimacy to the organization. The Citizens’ Council often convinced state sovereignty commissions to adopt the Citizens’ Council literature, and this development too lent greater legitimacy and steam to redbaiting in Southern legislatures. The Citizens’ Council, like state sovereignty commissions, attempted to confront the so-called paper curtain. It established the Citizens’ Council, the organization’s newspaper, and the “Citizens’ Council Forum,” a public affairs show broadcasted on both television

Waring, a well-known news editor and intellectual leader in the Citizens’ Council, stressed that the Citizens’ Council’s founders intentionally named the group to avoid any white supremacist connotations. Waring stated, “[T]he name of this movement is not WHITE Citizens Councils. The word ‘white’ was stuck in front of the name by some newspaper writer to designate the group as white people.” For Waring, journalists’ decision to refer to the Citizens’ Council as the White Citizens’ Council was a misguided effort to “emphasize the racial character” of the organization and part of “the overall smear campaign” against the Citizens’ Council. Waring believed that this journalistic technique was just another example of the “Paper Curtains” dividing Americans.

11. Id.
12. Id.
15. See, e.g., Senator Olin D. Johnston Backs Citizens’ Councils, CITIZENS’ COUNCIL, Oct. 1955, at 1 (noting a letter from Senator Johnston’s office which expressed the senator’s “absolute agreement with the principles of the various Citizens’ Councils that are being organized throughout South Carolina”).
17. To All Citizens’ Council Members, CITIZENS’ COUNCIL, Oct. 1955, at 1 (introducing the newspaper).
and radio. These broadcasts reached national audiences, and they boasted that their shows featured prominent national politicians interested in protecting states’ rights, fighting “the menace of global Communism,” and speaking “frankly” about race.

Bigots established new groups in areas outside of the South too. In 1958, Robert Welch, the candy magnate, founded the John Birch Society in Indianapolis. Welch was a rabid anti-communist and conspiracy theorist. And while he, like far too many whites in Cold War America, believed that the civil rights movement was subversive, Welch’s disinformation went well beyond. Welch believed that some men at the highest levels of government were either communists or communist-influenced. Welch blasted Chief Justice Earl Warren, former Secretary of State John Foster Dulles, and Presidents Dwight Eisenhower, Harry Truman, and Franklin Roosevelt for allegedly being entangled in a large communist conspiracy. It is difficult to overemphasize how extreme Welch and the John Birchers were, but one Republican U.S. Senator aptly described Welch’s red baiting style as something “far beyond anything the late Senator Joe McCarthy [of Wisconsin] even thought of.”

Again, here it is critical to note that although the John Birch Society actively opposed civil rights reforms, the organization maintained that it was not a white supremacist organization. Welch announced to the press that his organization “did not allow bigots.” Commentators explained Welch’s so-called colorblind approach to advancing “anti-Negro” politics. One black journalist wrote that while a “frontal attack on the Negro and his righteous aspirations would be

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118. See Councils Take Lead in TV-Radio, CITIZENS’ COUNCIL, June 1958, at 1 (describing how the “Citizens Council Forum” was the outgrowth of eighteen months of the Citizens’ Council’s initial television and radio programming).

119. Id. See also ‘Citizens’ Council Forum’ TV-Radio Series Adds Another 75 Stations, CITIZENS’ COUNCIL, Apr.–May 1961, at 4 (discussing the program’s expansion).


121. Salesman of the Right, N.Y. TIMES, Apr. 1, 1961, at 5.

122. See id. (describing how Welch identified numerous high-ranking Eisenhower administration officials as communists, including President Eisenhower, Dr. Milton Eisenhower, Secretary of State John Foster Dulles, and head of the Central Intelligence Agency, Allen Dulles). The John Birch Society embraced many outlandish conspiracy theories. See Walter Trohan, Story Behind Anti-Red John Birch Society, CHI. TRIB., Mar. 30, 1961, at 5 (criticizing the United Nations for promoting the surrender of U.S. sovereignty and alleging that U.S. foreign aid was a tool that would allow communists to penetrate the United States and spend the country into destruction); see also What Fluoridation Fuss is All About, MICH. CHRON., Feb. 2, 1963, at 4 (noting that the John Birch Society was part of a right wing campaign that opposed fluoridation in water because they believed that fluoridation would lead to mottling of teeth, cancer, heart disease, kidney disorders, failing hair, uterine bleeding, and hearing defects, among other ailments).

123. DAVID FARBER, THE RISE AND FALL OF MODERN AMERICAN CONSERVATISM: A SHORT HISTORY 71 (2012). John Birch was a U.S. missionary and intelligence officer killed by Chinese Communists and Welch remained steadfast that the U.S. government had to destroy anything potentially communist. Id.


condemned” by many including those in “the New South . . . the Negro’s opponents have definitely chosen a flank attack which is being evidenced by such organizations as the John Birch Society.” The writer underscored that because “hating the Communists is one of the most popular causes of the hour . . . [these] flank attackers would paint every white liberal as Communist and every Negro fighter for fuller freedom as having been tampered with by the Communists.” Under this approach, red baiting became “just as deadly as if it were frontal,” he stated, “and in many cases more so; because it is subtle and deceptive.” Welch’s campaign against communism provided him with a strategy to provide him cover against charges that he was racist while also allowing him to paint himself as a patriot.

Welch was steadfast in his position that he was not racist. He pointed to other evidence, which, at least for him and his followers, proved that his organization could not be racist. What was Welch’s evidence? The organization, according to Welch, had black members.

The John Birch Society became wildly popular as Welch’s gripping conspiracy theories and hyper-nationalism won over many rural and suburban dwellers. Some have estimated that by the early 1960s, there were between 60,000 to 100,000 John Bircherers nationally. The group also boasted very prominent members. Its founders included Clarence Manion, former Notre Dame Law School dean and constitutional law professor, and Frederick Koch, the industrialist whose oil refinery firm later became Koch Industries. Welch’s recruitment of high-status leaders not only added to the organization’s prestige, but it became one way to make what were regarded as fringe views more mainstream.

Segregationists remade themselves during the mid-twentieth century. As active participants in a social movement, segregationists adopted tactical innovations to defy the Court’s ruling in Brown and Brown’s potential implications for all of America. They bent Cold War logic to their own ends and reached for new tools and less overtly racist language to chill civil rights activism. Crude forms of demagoguery certainly loomed large during the civil rights movement, but segregationists, were, at times, more sophisticated than depicted in popular and scholarly debates. Conventional, simplistic representations of

128.  Id. at 8–9.
129.  Id.
134.  Pamphlet Listing Birch Society Council is Released, N.Y. TIMES, Apr. 1, 1961, at 5.
life in Cold War America do violence to the formidable and more nuanced legal and political challenges civil rights leaders encountered during this turbulent period.

III

XENOPHOBIC CONSPIRACY THEORIES DURING THE CIVIL RIGHTS MOVEMENT

The modern voting rights regime emerged from an era dominated by xenophobic conspiracy theories used against minority populations. While some voting rights opponents in the decade following Brown still used explicitly racist terms to discredit efforts to expand the political process, many more voting rights opponents opted for more racially coded Cold War terminology to achieve those ends. This Part explores the place of xenophobic conspiracy theories in landmark voting rights cases, voting rights legislation, and a Presidential campaign.

A. Voting Rights Litigation

1. Voting Registrars

Voting registrars were the chief barrier to black enfranchisement in the decade that followed Brown. The voting rights struggle in Louisiana offers one example. In the mid-1950s, William Rainach was president of Louisiana’s Citizens’ Council, a state senator, and the chairman of the state’s Joint Legislative Committee on Segregation.136 William Shaw served as the Committee’s counsel and a leading Citizens’ Council member.137 In 1956, Rainach and Shaw co-authored a pamphlet entitled, Voter Qualification Laws in Louisiana—The Key to Victory in the Segregation Struggle.138 The pamphlet opened:

The Communists and the NAACP plan to register and vote every colored person of age in the South. . . . They are not concerned with whether or not the colored bloc is registered in accordance with law. They are interested only in seeing that all persons in this bloc are registered and in using their votes to set up a federal dictatorship in the United States.139

Rainach and Shaw traveled the state in their dual roles as state actors and Citizens’ Councilors, and they led an effort to disenfranchise black voters through discriminatory enforcement of the state’s interpretation test.140 The interpretation test required that an applicant for voter registration “‘understand and give a reasonable interpretation of any section’ of the Constitutions of

136. U.S. COMM’N ON CIV. RTS., REPORT OF THE UNITED STATES COMMISSION ON CIVIL RIGHTS 101 (1959) [hereinafter COMMISSION ON CIVIL RIGHTS REPORT].
138. Id.
139. COMMISSION ON CIVIL RIGHTS REPORT, supra note 136, at 102.
Louisiana or of the United States." 141 The registrar had the sole discretion to
determine whether an applicant passed the test, and Rainach and Shaw urged
registrars to use their discretion to disenfranchise black voters. 142 Unfortunately,
these white supremacists were wildly successful. 143 Registrars purged thousands
of black voters in the name of protecting the vote from communist subversion. 144
A xenophobic conspiracy theory led to massive black voter disenfranchisement.

Seven years after Rainach and Shaw began their crusade a federal district
court finally intervened on behalf of the victims of voter disenfranchisement. In
*United States v. Louisiana*, Judge John Minor Wisdom, writing for the two-judge
majority, invalidated the state’s interpretation test. 145 Wisdom underscored the
political context in which the voter purges emerged: “Immediately following the
School Segregation Cases, two strong organizations dedicated to maintaining
segregation in Louisiana were established, one by the legislature and one by
private persons with official blessing.” 146 He was referring to the Louisiana
legislature’s Joint Legislative Committee established in 1954 and the state’s
Citizens Council established shortly thereafter, respectively. 147 Wisdom added
that the collaboration between these two bodies devastated “Negro participation
in the electoral process.” 148 In fact, he proclaimed that in recent years “the
interpretation test has been the highest, best-guarded, most effective barrier to
Negro voting in Louisiana.” 149 For Wisdom, preventing election fraud was pretext
for white political domination.

The court’s recognition of the violence done to black voters was a profound
reckoning with the changing political environment after *Brown*. Nevertheless,
despite the judicial assault on the Citizens Council, black Louisianans had already
experienced a series of harms that the court could never fully repair. Blacks,
whose voter registration numbers were already low, were violently stripped of
one of the few ways they could access the political process, and the state’s leading
civil rights organization came under heavy fire. 150 When Louisiana purged blacks
from the electorate, the state’s political climate became far more conservative,
the state’s elected officials became more demagogic, and blacks’ material
conditions suffered. 151 For years, a xenophobic conspiracy theory provided

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144. See *Commission on Civil Rights Report*, supra note 136, at 105–06 (detailing how the
number of black voters in Louisiana parishes decreased from March 1956 through November 1958).
146. Id. at 378.
147. Id.
148. Id.
149. Id. at 355.
150. See *Commission on Civil Rights Report*, supra note 136, at 105–06 (showing the sharp
decline in black voting registration).
151. Faireclough, supra note 140, at 232–33. Faireclough notes that by 1960, Louisiana’s black voter
registration had plummeted, and the state’s extremist segregationist vote exceeded the black vote.
Segregationists had been so successful at disenfranchising black voters and racism was so politically
segregationists legal and political cover to install another form of black second-class citizenship. In an era that seemed to have so much potential for racial progress, racist regress set in.

Louisiana was not the only state to amend its voting registration requirements during this period. In 1954, the Mississippi legislature proposed an amendment to its 1890 Constitution, which required that already registered voters re-register and as part of that process, pass a new, more elaborate literacy test. The increasingly polarized political atmosphere during the school desegregation battle drove the renewed effort to disenfranchise black voters. However, what was particularly striking here was that segregationists did not only pass a literacy test amendment during the 1954 elections, they also passed a state constitutional amendment that authorized state officials to resist the Court’s ruling in *Brown*.

Voter disenfranchisement in Mississippi was intimately tied to *Brown*’s backlash, and so much so that the governor of Mississippi called a special legislative session to adopt new laws pursuant to the state constitutional amendments.

Voting rights activists in Mississippi challenged the constitutionality of the state’s literacy test amendment, but in *Darby v. Daniel*, a three-judge federal district court unanimously upheld the amendment. Judge Benjamin Franklin Cameron, a Mississippi native born during the rise of Jim Crow, wrote for the court. He held that states possessed the authority to set reasonable voting standards and that there was no evidence the literacy test violated the Fourteenth or Fifteenth Amendments.

Cameron relied on a xenophobic conspiracy theory to craft the court’s opinion. “At a time when alien ideologies are making a steady and insidious assault upon constitutional government everywhere,” Cameron wrote, “it is nothing but reasonable that the States should be tightening their belts and seeking to assure that those carrying the responsibility of suffrage understand and appreciate the form and genius of the government of this country and of the States.” Cameron cited to a recent issue of *U. S. News & World Report* to advance his point. The paper’s headline read, “Today’s War: How the Reds Are Operating in 72 Countries.”

profitable that candidates during this period attempted to show white voters that they were more committed to segregation than their opponents to win elections. The state legislature also passed a series of facially neutral laws that had racist intents, including legislation that attacked welfare recipients and disenfranchised those “defined as ‘not of good character.’”

153. See *Governor Calls Special Session of Legislature*, CLARK CNTY. TRIB., Dec. 31, 1954, at 1 (detailing three amendments that featured proposals to abolish public schools to maintain segregation).
154. *Id.*
156. *Id.* at 172; *Cameron, Benjamin Franklin*, FED. JUD. CTR., https://www.fjc.gov/history/judges/cameron-benjamin-franklin [https://perma.cc/2ALA-LMLX].
158. *Id.* at 183.
159. *Id.*
Journalists for the *Citizens’ Council* celebrated *Darby* and only fueled segregationists’ insistence that U.S. elections were being subverted. The *Citizens’ Council* quoted large portions of *Darby*, placing the xenophobic conspiracy theory in bold letters. The *Citizens’ Council*’s editorialists also emphasized the decision’s significance but complained that “the Northern press,” national television, and national radio networks had not covered the ruling. The “Citizens’ Council Radio Forum” stepped in the debate, seeking to breach the alleged paper curtain. Representative John Bell Williams of Mississippi appeared on the show, praised Cameron’s opinion, and read Cameron’s paragraph on foreign interference. Williams concluded that white Southerners were “a minority group” being scapegoated like “the Nazi regime used the Jewish people as a scapegoat.” This lie recast a group made up of oppressors into society’s true victims and mainstream media outlets into extensions of Hitler and his stooges. Accordingly, xenophobic conspiracy theories allowed segregationists to depict themselves as true Americans, whereas journalists who sought to produce more accurate accounts of race relations became existential threats to U.S. democracy.

As the *Darby* ordeal demonstrated, judges were instrumental to midcentury culture wars. The case provided new legal legitimacy to disenfranchisement and red baiting. When black activists launched new voting rights campaigns to topple the state’s registration barriers, segregationists consistently launched anti-communist counterattacks. Segregationists revived the same conspiratorial logic that blossomed after *Brown* and called these voting rights activists “outside agitators.” Throughout this period, the architects of voter disenfranchisement often sought facially neutral approaches to achieve racist results. Courts were unable to fully resolve this voting rights crisis, and a patchwork approach to regulating literacy tests stood until the enactment of the Voting Rights Act. The language of election security, always important and particularly so during the Cold War, became a more palatable means to suppress black votes and stoke white rage at the ballot box.

2. Reapportionment

As battles over interpretation and literacy tests raged in lower courts, the U.S. Supreme Court began to intervene in the reapportionment cases. Reapportionment, on its face, was not about race or communism. Nevertheless,
white supremacists viewed reapportionment as an attack on their political power. In turn, they decried the Court’s growing role in electoral politics and blasted the decisions as part of a plot pushing America closer to totalitarianism. White supremacists resisted reapportionment by tapping into broader, Cold War anxieties.

The Warren Court’s reapportionment cases remade U.S. legislatures in a way unrivaled past or present. In *Baker v. Carr*, the Court held that “political questions” were justiciable in federal courts, and the decision opened the way to establish the “one person, one vote” principle now central to U.S. democracy.165 The Court relied on *Baker* to render a series of watershed decisions reapportioning state and federal legislatures, most notably *Gray v. Sanders*,166 *Wesberry v. Sanders*,167 and *Reynolds v. Sims*.168 While many people believed that *Brown v. Board of Education* was the Warren Court’s most important case, Warren felt the accolade actually belonged to *Baker*.169 For Warren, if the political process were open, other progressive reforms could soon follow.170

White supremacists understood the racial stakes of reapportionment. During the Great Migration, which began in the early twentieth century, millions of blacks fled the Jim Crow South to live in cities in the North, Midwest, and West.171 In response, many whites began moving out of urban centers and into the suburbs.172 These corresponding migrations dramatically changed population levels, racial demographics, and political representation across America.173 In an era that pre-dated the “one person, one vote principle,” blacks were moving to cities, often underrepresented in legislatures, while former urban whites found outsized representation in suburban areas through white flight.174 In the Southern enclaves during this period, where blacks remained a substantial percentage of the population, blacks typically lacked the power to elect candidates of their own choice.175 Reapportionment, in other words, strengthened black voting power in most areas of the country and reduced political representation in areas that diluted black voting strength.

167.  *Wesberry v. Sanders*, 376 U.S. 1, 17–18 (1964) (holding that population disparity of congressional representatives amongst the Georgia congressional districts was unconstitutional).
170.  See id. at 306–07 (stating that without fair apportionment, “orderly development” could not occur).
172.  *Id.* at 490.
173.  *Id.*
174.  *Id.* at 486, 490–91.
175.  *Id.* at 491–92.
The reapportionment cases fed white supremacists’ complaints about burgeoning federal power and judicial disrespect for the separation of powers. They sought to frame reapportionment as an assault on rural whites’ voting power and a communist scheme. Georgia became a critical battleground in the reapportionment fight. Two of the Court’s most significant reapportionment cases—Gray and Wesberry—were Georgia cases, and the ties between racism, anti-communism, and reapportionment were painfully obvious. William Hartsfield, mayor of Atlanta, declared that reapportionment’s opponents “scream about minorities in Atlanta in order to hide the fact that for years Georgia has been ruled by a tight county unit minority and a rural bloc vote.” Hartsfield continued, “As usual, they will flail the Negro and intimate that we are all Communists and agents of the NAACP.”

Morris Abram, an attorney for Martin Luther King, Jr., counsel in Gray, and the lawyer often credited with introducing the phrase “one man, one vote” into election law jurisprudence, reflected on how white nationalists smeared him and other civil rights lawyers using a xenophobic conspiracy theory. During Abram’s quest to end malapportionment, Georgia’s segregationist governor attacked Abram “by pamphlet, newspaper, radio, and television” for working with black lawyers and participating in a movement “created and . . . dominated by Reds and fellow travelers.” Despite this widespread redbaiting, Abram and his colleagues were steadfast in their fight to end voter suppression in Georgia. Abram remembered that blacks were 29 percent of the state’s voting-age population in 1960, but because most blacks lived in urban areas, malapportionment left them underrepresented. In rural counties with significant black populations, blacks were unrepresented. Abram remembered, “[T]hese blacks were largely unregistered and even if registered frequently did not dare to vote” due to their fears of violent reprisals.

Opposition to reapportionment also came from some scholarly voices. Redbaiting did too. Clarence Manion led the charge on both fronts. The former Notre Dame Law School dean was a pioneer in political talk radio and later

176. See, e.g., Anthony Lewis, Decision to Reapportion the State Legislatures Stirs Opposition, N.Y. TIMES, Aug. 16, 1964, at E3 (detailing political opposition to the Court’s reapportionment decisions, including stripping jurisdiction away from the Court on these issues).
177. See, e.g., William B. Hartsfield, Mayor Hartsfield Says Demagogues Use Corrupt Unit System to Stay in Power, ATLANTA CONST., Mar. 13, 1958, at 4 (“They will . . . intimate that we are all communists . . . .”).
178. Id.
179. Id.
180. Id.
182. ABRAM, supra note 181, at 84.
183. Id. at 79.
184. Id.
185. Id.
televison.\textsuperscript{186} On the heels of \textit{Gray}, Manion told his show’s listeners: “In the current climate of conflict over Communism, legislative reapportionment and civil rights,” the Supreme Court was operating “in complete and utter disregard for” the Tenth Amendment.\textsuperscript{187} Manion then turned to Woodrow Wilson, interestingly, to provide listeners with a lesson on despotism. Manion asserted that Wilson had warned Americans that “a concentration of governmental power is what always precedes the death of human freedom.”\textsuperscript{188} Although “Wilson wasn’t thinking of Communism when he said this in 1912,” Manion added, “whoever repeats the statement today must think of the Communist menace.”\textsuperscript{189}

Manion launched into a full conspiracy theory about foreign interference in the reapportionment cases. Manion alerted his audience that the “big Red hand” was destroying freedom, and he cringed at “the advance of the Communist conquest throughout the world [which] . . . almost exactly paralleled the official progressive dismemberment of States’ rights within this country.”\textsuperscript{190} Manion left listeners with a legal prescription to end the Supreme Court’s “assault” on states’ rights in the reapportionment cases, calling for Congress to strip the Court of its appellate jurisdiction.\textsuperscript{191}

Manion’s proposal found sponsorship in Congress. William Tuck, a Democratic Representative from Virginia and a regular on “The Manion Forum,” proposed a bill to strip the Court of its jurisdiction in cases involving reapportionment of state legislatures.\textsuperscript{192} Everett Dirksen, a Republican Senator from Illinois and Senate Minority Leader, attempted to be less extreme on malapportionment, yet his ideas were far from moderate. Dirksen’s bill would have temporarily suspended federal courts from hearing any reapportionment cases.\textsuperscript{193} Neither bill became law, but they escalated the attacks on the Court.

Reapportionment also became a major issue in the 1964 Presidential election.\textsuperscript{194} Barry Goldwater, the U.S. Senator from Arizona and Republican Presidential nominee, ripped the Court’s reapportionment decisions while on the campaign trail.\textsuperscript{195} Many Republicans embraced this position, but the John


\textsuperscript{187} Dean Clarence Manion, \textit{Congress Should Strip the Supreme Court of Its Appellate Jurisdiction} (July 14, 1963), in \textit{The Clarence Manion Papers}, UNIV. OF NOTRE DAME ARCHIVES, PMNN 1/10 #459.

\textsuperscript{188} Id.

\textsuperscript{189} Id.

\textsuperscript{190} Id.

\textsuperscript{191} Id.

\textsuperscript{192} Rodney Crowther, \textit{House O.K.’s Bill to Bar Court Apportionment Action}, BALT. SUN, Aug. 20, 1964, at 1.

\textsuperscript{193} Lewis, \textit{supra} note 176, at E3.

\textsuperscript{194} See, e.g., Edward Folliard, \textit{Gov. Wallace Quits Race for Presidency}, WASH. POST, July 20, 1964, at A1 (“Apparent referring to Supreme Court decisions on state legislative apportionment, Wallace said Federal courts are not supposed to run other branches of government . . . .”)

\textsuperscript{195} Reg Murphy, \textit{Goldwater Greeted by Big Crowds, Rips Supreme Court and ‘Scandals,’} ATLANTA CONST., Sept. 16, 1964, at 1.
Birchers’ persistent red baiting and extreme conspiracy theories around the Court disquieted some Republicans.\textsuperscript{196} When these party members urged Goldwater to reject all support from the John Birches, he refused. Goldwater said he welcomed the support in the fight against communism.\textsuperscript{197} Goldwater added that while he was willing to criticize Robert Welch for Welch’s extremism, not everyone in the organization was an extremist.\textsuperscript{198} According to Goldwater, there were “many fine people” in the John Birch Society.\textsuperscript{199}

B. Voting Rights Legislation

Voting rights dominated the first four civil rights acts of the twentieth century.\textsuperscript{200} These federal acts eventually opened the polls to millions of voters of color. This was no easy fight. Although Congress possesses express power to make Section I of the Fifteenth Amendment ring true,\textsuperscript{201} segregationists led vicious congressional opposition to voting rights legislation, and they often invoked the specter of foreign interference in U.S. politics to advance their cause. This section chronicles that history.


The Civil Rights Act of 1957 was “the first modern civil rights act.”\textsuperscript{202} Voter protections were integral to the 1957 Act. The Act empowered the Attorney General to file lawsuits to protect the right to vote, instituted new criminal penalties for interfering with voting, and created the Civil Rights Division of the Department of Justice and the U.S. Commission on Civil Rights.\textsuperscript{203}

Allegations of foreign interference shrouded the bill’s congressional debates. Southern congressmen were at the forefront. Senator William Fulbright, the namesake of America’s premier international exchange program, reminded his colleagues that the Founding Fathers did not support universal suffrage.\textsuperscript{204} He said, “[The notion that] vast masses of voters possess a wisdom and sanctity superior to that of a more restricted electorate gained its greatest momentum under Hitler and Mussolini.”\textsuperscript{205} Representative John Ashmore said that federal
regulation of elections would not only usurp states’ rights but would also push America closer to autocracy.\textsuperscript{206} Others red baited specific provisions of the bill, claiming that the bill would instate the Attorney General as the “czar of civil rights,”\textsuperscript{207} turn the staff of the Civil Rights Division of the DOJ into “instrumentalities of fascism,”\textsuperscript{208} and establish the Commission on Civil Rights as the “‘greatest gestapo system the world has ever known.’”\textsuperscript{209}

However, the most notable opposition to the bill came from Senator Strom Thurmond. Thurmond filibustered the bill for more than twenty-four hours.\textsuperscript{210} During his record setting, one-man filibuster, Thurmond claimed that the “so-called civil rights bill”\textsuperscript{211} would permit a strong central government to “invade fields which are reserved to the States” and “infiltrate . . . election systems” like communists had done in Poland, Czechoslovakia, and China.\textsuperscript{212} Thurmond used variants of the word “communist” more than 30 times during his filibuster, and when he was not caricaturing the bill as communist, he used terms like “fascism” and “absolute monarchy” to describe the bill “foisted on the American people under the alias of ‘civil rights.’”\textsuperscript{213} Thurmond carped that the bill “opens the door wide for such organizations as the NAACP . . . to make complaints to the Commission with little or no basis for doing so.”\textsuperscript{214} And he railed against one proposed attempt to forge a compromise on the bill, saying that “[i]f this so-called compromise amendment were to go a little bit further, it would sound more like a Communist amendment.”\textsuperscript{215}

Many Americans, including some segregationists, regretted Thurmond’s daylong mockery of the democratic process.\textsuperscript{216} Yet, the junior senator from South Carolina used the high-profile moment in voting rights history to help cultivate his public persona. While Thurmond was ostensibly addressing his colleagues in Washington, his primary audience was much farther away. This was an unabashed appeal to his base in South Carolina. One newspaper editor noted that although Thurmond “was criticized outside of South Carolina for his one-man filibuster against the civil rights bill . . . the newspapers in South Carolina for the most part praised his action.”\textsuperscript{217}

\begin{footnotes}
\item 208. Id.
\item 212. Id. at 16436.
\item 213. Id. at 16399.
\item 214. Id. at 16432.
\item 215. Id. at 16440.
\item 216. See, e.g., Thomas Ross, Thurmond ‘Goofed’ with Civil Rights Filibuster, Norfolk J. & Guide, Sept. 7, 1957 at 11 (describing Democratic senators’ discontent with the filibuster).
\item 217. Thurmond Praised, Criticized for Filibuster, Index-Journal 4 (1957) (describing the responses to Thurmond throughout the state).
\end{footnotes}
Columbia “all heaped lavish praise on Thurmond.”^218 Writers “applaud[ed] Thurmond’s courage and his faith in the cause for which he was fighting.”^219 Thurmond sought to depict segregationists as the oppressed and voting rights advocates as the oppressors, and some Southern editorialists lionized Thurmond for “speaking up for his people.”^220 Thurmond’s filibuster was also part of a larger media strategy to use mainstream press, which he scorned, to boost his national profile. Media outlets from coast to coast, including those that had been critical of Thurmond’s obstructionism, highlighted his physical feat, unmatched in Congress’ 168-year history. Some even wondered how Thurmond was able to hold his bladder. One theory emerged that Thurmond had dehydrated himself in the Senate’s steam room so that his body could sponge up anything he drank.^221 This only added to his mystique. Thurmond wanted the nation to believe that he personified white Southern manhood and was the most fearsome defender of the “Southern way of life.”^222

Opposition to the voting rights provisions in the 1960 and 1964 Acts mirrored opposition to the 1957 Act. On the Senate floor, Thurmond proclaimed that the “system of segregation in the South” was superior to that of the North due to the absence of “outside agitation,”^223 and he bemoaned the “NAACP and other leftwing, radical groups who [were] merely serving the cause of the Communists by pitting race against race.”^224 In the House, Florida Representative Robert “He-Coon” Sikes linked the “communist inspired” bill with America’s new sit-in movement.^225 In early 1960, waves of black high school and college students began demanding that merchants desegregate public accommodations. Sikes called it “sad commentary” that Congress was “legislating under duress” caused by these demonstrations.^226 Sikes, typically referred to by a nickname with clear white supremacist origins,^227 claimed that the sit-in movement was “a tribute only to behind the scenes Communist organizing, and which frequently are coupled with violence, shame our land.”^228 He urged Congress to suspend all debate on

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218.  Id.
219.  Id.
220.  Id.
221.  Joseph Crespino, Strom Thurmond’s America 117 (2012). See also Edward Folliard, Thurmond Sets Filibuster Record of 24 Hours in Opposing Rights Bill, WASH. POST, Aug. 30, 1957, at A1 (noting the steam bath and Thurmond’s minimal diet during the filibuster).
222.  Folliard, supra note 221, at A1. See also CRESPINO, supra note 221, at 117 (describing how Thurmond played into gendered and racialized notions of manhood).
226.  Id.
227.  See Pam Mee, Crowd of About 10,000 Says Si to Old Spanish Trail Festival, NW FLA. DAILY NEWS, May 7, 1989, at A1 (demonstrating how even decades after the bill’s debates, Sikes proudly embraced his white nationalist nickname); 142 CONG. REC. 21536 (statement of Rep. Bennett) (referring to Sikes’ nickname).
the bill “until these demonstrations end.” The legislative debates, for Sikes, were “immoral” and a foreign policy faux pas; it signaled that communists could and did influence congressional debates on voting rights.229 “It should never be reported to the world that the forces of democracy work in this manner,” Sikes concluded.230

But the massive demonstrations of the early 1960s had a major legislative impact as they helped to create the political context for passing the Civil Rights Act of 1964.231 Most notably, in the spring of 1963, the Southern Christian Leadership Conference (SCLC) launched “Project C” (Confrontation) in Birmingham, a series of marches on city hall, lunch counter sit-ins, and boycotts of segregated downtown merchants.232 Peaceful protesters were met with incredible violence. In May 1963, Eugene “Bull” Connor, Birmingham’s Commissioner of Public Safety, unleashed high-pressured fire hoses and snarling police dogs on thousands of peaceful protestors.233 These horrific images of brutality in Birmingham not only circulated in the United States—they became an international embarrassment.234

President Kennedy had been relatively uninterested in passing new civil rights legislation until he appreciated how racism undermined America’s position in the Cold War.235 People around the world again wondered how America could talk about spreading democracy abroad when it practiced racism at home.236 Segregation was fodder for Soviet propaganda machines and raised serious doubts in the Third World about the United States’ commitment to its creed.237 As protests in Birmingham continued to stain America’s global reputation, President Kennedy finally moved into action. He proposed new civil rights legislation on national television.238 The President decried the “repressive police action” in cities like Birmingham, but he maintained that the brutality in Birmingham was not an isolated incident.239 “[I]n too many communities, in too many parts of the country, wrongs are inflicted on Negro citizens and there are

229. Id.
230. Id.
234. Id.
235. Id. at 183–85, 191–92.
236. Id. at 182–83.
237. Id. at 188, 192.
239. Id.
no remedies at law,” Kennedy pressed.240 “Unless the Congress acts, their only remedy is in the street.”241 Although the most dramatic protests in America were battles over public accommodations laws, Kennedy announced that he was proposing a more expansive civil rights bill, including provisions in the bill to protect the right to vote.242 Kennedy told the evening’s watchers, “It ought to be possible for American citizens of any color to register to vote in a free election without interference or fear of reprisal.”243

Title I was the heart of the bill’s voter protections.244 Title I authorized the Attorney General to file lawsuits to end the unequal application of existing voting procedures,245 but for leading black activists, like John Lewis—then chairman of the Student Nonviolent Coordinating Committee (SNCC)—the bill was too tepid.246 Title I, most significantly, did not ban notorious practices like literacy tests. Rather, the provision merely required that states use the same standards for judging literacy irrespective of race.247 The bill’s other provisions related to voting did even less to protect the franchise.248

Despite the voting rights provisions’ deep weaknesses, segregationists still attempted to sink the bill using xenophobic conspiracy theories. A predictable group of red baiting Congressmen condemned the bill as a communist “guise,”249 “a monster of communism,”250 “despotism,”251 “a communist invasion,”252

240.  Id.
241.  Id.
242.  Id.
243.  Id.
245.  Id.
247.  42 U.S.C. § 1971 (1964). While some claimed that literacy tests merely ensured an educated electorate and were facially neutral, see, e.g., Lassiter v. Northampton Cnty. Bd. of Elections, 360 U.S. 45 (1959), literacy tests were in practice tools to disenfranchise poor and minority groups.
248.  42 U.S.C. § 1975(a) (establishing a permanent Civil Rights Commission with no enforcement powers); 42 U.S.C. § 2000(f) (authorizing the Secretary of Commerce to compile registration and voting statistics at the Civil Rights Commission’s request).
“communist revolution,”\textsuperscript{253} and “Russian meddling.”\textsuperscript{254} Some pointed to foreign condemnation of U.S. racism as an indicator that communists were successfully wreaking havoc in America.\textsuperscript{255} Others took umbrage with Title I squarely, with one Congressman warning that Title I would lead to authoritarian control of elections like in Russia and Germany.\textsuperscript{256}

New variants of these xenophobic conspiracy theories emerged during the bill’s debates. Title II of the bill prohibited segregated public accommodations.\textsuperscript{257} Ostensibly, Title II had nothing to do with the bill’s voting provisions. Segregationists argued that Title II infringed upon states’ rights and the Fifth Amendment of the U.S. Constitution by compelling merchants to serve all people regardless of race.\textsuperscript{258} According to the bill’s opponents, Title II was nothing more than a Soviet-inspired invasion of private property rights, a cornerstone of U.S. democracy.\textsuperscript{259} Segregationists reasoned that if they could paint Title II red, they might be able to defeat Title I and indeed the entire bill.\textsuperscript{260}

A new, major, and highly visible target of the FBI’s red-baiting emerged during the bill’s debates: the SCLC.\textsuperscript{261} In 1963, King was Time Magazine’s “Man of the Year,” and according to the FBI, “the most dangerous Negro of the future in this Nation from the standpoint of communism.”\textsuperscript{262} Moreover, the FBI’s red-baiting of King and the bill increased because of King’s relationship with SCLC lieutenant, Bayard Rustin.

In 1963, Bayard Rustin was fifty-one years old, the chief planner on the March on Washington, and an openly gay black man who did not apologize for his sexuality—an unfathomable reality for many in deeply homophobic America.\textsuperscript{263} Rustin faced red-baiting as a civil rights activist, but he endured intersecting forms of oppression during the Cold War as the hysteria over communism and

\textsuperscript{260} Richard Lyons, Committee is Apparently Unshaken by Dixie’s Assault on Civil Rights, WASH POST., July 16, 1963, at A5.
\textsuperscript{262} JAY FELDMAN, MANUFACTURING HYSTERIA: A HISTORY OF SCAPEGOATING, SURVEILLANCE, AND SECRECY IN MODERN AMERICA 264 (2011).
\textsuperscript{263} See also Susanna McBee, Organizer of D.C. March Is Devoted to Non-Violence, WASH. POST, Aug 11, 1963, at A6.
homosexuality overlapped. For many American Cold Warriors, the U.S. was a
Christian nation fighting atheistic communism. They believed that
homosexuality was un-Christian, and thus, pursuant to this binary logic, un-
American. They maintained that such “immorality” was part of a communist
plot to undermine American decency.

Two other facts drove redbaiting of Rustin. First, Rustin was a conscientious
objector who served twenty-eight months in prison for refusing to fight in World
War II. This was proof for redbaiters that Rustin was un-American. Second,
and more provocatively, more than three decades before the March on
Washington, Rustin had briefly been affiliated with a group of communist college
students. Although Rustin had long renounced communism and publicly
excoriated the Communist Party, segregationists viewed this as a smoking gun of
communist infiltration in the movement. Strom Thurmond savored the
moment. Thurmond denounced Rustin as a “convicted pervert”—a
homophobic slur, placed Rustin’s police record into the Congressional Record,
and bemoaned major newspapers’ alleged whitewashing of Rustin’s
background. The entire bill was tainted red, segregationists railed, because
“Mr. March on Washington” was profoundly un-American. For segregationists
in Cold War America: once a communist, always a communist.

2. The Voting Rights Act of 1965

The 1965 Selma to Montgomery March occupies a hallowed place in voting
rights history. In February 1965, an Alabama state policeman killed Jimmie Lee
Jackson, an unarmed demonstrator participating in a voting rights march. Black activists marched to the Alabama statehouse to protest Jackson’s murder and dramatize their struggle for voting rights. The activists barely passed the Edmund Pettus Bridge in Selma—the bridge named after the former Confederate Brigadier and Grand Dragon of the Alabama Ku Klux Klan. State troopers beat, trampled, and tear gassed nonviolent demonstrators.

265. Id.
266. Id.
268. Id.
271. Christina L. Moss & Ronald L. Jackson II, Introduction to Special Issue: We March Lest We Forget, 28 HOW. J. COMM. 123, 123 (2017).
272. Id.
273. Id.
274. Id.
275. Id.
276. Id.
Lewis, who stood at the front of the protest line, suffered a fractured skull. The day became known as Bloody Sunday.

The Selma crisis stirred President Johnson. In a nationally televised speech, Johnson, riffing from the movement anthem, proclaimed that “we shall overcome” racism, and he demanded that Congress, without delay, pass a voting rights bill much stronger than Title I of the Civil Rights Act. And Congress did exactly that. Then, the U.S. Supreme Court then upheld the strong medicine of the Voting Rights Act in two landmark cases, South Carolina v. Katzenbach and Katzenbach v. Morgan. The history of the Voting Rights Act of 1965 represents the triumph of popular constitutionalism and the federal government’s heroic efforts to democratize U.S. elections.

This section chronicles the political context leading to the passage of the Voting Rights Act by following two stories. The first is the drama in Selma. The Selma voting rights campaign drove the bill’s proposal and enactment. The second story follows a less familiar voting rights struggle centered in New York City. Although Selma and New York City may seem worlds apart, xenophobic conspiracy theories connected the two campaigns in unexpected ways.

a. Selma

The Selma story also represents a major political triumph over an infamous set of red-baiting segregationists. Alabama Governor George Wallace declared that the Selma to Montgomery march was “led by career and professional agitators with pro-Communist affiliations.” The Alabama Commission to Preserve the Peace, one of the state’s segregation committees, issued a scathing report during the Selma crisis, describing the SCLC, the Congress of Racial Equality (CORE), and SNCC as Red agents. Dallas County, Alabama Sheriff Jim Clark insisted that the Selma crisis was a “Communist conspiracy” planned and funded by the Civil Rights Division of the Department of Justice. Clark then slammed major media outlets for reporting only “very distorted news” and sensational stories that would sell magazines and newspapers. The Selma Times-Journal published an op-ed agreeing that the Selma story had been “distorted.” The writer claimed that conflict in Selma was not about racism but about states’ rights. He made an originalist argument, asserting that the

277. Id.
278. Id.
286. Id.
287. Id.
Constitution’s founders designed a government to prevent federal intervention in voting matters and protect against “the autocratic rule of the dictator, the central planning of socialism, or the regimentation of communism.”\(^ {288}\) Moreover, according to the writer, it was a “farce” that King, the person who had actually encouraged violence in Selma, had just won the Nobel Peace Prize; King should have instead won the “Lenin ‘Peace’ Prize.”\(^ {289}\)

On Capitol Hill, Judge Leander Perez, Louisiana’s most prominent Citizens’ Councilor and one of America’s most flamboyant segregationists, appeared on the national stage with a creative take on foreign meddling in U.S. elections.\(^ {290}\) In the early twentieth century, the Soviet Union and a small band of U.S. communists had attempted to court black support in the U.S. South.\(^ {291}\) They called for a Black Belt Republic, an autonomous black state stretching from Virginia to Texas.\(^ {292}\) Although the communist proposal never found traction in black America, this was no issue for Perez, who was well known across America for his extremist and unwavering defenses of segregation.\(^ {293}\) Perez wove this obscure relic into a newfangled conspiracy theory during his testimony before the Senate Judiciary Committee.\(^ {294}\)

Under the Voting Rights Act of 1965, jurisdictions with substantial histories of voter disenfranchisement—“covered jurisdictions”—had to seek federal preclearance before changing any voting practices.\(^ {295}\) Most “covered jurisdictions” under the Voting Rights Act were in the South.\(^ {296}\) The Act’s coverage formula, in other words, largely mapped onto the Black Belt Republic.\(^ {297}\) Perez seized the moment. He reminded the Senate Judiciary Committee that the Communist Party had demanded “Black Belt voter registration of all Negroes” and “the unlimited right of the Negro majority to exercise governmental authority in the entire territory of the Black Belt.”\(^ {298}\) For Perez, Congress was now poised to give life to “the original Stalin plan.”\(^ {299}\) and

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289. Id.
292. Id.
293. See generally JAMES CONWAY, JUDGE: THE LIFE AND TIMES OF LEANDER PEREZ (1973) (explaining how Perez played a key role in spreading the notions of segregation across America).
296. Katzenbach, 383 U.S. at 318. The states initially qualifying as “fully covered” under Section 4 of the Act were Alabama, Alaska, Georgia, Louisiana, Mississippi, South Carolina, and Virginia.
299. Id.
he implored mass white registration to counterbalance the voting power blacks would gain if the voting rights bill became law.  

The John Birch Society echoed Perez’s conspiracy theory linking the Voting Rights Act and the Black Belt Thesis, but the John Birchers used art to amplify their message. They produced *Anarchy, U.S.A.*, a seventy-seven-minute-long film, which claimed that Communists often hid behind a thin veneer of humanitarianism to beguile well-intentioned people and transform law.  

“Sympathetic” victims and “martyrs” in Selma had created the political environment to pass a communist-influenced voting rights plan. The film argued that this communist blueprint had successfully toppled healthy governments in China, Cuba, and Algeria and was now working in the U.S. South.  

The most striking aspect of *Anarchy U.S.A.* was the John Birch Society’s heavy reliance on African Americans to red bait the Selma campaign. It was no doubt innovative. The group used black representatives seeking to prove that the organization was not racist at all; John Birchers said they were simply interested in “law and order” and anti-communism. *Anarchy U.S.A.* showcased a black man and a black woman who said they were former communists but who left the party when it became clear that communists only wanted to use blacks “as cannon fodder in a violent and bloody revolution” to establish “an American Soviet dictatorship.”  

They said that movement leaders only wanted to make blacks hate whites and open “wounds that have long healed.” *Anarchy U.S.A.* also cunningly spliced together scenes of mass meetings in black churches and nonviolent demonstrations to illustrate how the alleged communist activists used moral appeals to manipulate Americans’ emotions. The film, for example, showed John Lewis preaching in a pulpit to illustrate “pious fraud” and claimed that a protester carrying a “one man, one vote” sign was a “noble sounding” smokescreen for communists’ true and nefarious motives.  

*Anarchy U.S.A.* concluded that viewers who believed in “law and order” could start their fight against the communist forces destroying America by reading the John Bircher’s literature and “support[ing] your local police.”  

Misinformation about the Selma struggle emerged from more respected sources too. Nationally syndicated columnists Rowland Evans and Robert Novak joined the red baiting. On the eve of the Selma to Montgomery march, Evans

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302. *Id.*

303. *Id.*

304. *Id.*

305. *Id.*

306. *Id.*

307. *Id.*

and Novak blasted John Lewis and SNCC in a nationally published column. The columnists alleged that SNCC had been “substantially infiltrated by beatniks, left wing revolutionaries and—worst of all—by Communists.”\(^{309}\) The writers opined that SNCC was “not really interested in the right to vote”\(^{310}\) or even registering voters—missing that much of SNCC’s activism centered on voting.\(^{311}\) According Evans and Novak, the “extremist” organization was more interested in “provoking social turmoil” and “knuckle[ing]” racial moderates and liberals than democratizing U.S. elections.\(^{312}\) The columnists argued that there was just one way to end the movement’s “agonizing internal crisis” over communist-infiltration in Selma: “expel” SNCC from the civil rights movement.\(^{313}\)

Accusations of foreign meddling in U.S. electoral politics also emerged in a novel way: interracial sex in Selma. Segregationists abhorred the idea of miscegenation, and in a society that characterized school desegregation as communist, miscegenation was certainly communist.\(^{314}\) Segregationists’ allegations of foreign subversion also invoked the culture wars of the mid-1960s. Those allegations in part focused on white hippies—those allegedly unpatriotic race traitors who consumed illicit substances, Eastern philosophies, and free love—who had traveled to Selma to protest side-by-side with black demonstrators. Segregationists had long raged at what they viewed as liberal’s moral depravity, but counterculture activists’ participation in the Selma campaign heightened segregationists’ suspicions that communist, “sex perverts” had penetrated the voting rights struggle.\(^{315}\) This sensational allegation emerged as a particularly pernicious way to stain a campaign led by ministers and occurring in the South, a region of America that congratulated itself for its supposed religiosity.\(^{316}\)

Back on Capitol Hill, Alabama Representative William Dickinson brought the sex perversion charge to the national forefront. Dickinson fumed that local blacks recruited prostitutes and lured white liberals to Selma by offering for “[$10 a day . . . room and board] and all of the sex from the opposite members of either

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\(^{309}\) Inside Report, supra note 308, at A25; Leftist Pressures, supra note 308, at A5.

\(^{310}\) Inside Report, supra note 308, at A25; Leftist Pressures, supra note 308, at A5.

\(^{311}\) See, e.g., HASAN KWAME JEFFRIES, BLOODY LOWNDES: CIVIL RIGHTS AND BLACK POWER IN ALABAMA’S BLACK BELT (2010) (describing SNCC’s activism in Selma before and after the Selma to Montgomery March).

\(^{312}\) Inside Report, supra note 308, at A25; Leftist Pressures, supra note 308, at A5.

\(^{313}\) Inside Report, supra note 308, at A25; Leftist Pressures, supra note 308, at A5.

\(^{314}\) See Virginia Grant, Miscegenation and Communism in Flannery O’Connor’s ‘The Displaced Person’, 12 FLANNERY O’CONNOR REV. 13, 13 (2014) (revealing that segregationists linked miscegenation with communism).

\(^{315}\) Ben A. Franklin, Klan Chief Calls 2 Rights Death Part of Red Plot, Mar. 28, 1965, at 1, 58.

\(^{316}\) See Just Disgusted, Raps Sex Orgies Charge, CHI. DEF., May 8, 1965, at 9 (expressing the dissatisfaction that “nuns and priests” were forced to confront these allegations).
race.” He announced that the coalition of beatniks, local blacks, and “misinformed” white “do-gooders” had littered local streets with empty alcohol bottles, engaged in indecent exposure and interracial sex, and had even used contraceptives during this allegedly illicit, interracial sex. But he was unwavering that a particular group of interlopers had been at the center of Selma’s moral cataclysm. “Who or what can weld this diverse group together into a formidable force that can and has ‘overcome?’” the congressman asked the gallery with rhetorical flair. The chamber sat silent momentarily. “The answer is this: the Communist Party.”

Dickinson maintained that reporters and law enforcement saw and even possessed photographs of the Selma activists engaged in vice. The Washington Post launched an investigation into Dickinson’s salacious claims. The Post soon debunked his allegations, stressing there was “no evidence” to support them, and none of the lewd photographs he said he had ever appeared. What upset Alabama segregationists was far less indecent. The Post noted that a few interracial couples held hands during the demonstrations “which obviously irritated Alabama policemen and white spectators.”

More allegations of foreign interference in the voting rights campaign emerged after the murders of three activists: Jimmie Lee Jackson, James Reeb, and Viola Liuzzo. In February 1965, as Jackson and hundreds of other black activists knelt to pray during one voting rights protest, a white mob descended on the news reporters covering the demonstration and the Alabama state police attacked the nonviolent demonstrators. Troopers clubbed Jimmie Lee Jackson’s mother and eighty-two year-old grandfather as they were attempting to seek refuge from the officers’ attack. When Jackson tried to aid his mother and grandfather, a trooper shot Jackson twice in the stomach. Troopers then clubbed him mercilessly in the street. Eight days later, he died from his injuries.

While Jimmie Lee Jackson’s death became a rallying cry for voting rights activists throughout the world, segregationists defended the state police and

318. Id.
319. Id.
320. Id.
321. Id.
323. Id.
324. Id.
325. Interview by Blackside, Inc. with Albert Turner, Field Secretary, Southern Christian Leadership Conference (Feb. 24, 1979).
placed black activists on trial. A local grand jury declined to indict the trooper who killed Jackson, and somehow the commander of the Alabama state troopers testified that he did not know of any instances of police brutality during the local voting rights campaign. The state instead blamed Jimmie Lee Jackson for his shooting and beating. They charged Jackson with assault with intent to murder the state trooper as the activist lay on his deathbed. The town’s mayor emphasized “[a]ctually, very little went on” during the troopers’ bloodthirst, but he then turned to a xenophobic conspiracy theory, denouncing “outside leadership” for causing police to act.

The Alabama State Legislature described the march of churchgoers as rioting. Legislators passed a resolution, which censured the marchers’ “deliberate provocations” and praised state troopers for their “unselfish devotion to the task of preserving the peace and saving lives and preventing damage to the property of all the citizens of this State.” There was no evidence of property damage during the protest, but nonetheless, the very idea of protecting whites’ property mattered more than Jimmie Lee Jackson or any black protester’s life. Legislators also directed ire at the news “propagators” who ran stories on the police brutality, white mobs, and rights denials during the march. The state legislature then sent the resolution to media outlets, including those they deemed part of the paper curtain: ABC, NBC, and CBS.

Two weeks after Jimmie Lee Jackson’s murder, a white mob murdered James Reeb, a white Unitarian minister from Boston who had just joined the voting rights campaign. As Reeb left a black-owned, Selma café, a group of white supremacists recognized Reeb as an outsider and beat him to death. Local segregationists thereafter dragged Reeb’s name through the mud and wielded a xenophobic conspiracy theory to explain his murder. The Imperial Wizard of the Ku Klux Klan took offense that some believed that the Klan was tied to Reeb’s murder, claiming that Reeb was “part of a ‘trumped-up Communist plot to destroy the right wing in America.’” The Klan leader maintained that communists were attempting to “blacken” the Klan’s reputation.

Death seemed to be ever-present during the Selma campaign. During the Selma to Montgomery march, a Klansman shot and killed Viola Liuzzo.

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330. ALABAMA LAWS AND JOINT RESOLUTIONS 30 (1965).
331. Id.
332. Id.
334. Id.
335. Id.
336. Id.
337. Klan Lawyer Accuses FBI of Attempting to Bribe One of Suspects, BALT. SUN, Mar. 28, 1965 at
was an activist, homemaker, and mother of five from Detroit.\textsuperscript{338} She had driven to Selma and used her car to shuttle activists between protest sites.\textsuperscript{339} Segregationists attacked Liuzzo, like Reeb, for being an outside agitator stirring up trouble in Selma, and the Klan similarly tied Liuzzo’s murder to “a ‘trumped-up’ Communist plot” that threatened U.S. democracy.\textsuperscript{340}

The Klansman was prosecuted for Liuzzo’s murder, but sensational accusations flew throughout the murder trial. A Klan informant had divulged the identity of Liuzzo’s alleged shooter to the FBI, and the prosecution relied heavily on this information.\textsuperscript{341} Matthew Murphy, the Klansman’s defense attorney in the case, countered the prosecution using multiple conspiracy theories. Murphy, for example, accused Hoover and President Johnson of “being part of a giant conspiracy to crush the Klan and destroy the South.”\textsuperscript{342}

As part of his defense of this Klansman, Murphy also returned to a baseless rumor Congressman Dickinson spread just weeks earlier on the House floor: “sex orgies” in Selma.\textsuperscript{343} Murphy asked a stunned courtroom, “Why . . . would a white woman from Detroit desert her husband and children to ride around in a car with a black man?”\textsuperscript{344} The Klan attorney smeared Liuzzo as “a white n——r who turned her car over to a black n——r for the purpose of hauling n——s and communists back and forth.”\textsuperscript{345} Murphy also directed his anger at Jack Greenberg and Ralph Bunche, notables who participated in the march. Murphy ranted, “I never thought I would see the day when Communists and n——-s and white n——-s and Jews would be flying around under the banner of the United Nations.”\textsuperscript{346}

Despite the informant’s compelling testimony and a ballistics report tying the defendant’s gun to the bullet that killed Liuzzo, the all-white male jury deadlocked.\textsuperscript{347} Segregationists reveled in the mistrial. Outside of the courtroom, Murphy blared that the “band of homosexuals, communists and pinkies who encourage of the mixing of races” should be blamed for the unrest in Selma, not his clients.\textsuperscript{348} The Imperial Wizard piled on. He reiterated his own conspiracy theory around communist infiltration of the voting rights campaign and

\begin{thebibliography}{99}
\bibitem{1, 3} Id.
\bibitem{338} Id. at 3.
\bibitem{339} Franklin, \textit{supra} note 333, at 14; see \textit{Klan Lawyer Accuses FBI of Attempting to Bribe One of Suspects}, \textit{supra} note 337, at 1 (reporting that the Klan claimed accusations of involvement in Liuzzo’s murder were “trumped up charges by the Federal Government.”).
\bibitem{341} \textit{Id.}
\bibitem{342} Id. at 3.
\bibitem{343} \textit{Says Sex is Motive in Rights Movement}, \textit{supra} note 317, at 9.
\bibitem{344} Mary Stanton, \textit{From Selma to Sorrow: The Life and Death of Viola Liuzzo} 119 (1998).
\bibitem{345} \textit{Id.} at 117.
\bibitem{346} \textit{Alabama Mistrial Proves Anti-Negro Feeling}, PHILA. TRIB., May 18, 1965, at 9.
\bibitem{348} James Felder, \textit{KKK Trio Plead Innocent to Mrs. Liuzzo’s Slaying}, CHI. DEF., Apr. 27, 1965, at 1, 4.
\end{thebibliography}
emphasized to reporters that Murphy’s performance at trial had boosted Klan membership.349

b. New York City
False allegations of foreign meddling also emerged in an unexpected way during the Voting Rights Act debates. Opponents of section 4(e) of the bill alleged that the provision would allow Puerto Rican “immigrants” to infiltrate U.S. elections.350 Section 4(e) provided that no person who has completed the sixth grade in Puerto Rico, in a public or accredited private school, in a language that was not English shall be deprived of the right to vote due to the inability to read in English.351 New York’s U.S. Senators, Republican Jacob Javits and Democrat Robert Kennedy, sponsored the provision to attack New York State’s literacy test.352

New York State adopted its literacy test in 1922.353 The literacy test heavily burdened white immigrants in the early twentieth century, but by 1965, the state’s literacy test disproportionately disenfranchised Puerto Ricans whose primary language was Spanish. New York City’s demographics in particular were changing rapidly.

Opponents of section 4(e) of the Voting Rights Act wielded a false, xenophobic conspiracy theory to attack the legislation. According to this theory, Puerto Ricans were not U.S. citizens; they were “immigrants” who should be denied full access to the franchise.354 They conveniently ignored that Puerto Rico is a U.S. territory whose citizens are citizens of the U.S. This myth rendered U.S. citizens as noncitizens and strangers in their own land.

One of section 4(e)’s most formidable opponents was Paul Fino, a Republican Congressman from the Bronx. Fino had no issues with a voting rights bill that targeted Southern racism. Yet, section 4(e) targeted the North and was, for Fino, an example of reverse discrimination. He submitted that section 4(e) “discriminates in favor of Spanish-speaking citizens who are illiterate in English” and the amendment was thus “clearly and definitely anti-Yiddish, anti-Italian, anti-Greek, [and] anti-German.”355 Moreover, according to Fino, section 4(e) would not help Puerto Ricans become real Americans. “Other immigrant groups,” Fino emphasized, “had to learn English to walk the tenement trail out of the ethnic ghettos.” English, he added, was a “ladder to Americanism, an

353. F. G. Crawford, New York State Literacy Test, 17 Am. Pol. Sci. Rev. 260, 261 (1923) (“After January 1, 1922 no person shall become entitled to vote . . . unless such person is also able, except for physical disability, to read and write English; and suitable laws shall be passed by the Legislature to enforce this provision.”) (quoting an amendment to the New York constitution).
354. See infra note 355.
incentive to assimilation, and a beacon light to the path leading out of the slums to the tree-lined streets beyond.”

The Wall Street Journal also opposed section 4(e). Writers editorialized that the provision had “little to do with the law’s main thrust” and was nothing short of a naked, federal power grab designed to benefit foreigners, not U.S. citizens. According to the Wall Street Journal, the Spanish-speaking Puerto Ricans were unfit for the ballot because they could not understand government affairs. The editors lamented that opportunistic liberals had “tenuously dragged” Puerto Ricans into the voting rights debate that should have only dealt with Southern racism. The Wall Street Journal concluded, “It’s just that New York’s Senators wanted to substitute their will for that of their state’s legislature” simply “to please Puerto Rican immigrants.”

Despite this opposition, Congress passed section 4(e) of the Act. The Supreme Court upheld section 4(e) in Katzenbach v. Morgan, yet more Northern opposition to the provision emerged. The Hartford Courant decried Katzenbach. According to the Courant, while most focused on section 4(e)’s impact on “three-quarters of a million Puerto Ricans in New York,” this Court’s “steady encroachment” on states’ rights would affect “others in communities like Hartford” too. The newspaper editorialized that if the Court’s expansion of the Fourteenth Amendment continued “the original theory of 13 sovereign states will be a myth,” and states would transform “into little more than provinces.”

As the Courant’s editorialists attempted to distance themselves from better-known bigots like George Wallace “who made bad words of ‘states’ rights,” the writers similarly peddled a xenophobic conspiracy theory to attack section 4(e). According to the Courant, section 4(e)’s direct beneficiaries were “immigrants” who were apparently dupes unfit for voting. “Immigrant groups,” the Courant proclaimed, “have traditionally been the toy of the demagogues.” The writers maintained, “When the group does not understand English, they are more susceptible to demagoguery and more likely to vote en bloc.” The irony was thick. The editors attempted to justify mass voter suppression by allegedly protecting U.S. democracy and saving Puerto Ricans from themselves.

C. Voting, the Vatican, and the Presidency

An even more powerful xenophobic conspiracy theory dominated national politics a few years later. During the 1960 Presidential race, some conspiracy

356. Id.
358. Id.
361. Id.
362. Id.
363. Id.
364. Id.
365. Id.
theorists suggested that if John F. Kennedy became president, the Pope would rule the White House. America had a long history of maligning Catholic politicians for being “foreign” agents and having “dual loyalties.” The anti-Catholic, election conspiracy theory held that if U.S. interests conflicted with the Vatican’s positions, Kennedy would be loyal to the Vatican, because his eternal soul, as a Roman Catholic, was on the line.

Kennedy wrestled with anti-Catholic bigotry throughout the Democratic primary. During the West Virginia primary, for example, A. James Manchin, a state politician, Roman Catholic community leader, and campaign volunteer was flatly asked, “Are you Catholics trying to take over not only the state of West Virginia but the United States, and are you going to try to bring the pope here?” Others traveled into West Virginia to traffic anti-Catholic bigotry. Nationally renowned minister Reverend Norman Vincent Peale joined the fray. Peale traveled from New York City to Charleston, West Virginia early in the primary to campaign against Kennedy and urged voters to reject the candidate who took instructions from those whose first loyalty was not to the United States. Peale then rhetorically asked reporters, “Should any ecclesiastical authority be able to interfere with the freedom of a public official of the United States?”

During the general election, Kennedy’s opponent, Richard Nixon, vowed that he would not raise the Pope’s potential influence on Kennedy. Yet, behind the scenes Nixon conducted an extensive anti-Catholic campaign. Nixon backers, Peale and Reverend Billy Graham—the country’s foremost white evangelical and Southern Baptist Convention minister—not only courted Protestants using anti-Catholic bigotry, but they also organized an anti-Catholic organization, Citizens for Religious Freedom. The organization attempted to brand religious oppression as sincere concern for protecting the First Amendment and U.S.

366. Id.
367. ALBERT MENENDEZ, THE RELIGIOUS FACTOR IN THE 1960 PRESIDENTIAL ELECTION: AN ANALYSIS OF THE KENNEDY VICTORY OVER ANTI-CATHOLIC PREJUDICE 51 (2014); see also JAMES FISCHER, COMMUNION OF IMMIGRANTS: A HISTORY OF CATHOLICS IN AMERICA 100 (2008). In 1928, Al Smith lost the Presidential race to Herbert Hoover in a campaign mired by anti-Catholic campaigning. Smith’s opponents claimed that Smith would build a tunnel between Rome and Washington to give Smith easier access to the White House. Id.
372. CASEY, supra note 368, at 97.
373. Id.
In September 1960, Citizens for Religious Freedom declared that “[i]t is inconceivable that a Roman Catholic President would not be under extreme pressure by the hierarchy of his Church to accede to its policies with respect to foreign relations . . . and otherwise breach the wall of separation of church and state.”

The culture wars were central to the Christian right’s attempts to remake American politics. At one Citizens for Religious Freedom rally, Peale warned that “[o]ur American culture is at stake” in the Presidential election. If Kennedy were to win, Peale offered, “I don’t say [American culture] won’t survive, but it won’t be what it was.”

Kennedy’s ability to secure the Presidency, despite the alleged specter of foreign interference, lifted black electoral hopes like never before. Benjamin Mays, President of Morehouse College—the historically black college in Atlanta and alma mater of Dr. King—called Kennedy’s victory “good for the country,” and Mays turned the xenophobic conspiracy theory on its head. “I wouldn’t want Kennedy defeated because he is a Catholic,” Mays asserted. “A Negro might want to be President one day,” he reasoned, “and all who oppose a candidate because of his Catholicism might oppose a Negro.” For Mays, Kennedy’s ability to win the White House despite fears of the Pope’s potential interference “prove[d] that every American, whatever his religion or race may be, has the chance to aspire and to become the Chief Executive of this nation.”

IV

LESSONS FOR TODAY

As white nationalists rioted at the Capitol and spewed false conspiracy theories about foreign interference in the 2020 Presidential election, then President-Elect Biden announced to millions, “The scenes of chaos at the Capitol do not reflect a true America.” This idea became a refrain across the ideological spectrum, as many commentators, in seeming disbelief, proclaimed,
“This is not America.” But upon closer inspection, many of the developments leading to and on January 6 were eerily reminiscent of America’s past. The exhortation that Americans remember the country’s true identity was, at best, ignorance of the country’s racist history. However, no doubt for some, this was willful amnesia.

The past is not simply the past. The past informs the present and the future. The xenophobic conspiracy theories that helped to drive the Capitol insurrection resemble those embraced by conspiracy theorists during the civil rights movement. By understanding how white nationalists have deployed xenophobic conspiracy theories in the past, we might better understand how white nationalism shapes the struggle for voting rights today.

A. Racial Progress is Not Linear

The conventional account of race relations in the U.S. holds that racial progress will inevitably occur. According to this account, Brown and the civil rights movement moved us from the darkest days of Jim Crow. Barack Obama was eventually elected the 44th President of the United States, and his election, in the words of the New York Times report on the day following Obama’s 2008 election “swe[pt] away the last racial barrier in American politics with ease as the country chose him as its first black chief executive.” And for some commentators, if America had not quite gotten to the racial Promised Land under Obama, the election of Kamala Harris was another sign that America was...


383. While white supremacists had never attacked the Capitol and even massacres to overturn governments during Reconstruction and in the late nineteenth century. In 1873, for example, white nationalists in Colfax, Louisiana sought to install a Democratic governor, and they massacred approximately 150 blacks during the disputed gubernatorial race. In 1898, white nationalists in Wilmington, North Carolina, massacred as many as 300 people and ousted that city’s biracial government. See Rachel Hartigan, Historians on the Unprecedented Chaos in Congress, NAT. GEOGRAPHIC (Jan. 8, 2021), https://www.nationalgeographic.com/history/2021/01/historians-on-the-unprecedented-chaos-in-congress [https://perma.cc/Z4R7-J2LA] (arguing that the insurrection was “deeply rooted in the American experience”).


385. Id.

moving in the right direction. This is a teleological reading of racial progress over time—that is, a forward moving story taking us from the anachronistic politics of the 1950s to the election of Barack Obama in 2008 to the election of Kamala Harris in 2020.

Yet, a closer inspection of U.S. history shows something far less savory: white supremacy evolves over time. White supremacy did not expire with the end of the civil rights movement or the celebrated twenty-first century elections. Rather, white supremacy is durable and persistent. It exists today despite some meaningful structural reforms and Americans’ best hopes and aspirations. While some race problems from midcentury are less pronounced now than in the past, other race problems continue today, even if only in altered form.

Some of these continuities between past and present conspiracy theorists are more striking than what some might think. In mid-twentieth century America, organizations like the John Birch Society relied heavily on xenophobic conspiracy theories to attack perceived racial advances. After Obama’s first inauguration, a similar phenomenon happened. The Tea Party movement developed. Tea Partiers fashioned themselves as part of a patriotic, right-wing, populist movement, and they became best known for opposing Obama’s plan to provide more affordable health care. Like their ideological ancestors, they invoked the language of foreign subversion to oppose Obama. They blasted Obama’s health care plan as “tyranny” and “socialism,” called Obama “anti-American,” and lofted picket signs at protests such “Stop Obamunism” and “National Socialist Healthcare.” They soon expanded their efforts into fighting alleged election fraud. Across the country, Tea Partiers led massive efforts to purge voters and install voter identification laws often under the banner of preventing noncitizen voting. What was fascinating is that although Tea Partiers styled themselves as a new grassroots movement, their political genealogy was clear. Two of the major benefactors of the Tea Party movement

387. See, e.g., Faith E. Pinho & Brian Contreras, Inauguration 2021, L.A. TIMES (Jan. 20, 2021), https://www.latimes.com/world-nation/story/2021-01-20/inauguration-2021-howard-university-celebrates-alumna-harris-becoming-vice-president [https://perma.cc/B76N-2LM9]. After Harris’ inauguration, Wayne Frederick, President of Howard University, Harris’ alma mater, emphasized that “we would be remiss to overlook the significance of what Harris’ inauguration represents.” According to Frederick, “Harris’ ascendance is a powerful symbol of the progress our country has made” and “a decisive testament to our country’s values and its future trajectory.”


389. Id.


392. Peters, supra note 388.
were David and Charles Koch—the sons of Frederick Koch, a founder of the John Birch Society.393

Xenophobic conspiracy theories were on full display during the 2020 and 2021 elections. Redbaiters did not only smear the Biden-Harris ticket,394 but their tactics went well beyond Presidential politics. Raphael Warnock, the senior pastor of Ebenezer Baptist Church, Martin Luther King, Jr.’s home church, learned this firsthand during his Georgia senatorial race.395 Warnock’s opponent, Kelly Loeffler, repeatedly red baited Warnock, calling him part of a potential Marxist takeover of the federal government.396 This type of criticism was nothing new for ministers from Ebenezer Baptist Church. King’s political opponents red baited King too.397 Jon Ossoff, the Democratic candidate in Georgia’s other U.S. Senate race, was red baited as well,398 and he also endured anti-Semitism during his race. Ossoff’s opponent, David Perdue, ran an advertisement which exaggerated the size of Ossoff’s nose.399 The advertisement also featured Senate Minority Leader Charles Schumer, who is Jewish, and proclaimed, “Democrats are trying to buy Georgia!”400

White nationalist groups found new and greater prominence in presidential politics during the 2020 campaign,401 and these xenophobic groups again seek to police the very lines of Americanness in familiar ways. The names of these groups

396. Id.
398. Id.
400. Id.
are the strong indications: the Oath Keepers, the Three Percenters, and the Patriot Front. During the “Stop the Steal” campaign, although many of these insurrectionists spewed white supremacist language, carried anti-Semitic and Confederate symbols, and sought to keep a white supremacist in office, they often did not self-identify as white supremacists in an attempt make their cause appear more mainstream. Contemporary white supremacists have increasingly opted for a euphemism for white supremacy: white nationalism. This is old wine in new wine skins.

Even the presidential candidates’ responses to these groups offer a way to see historical continuities in white nationalist politics. Both Barry Goldwater and Donald Trump found support amongst xenophobic conspiracy theorists, and on the campaign trail, Goldwater and Trump were asked to denounce groups like the John Birch Society and the Proud Boys. Both men balked. Yet, what was perhaps more arresting than even their refusals to denounce white nationalist organizations at these key moments was how Goldwater and Trump actually

402. Oath Keepers, S. POVERTY L. CTR., https://www.splcenter.org/fighting-hate/extremist-files/group/oath-keepers [https://perma.cc/P8SD-7GVV] (last visited Aug. 4, 2021) (explaining that the organization is comprised of present and former law enforcement and military officers who believe their efforts are extensions of “the oaths they took on joining law enforcement or the military to ‘support and defend the Constitution of the United States against all enemies, foreign and domestic’”).


408. Scranton Vows Fight on Rights, supra note 197, at 1; Trump Refuses to Condemn, supra note 407.
praised white nationalists in public—with very similar rhetoric. Both men credited white nationalist groups for having “fine people” in their ranks.

New media have also been instrumental to white nationalists’ misinformation campaigns, past and present. During the 1950s, newswires crisscrossed the world like never before, radio waves amplified, and television was indeed new technology. The Citizens’ Council seized this technological revolution, and in the process developed creative ways to amplify their messages and counter what they believed was a liberal media bias. During the white nationalist backlash to Obama, new media outlets, like the One America News Network, similarly sprouted and sought to counter the so-called liberal media bias. This network traffics in xenophobic conspiracy theories and routinely aired false claims around the 2020 Presidential election. White nationalists have also taken keen advantage of this era’s newest media—the internet—to disseminate conspiracy theories. When social media platforms in particular began to regulate misinformation more stringently, white nationalism evolved. White nationalists, for instance, founded platforms like Gab and Parler as social media alternatives. While these new platforms have served as havens for many forms of bigotry and conspiracy theories, founders and users alike—like white nationalists of the past—have often relied on a colorblind rationale for flocking to these newer platforms: protecting free speech.

There are strong historical parallels in the media personalities which often broadcast xenophobic conspiracy theories. Clarence Manion and John Eastman offer one prominent example. Both men taught constitutional law, served as law school deans, have styled themselves as conservative public intellectuals, and rely on new media technologies to propagate conspiracy theories.

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409. See Scranton Vows Fight on Rights, supra note 197, at 1 (reporting that Goldwater said there were “many fine people” in the John Birch Society); see also Jane Coaston, Trump’s New Defense of his Charlottesville Comments is Incredibly False, VOX (Apr. 26, 2019), https://www.vox.com/2019/4/26/18517980/trump-unite-the-right-racism-defense-charlottesville [https://perma.cc/LNQ6-VXS7] (noting that Trump stated that there were “very fine people, on both sides” after the Unite the Right rally in Charlottesville).

410. Id.

411. Councils Take Lead in TV-Radio, supra note 118, at 1.


415. Id.

The most recent and perhaps most troubling continuity is the fight over voting rights in state governments. The echoes of state sovereignty commissions ring loud in our present moment. In Georgia, for instance, the false, xenophobic conspiracy theory that Venezuelan affiliated voting machines rigged the election in favor of Biden became part of a major effort to change the state’s voting laws.\footnote{Zachary Wolf, \textit{How Trump’s Election Fraud Lie Turned into Law in Georgia}, CNN (Mar. 26, 2021), https://www.cnn.com/2021/03/26/politics/trump-election-fraud-lie-georgia/index.html [https://perma.cc/5HMK-BS96].} Although there was no foreign election interference in Georgia, state legislators nonetheless successfully weaponized a xenophobic conspiracy theory as a voter suppression tactic.\footnote{Id.}

In Arizona, state officials audited the 2020 Presidential election due to bizarre, xenophobic conspiracy theories. These officials alleged that Asian subversives had interfered with the 2020 voter ballots in Arizona and that these subversives left evidence of their tampering: bamboo in the counterfeited ballots.\footnote{Sam Levine, \textit{Arizona Republicans Hunt for Bamboo-Laced China Ballots in 2020 ‘Audit’ Effort}, Guardian (May 6, 2021), https://www.theguardian.com/us-news/2021/may/06/arizona-republicans-bamboo-ballots-audit-2020 [https://perma.cc/UB59-6F4H].} One version of the bamboo ballot theory was that China had flown in 40,000 illegal ballots and stuffed Arizona’s ballot boxes to help Biden win.\footnote{Id.} Another version of this false theory was that these counterfeited ballots were flown from South Korea to Arizona.\footnote{Jonathan Cooper & Bob Christie, \textit{Inside Arizona’s election audit, GOP fraud fantasies live on}, AP NEWS (July 7, 2021), https://apnews.com/article/arizona-election-recount-b38a9205c306796f914d62bbad601587 [https://perma.cc/DR2K-VDX3].} After extensive testing to see whether the ballots were legitimate, the theory was determined to be meritless.\footnote{Id.} Nonetheless, it led to an unprecedented, very extensive and costly election audit, public confidence in our existing election infrastructure was damaged, and the legitimacy of the Biden Presidency tarnished. The fight over xenophobic conspiracy theories and voter suppression in Arizona is far from over. Although the audit did not lead to an overturn of the election, one of its ardent supporters, the Arizona Senate President, stated that the benefit is that it could lead to changes in law for future elections.\footnote{Id.}

In Florida, state lawmakers passed legislation with voting restrictions under the pretext of ensuring election security.\footnote{Wendy Rhodes & Antonio Fins, \textit{Gov. Ron DeSantis to Sign Controversial Voter Bill Thursday in West Palm Beach}, PALM BEACH POST (May 5, 2021), https://www.palmbeachpost.com/story/news/politics/state/2021/05/05/desantis-expected-sign-bill-restricting-voting-west-palm-beach/4954451001 [https://perma.cc/MQ7E-Q63T].} State legislators pointed to the “Stop the Steal” campaign as justification for the legislation, and Governor Ron DeSantis, ostensibly in tribute to the former President, signed the legislation at a

\textit{businessmen from Robert Welch to My Pillow, Inc. CEO, Michael Lindell, and Donald Trump.}

\footnote{Id.}
pro-Trump fan organization. More remarkably, in states like Florida, the legislature passed these voting restrictions during the same session during which legislators passed laws preventing public schools from teaching about white supremacy but then requiring public schools to teach about the evils of communism and totalitarianism. State lawmakers are now suppressing the vote and targeting antiracist pedagogies often by invoking xenophobic conspiracy theories. For instance, Governor DeSantis’ first example of the academic content now banned in Florida schools conjured up a xenophobic theme: that teachers were forcing students to learn about “Black communism.” Like the period after Brown, the white nationalist political climate that produced a major assault on voting rights likewise produced a major assault on antiracist public education.

B. Racist Regress Can Be a Reality

Despite the powerful continuities in white supremacy, it is also crucial to highlight historical discontinuities—and especially those that disrupt the dominant race progress narrative. One might justifiably assert that there are expressions of white nationalism that are worse now than during the civil rights movement. Recent presidential politics offer examples. Most conspicuously, neither the Citizens’ Council nor the John Birch Society, as despicable as they were, ever attempted to overturn a presidential election by assauling the U.S. Capitol. Goldwater ran for president in 1964, and he lost by a landslide. Trump, on the other hand, was indisputably elected president in 2016 and garnered a whopping seventy-four million votes in his 2020 loss to Biden, the second largest vote total in presidential history after Biden. One way to understand this historical discontinuity is that a twenty-first century white nationalist is able to profit politically and to ramp up white electoral anger in ways that those decades ago could never do. This is racist regress.

425. Id.
427. Governor Ron DeSantis, Governor DeSantis Emphasizes Importance of Keeping Critical Race Theory Out of Schools at State Board of Education Meeting (June 10, 2021), https://www.flgov.com/2021/06/10/governor-desantis-emphasizes-importance-of-keeping-critical-race-theory-out-of-schools-at-state-board-of-education-meeting [https://perma.cc/K6EB-AQNK] (condemning a “Philadelphia elementary school [which] forced fifth-graders to celebrate ‘Black communism’”). Many white supremacists wrongly describe antiracist teaching as “critical race theory.” It must be emphasized critical race theory is generally not part of K-12 curricula, and the anti-“critical race theory” legislation often includes themes not related and even antagonistic to tenets of critical race theory.
Recent developments in the other federal branches sadly challenge the notion of inevitable racial progress. During the civil rights movement, activists won voting rights legislation despite the widespread xenophobic attacks on the voting rights struggle. Although Congress, for example, passed the Civil Rights Act of 1957 despite Strom Thurmond’s filibuster, today the filibuster has proven to be an unmovable barrier in the march for federal voting rights legislation.\(^{431}\) Moreover, the Roberts Court is far from the Warren Court in the area of voting rights. In fact, in 2013, the Roberts Court’s decision in *Shelby County v. Holder* invalidated the Voting Rights Act’s coverage formula, the very same one the Warren Court upheld in *South Carolina v. Katzenbach*.\(^{432}\) The Roberts Court’s attack on voting rights continued in 2021. In *Brnovich v. Democratic National Committee*, the Court upheld two Arizona voting laws purportedly enacted to prevent voter fraud, but that have a disparate racial impact on voting opportunity.\(^{433}\) The Roberts Court ignored that state lawmakers relied on a false, conspiracy theory centered on “illegal alien” voting to propel the legislation forward.\(^{434}\) Contemporary voting rights activists cannot expect to receive justice through Congress or the Court in the ways they did a half century ago.

Finally, recent developments in technology suggest that ending the spread of xenophobic conspiracy theories, and more broadly, white nationalism will not be easy. While the civil rights movement saw its own technological revolution, the internet now offers white nationalists unprecedented platforms. White nationalists have matchless opportunities to produce their own content, win recruits, and spread conspiracy theories and other forms of misinformation—all of which can occur in ways that can protect their anonymity.

White nationalism is thriving in twenty-first century America. This is a proposition that many might have never expected, especially for those who believe in the idea of linear racial progress over time. Given how polarized


\(^{432}\) 570 U.S. 529, 554 (2013).

\(^{433}\) 141 S. Ct. 2321, 2330 (2021) (declaring that the laws did not violate Section 2 of the Voting Rights Act because they were neutral voting laws allowing Arizona to regulate the time, place, and manner of voting pursuant to its constitutional authority).


Legislative debates on the bill were contentious. . . . Supporters [of Shooters’ bill] repeated the same baseless claims originally propagated by Senator Shooter and pointed to “a racially charged video created by Maricopa County Republican Chair A.J. LaFaro.” The “LaFaro” video showed surveillance footage of a Hispanic man delivering a stack of completed ballots to election officials. Accompanying commentary from LaFaro included “statements that the man was acting to stuff the ballot box; that LaFaro did not know if the person was an illegal alien, a dreamer, or citizen, but knew that he was a thug; The video featured prominently in legislative debates, at Republican district meetings, and in a television advertisement for a successful 2014 Arizona Secretary of State campaign.
America is and the utter ubiquity of domestic misinformation, one might easily worry about continued backsliding. Racial progress is never promised.

V

CONCLUSION

The country needs a full reckoning not merely of January 6, but also of how the country got to such a state that millions of Americans falsely believed Venezuelan voting machines helped a U.S. presidential candidate steal the election. Our democracy did not get to this dangerous point overnight. It is past time for Americans, across the ideological spectrum, to tell the truth about the centrality of white nationalism in U.S. politics and indeed of all of American life. We will not be able to build the democracy we need if we cannot be honest about the one we have.