RECENT CASES

EQUAL PROTECTION — RACE DISCRIMINATION — ELEVENTH CIRCUIT REVERSES DISMISSAL OF DISCRIMINATION CLAIM RELYING ON HISTORICAL AND STATISTICAL EVIDENCE. — *Lewis v. Governor of Alabama*, 896 F.3d 1282 (11th Cir. 2018).

In 1901, Alabama adopted a state constitution — still in effect today — the express purpose of which was the reification of white supremacy.[1] To achieve this end, the state constitution disenfranchised Alabama's Black population and restricted democratic self-governance at the local level.[2] Sixty-two years later, civil rights leaders organized the Birmingham Campaign, a massive operation of nonviolent civil disobedience aimed at resisting and toppling Birmingham's segregation regime.[3] In response to the Birmingham Campaign, Black communities in Birmingham endured bombings in their homes and churches, police-sanctioned mob violence, and outright attacks by police.[4] The Birmingham campaign cemented the city's status as a site of Black resistance to white supremacy and corresponding violent white backlash.

In 2015, the Birmingham City Council passed an ordinance gradually raising the minimum wage to $10.10 per hour.[5] Shortly thereafter, the Alabama state government enacted legislation preempting all municipal minimum wage regulation.[6] Recently, in *Lewis v. Governor of Alabama*,[7] the Eleventh Circuit held that plaintiffs challenging the state statute pled facts sufficient to state a claim of intentional racial discrimination under the Fourteenth Amendment.[8] Unlike the modern Supreme Court, the *Lewis* court embraced an explicitly race-conscious framework. Even as the Supreme Court's race discrimination jurisprudence continues to ignore the lived experiences of Black Americans,

---

[1] At Alabama's 1901 Constitutional Convention, John B. Knox, the President of the Convention, said in his opening speech to the delegates: "[T]he people of Alabama have been called upon to face no more important situation than now confronts us . . . . And what is it that we want to do? Why it is within the limits imposed by the Federal Constitution, to establish white supremacy in this State." 1 OFFICIAL PROCEEDINGS OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF ALABAMA, MAY 21ST, 1901, TO SEPTEMBER 3RD, 1901, at 7–8 (1940).

[2] *See* Wayne Flynt, *Alabama's Shame: The Historical Origins of the 1901 Constitution*, 53 ALA. L. REV. 67, 75–76 (2001); Will Parker, Commentary, *Still Afraid of "Negro Domination?": Why County Home Rule Limitations in the Alabama Constitution of 1901 Are Unconstitutional*, 57 ALA. L. REV. 545, 558–60 (2005).

[3] *See* David Benjamin Oppenheimer, *Kennedy, King, Shuttlesworth and Walker: The Events Leading to the Introduction of the Civil Rights Act of 1964*, 29 U.S.F. L. REV. 645, 646 (1995).

[4] *Id.* at 653, 659, 667.

[5] Amended Complaint at 30, Lewis v. Bentley, No. 16-cv-00690 (N.D. Ala. Feb. 1, 2017).

[6] *See* Alabama Uniform Minimum Wage and Right-to-Work Act, Act No. 2016-18, 2016 Ala. Laws 36.

[7] 896 F.3d 1282 (11th Cir. 2018).

[8] *Id.* at 1287.

Lewis validated their understandings of reality and helped bolster perceptions of the courts as legitimate and fair forums.

In August 2015, the city of Birmingham, which has the state's highest proportion of Black citizens and of people living in poverty,[9] passed an ordinance raising the minimum wage from $7.25 to $10.10 per hour over the course of two years.[10] In response to Birmingham's efforts, the majority-white state legislature — in a span of only sixteen days — introduced and enacted the Alabama Uniform Minimum Wage and Right-to-Work Act[11] (the Minimum Wage Act), which preempted any municipal legislation regulating employee-employer relations, including the establishment of a local minimum wage.[12] The Governor signed the bill into law on February 25, 2016, so that Birmingham minimum-wage workers received a raise for only one day.[13]

In April 2016, the Alabama NAACP, Greater Birmingham Ministries, and Marnika Lewis and Antoin Adams, two Black Birmingham residents who made less than $10.10 per hour, sued the Alabama Governor and Attorney General in their official capacities.[14] In an amended complaint, the plaintiffs alleged violations of the Voting Rights Act[15] (VRA), the Thirteenth and Fifteenth Amendments, and the Fourteenth Amendment's Equal Protection Clause — including a claim of intentional discrimination and a political process doctrine claim.[16]

The defendants moved to dismiss, and the district court granted the motion.[17] That court first held that the plaintiffs did not have standing to challenge the Minimum Wage Act.[18] The court held that, even if the plaintiffs had standing as to the Fifteenth Amendment and VRA claims,

---

[9] *QuickFacts*, U.S. CENSUS BUREAU, https://www.census.gov/quickfacts/fact/table/montgomerycityalabama,mobilecityalabama,huntsvillecityalabama,tuscaloosacityalabama,birminghamcityalabama/PST045217 [https://perma.cc/A232-PVN9].

[10] Plaintiffs-Appellants' Opening Brief at 5–6, *Lewis*, 896 F.3d 1282 (No. 17–11009).

[11] Act No. 2016-18, 2016 Ala. Laws 36.

[12] *See id.* at 38; *see also* Plaintiffs-Appellants' Opening Brief, *supra* note 10, at 7–8.

[13] Plaintiffs-Appellants' Opening Brief, *supra* note 10, at 7. On February 24, 2016, the Birmingham City Council had enacted a resolution making the $10.10 per hour minimum wage effective immediately, which was nullified the next day by the Minimum Wage Act. *Id.* at 5, 7–8.

[14] Complaint for Declaratory and Injunctive Relief at 4–7, Lewis v. Bentley, No. 16-cv-00690 (N.D. Ala. Feb. 1, 2017).

[15] 52 U.S.C. § 10301 (Supp. III 2015).

[16] Amended Complaint, *supra* note 5, at 2–3, 47–48. The political process doctrine establishes an Equal Protection Clause violation when states restructure the political process to make it disproportionately difficult for minority groups to enact legislation to their benefit or protection. The doctrine was first articulated in *Hunter v. Erickson*, 393 U.S. 385 (1969), in which the Court struck down an ordinance that required approval by referendum for antidiscrimination housing ordinances but not for any other type of property-related ordinance. *Id.* at 389–91, 393; *see also* Thomas D. Kimball, Casenote, Schuette v. BAMN*: The Short-Lived Return of the Ghost of Federalism Past*, 61 LOY. L. REV. 365, 373–75 (2015).

[17] Lewis v. Bentley, No. 16-cv-00690, 2017 WL 432464, at *1, *13–14 (N.D. Ala. Feb. 1, 2017), *aff'd in part, rev'd in part, and remanded sub nom. Lewis*, 896 F.3d 1282.

[18] *Id.* at *3–6.

the law was not applicable to the plaintiffs' alleged injuries and that, regardless, Congress did not abrogate state sovereign immunity through Section 2 of the VRA, so Alabama was immune from suit.[19] The court further found that the political process doctrine claim was inapplicable given that the statute lacked racial classifications and was facially neutral.[20] Finally, the district court dismissed the plaintiffs' intentional discrimination claim under the Equal Protection Clause because the plaintiffs had not provided "the clearest proof" of invidious motive.[21]

The Eleventh Circuit affirmed in part and reversed in part.[22] Writing for the panel, Judge Wilson[23] agreed with the dismissal of the claims under the political process doctrine, Fifteenth Amendment, and VRA, but held that the plaintiffs had stated a valid claim of intentional racial discrimination under the Equal Protection Clause.[24] Before turning to the merits, the court addressed several jurisdictional issues. First, the panel concluded that both the organizations and the individual plaintiffs had standing, as they suffered concrete injury directly traceable to the law enforcement authority of the Alabama Attorney General.[25] Second, the panel determined that Congress, pursuant to its power under the Fifteenth Amendment, did abrogate state sovereign immunity with Section 2 of the VRA.[26]

The court affirmed the dismissal of the political process doctrine, Fifteenth Amendment, and VRA claims. The panel noted that the Supreme Court had seriously limited the political process doctrine,[27] a subset of equal protection law, and that the facially neutral statute at issue here did not "explicitly address[] racial harms such as segregation," as required by precedent.[28] As for the plaintiffs' VRA and Fifteenth Amendment claims, the court stated that they "f[ell] short for the simple reason that their allegations have nothing to do with voting."[29] Because the plaintiffs' claims were unrelated to elections or the processes and procedures for voting, the court found the claims to be unrelated to the "essence" of the VRA.[30]

The court's central holding, that the plaintiffs had stated a claim of intentional racial discrimination, was the result of a "sensitive inquiry"

---

[19] *Id.* at *7–10.
[20] *Id.* at *13.
[21] *Id.* (quoting Smith v. Doe, 538 U.S. 84, 92 (2003)); *see also id.* at *12–13.
[22] *Lewis*, 896 F.3d at 1287.
[23] Judge Wilson was joined by Eleventh Circuit Judge Jordan and District Judge Conway.
[24] *Lewis*, 896 F.3d at 1287.
[25] *Id.* at 1290–91.
[26] *Id.* at 1292–94.
[27] *Id.* at 1297 (citing Schuette v. Coal. to Defend Affirmative Action, Integration & Immigrant Rights & Fight for Equal. by Any Means Necessary (BAMN), 572 U.S. 291 (2014)).
[28] *Id.* at 1298 (citing Washington v. Seattle Sch. Dist. No. 1, 458 U.S. 457, 474 (1982)).
[29] *Id.*
[30] *Id.* (quoting Thornburg v. Gingles, 478 U.S. 30, 47 (1986)).

into the legislature's motives under *Village of Arlington Heights v. Metropolitan Housing Development Corp.*[31] The Supreme Court's decision in *Arlington Heights* provided a framework for evaluating allegations of intentional discrimination under the Equal Protection Clause, which included examples of the types of circumstantial evidence lower courts could consider in assessing these claims. This evidence included (1) the impact of the challenged action, (2) "[t]he specific sequence of events leading up to the challenged decision," and (3) "the historical background."[32]

The *Lewis* court closely tracked the *Arlington Heights* framework. First, the court examined the impact of the Minimum Wage Act and found that the harm it caused by depriving Birmingham's low-wage earners of a higher wage was borne disproportionately by Black workers.[33] The disproportionate effects on Black workers in Birmingham were particularly salient given the racial wage disparities in the city (where white wage workers earned $1.41 per hour more than Black wage workers) and the Minimum Wage Act's enactment as a specific response to the Birmingham minimum wage increase.[34]

Second, the court relied on the "rushed, reactionary, and racially polarized nature of the legislative process" to find discriminatory intent.[35] While the "Birmingham City Council, which represents more black citizens (and more black citizens living in poverty) than any other city in Alabama" is majority Black, the state legislators who voted in favor of the Minimum Wage Act were all white.[36] Not a single Black lawmaker voted in favor of the bill, which sailed through the legislature without a chance for public comment,[37] despite the fact that prior to Birmingham's minimum wage ordinance, the state legislature had never expressed interest in regulating the minimum wage.[38]

Third, the court found it plausible that the Minimum Wage Act was a modern iteration of "Alabama's historical use of state power to deny

---

[31] 429 U.S. 252 (1977); *see Lewis*, 896 F.3d at 1294 (quoting *Arlington Heights*, 429 U.S. at 266).

[32] *Arlington Heights*, 429 U.S. at 267; *see also id.* at 266–68; *Lewis*, 896 F.3d at 1294.

[33] *Lewis*, 896 F.3d at 1294–95.

[34] *Id.*

[35] *Id.* at 1295.

[36] *Id.* Moreover, the state legislator who introduced the Minimum Wage Act hails from a suburban district the court called "Alabama's least diverse area." *Id.*

[37] The panel's discussion of the speed at which the legislature enacted the bill also speaks to another factor identified in *Arlington Heights* as indicative of discriminatory intent — departure from decisionmaking norms. *See Arlington Heights*, 429 U.S. at 267.

[38] *Lewis*, 896 F.3d at 1295. Alabama has no state minimum wage, so Alabama workers are entitled only to the federal minimum wage, currently $7.25 per hour. *Consolidated Minimum Wage Table*, U.S. DEP'T OF LABOR, https://www.dol.gov/whd/minwage/mw-consolidated.htm [https://perma.cc/3JD8-NLRG].

local black majorities authority over economic decision-making."[39] Noting the racist origins of the state's constitution, the panel emphasized historical patterns of racial discrimination that "ha[ve] consistently impeded the efforts of [Alabama's] black citizens to achieve social and economic equality."[40] The court reiterated the relevance of this history to the equal protection inquiry and held that, with the events surrounding the decision and the disproportionate impact on Black Americans, the plaintiffs had stated a claim of intentional discrimination.[41]

Concluding its discussion of the intentional discrimination claim, the panel admonished the district court for requiring the "clearest proof" of intentional discrimination.[42] The "clearest proof" standard had no basis in and was directly contrary to the Supreme Court's equal protection doctrine.[43] The court opined that such a standard "turns a blind eye to the realities of modern discrimination," where "racism is no longer pledged from the portico of the capitol or exclaimed from the floor of the constitutional convention; it hides, abashed, cloaked beneath ostensibly neutral laws and legitimate bases, steering government power toward no less invidious ends."[44]

The Eleventh Circuit's decision embraces reasoning that the Supreme Court has disfavored in modern race discrimination cases. While the *Lewis* court was able to infer an invidious motive from historical and statistical evidence, the Supreme Court has dismissed the probative value of such evidence. The Supreme Court's and the *Lewis* court's divergence in analyzing race discrimination claims stems from opposing understandings of contemporary American society — one post-racial, the other race-conscious. The *Lewis* court's race-conscious approach is more consistent with and validates most Black Americans' own understandings of race discrimination. This type of validation may bolster Black Americans' perceptions of the courts as legitimate and fair forums, particularly when compared to the Supreme Court's race discrimination jurisprudence, which continues to ignore their lived experiences.

The *Lewis* opinion's reliance on historical and statistical evidence stands in stark contrast to the modern Supreme Court's treatment of intentional race discrimination claims. The *Lewis* court closely tracked the framework established in *Arlington Heights* for evaluating circumstantial evidence of intentional discrimination. Though *Arlington Heights* has been thought of as a path for plaintiffs to demonstrate discriminatory

---

[39] *Lewis*, 896 F.3d at 1295.

[40] *Id.*; *see also* Brief of Amici Curiae Historians Susan Ashmore et al. in Support of Appellants Seeking Reversal at 6, 20–22, *Lewis*, 896 F.3d 1282 (No. 17-11009).

[41] *Lewis*, 896 F.3d at 1296–97.

[42] *Id.* at 1296.

[43] *Id.*

[44] *Id.* at 1296–97 (footnotes omitted).

intent without a "smoking gun,"[45] the Supreme Court has refused to draw the inferences necessary to find actual intentional discrimination from circumstantial evidence.[46] While *Arlington Heights* technically remains good law, recent cases call into question whether an *Arlington Heights* argument will ever convince the Court of intentional discrimination.[47] The Court has similarly rejected race discrimination claims not specifically invoking *Arlington Heights* that rely on historical or statistical evidence. In *McCleskey v. Kemp*,[48] the Court rejected the use of a statistical analysis that demonstrated racial bias in capital sentencing as evidence of impermissible discrimination.[49]

The Supreme Court's treatment of race, including its refusal to recognize instances of anti-Black discrimination, reflects a colorblind or post-racial framework.[50] This framework is characterized by a belief that pervasive racism is simply no longer characteristic of American society.[51] Because the Court assumes that the United States has largely progressed beyond racism, it has had difficulty believing that racial animus still motivates individual and institutional decisionmaking. For example, in *Shelby County v. Holder*,[52] the Court struck down the provision of the VRA that determined which states or localities would, under Section 5, need "to obtain federal permission before enacting any law related to voting."[53] The *Shelby County* Court held that the VRA's "substantial federalism costs"[54] were impermissible given that in the fifty years since the VRA's passage "things ha[d] changed dramatically."[55] Because literacy tests and "[b]latantly discriminatory" voting regulations were no longer widespread, the race discrimination that originally justified federal supervision of historically discriminatory areas

---

45 *See* Veasey v. Abbott, 830 F.3d 216, 231 n.13 (5th Cir. 2016) (explaining that *Arlington Heights* does not require a "smoking gun" for a finding of intentional discrimination); *see also* Village of Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 266 (1977).

46 Michael Selmi, *Proving Intentional Discrimination: The Reality of Supreme Court Rhetoric*, 86 GEO. L.J. 279, 335 (1997); *see also* City of Memphis v. Greene, 451 U.S. 100, 128 (1981); City of Mobile v. Bolden, 446 U.S. 55, 74 (1980) (plurality opinion).

47 *See* Abbott v. Perez, 138 S. Ct. 2305, 2327 (2018); *id.* at 2346 (Sotomayor, J., dissenting) (criticizing the majority for ignoring the district court's thorough *Arlington Heights* analysis); *see also* Guy-Uriel E. Charles & Luis Fuentes-Rohwer, Abbott v. Perez*, Race, and the Immodesty of the Roberts Court*, HARV. L. REV. BLOG (July 31, 2018), https://blog.harvardlawreview.org/abbott-v-perez-race-and-the-immodesty-of-the-roberts-court/ [https://perma.cc/6QG6-QKWX].

48 481 U.S. 279 (1987).

49 *Id.* at 293–97.

50 *See* Sumi Cho, *Post-Racialism*, 94 IOWA L. REV. 1589, 1616–21, 1645 (2009).

51 *See* Sara Mayeux, *Debating the Past's Authority in Alabama*, 70 STAN. L. REV. 1645, 1649–50 (2018).

52 570 U.S. 529 (2013).

53 *Id.* at 535 (citing Voting Rights Act of 1965, Pub. L. No. 89-110, § 4, 79 Stat. 437, 438–39).

54 *Id.* at 540 (quoting Nw. Austin Mun. Util. Dist. No. One v. Holder, 557 U.S. 193, 202 (2009)).

55 *Id.* at 547.

was no longer present.[56] Thus, the infringement on state sovereignty was no longer constitutionally permitted.

Conversely, the *Lewis* court's treatment of the discrimination claim reflects a race-conscious framework, which acknowledges the continued salience of race, particularly in imbalances of political and economic power. Compare the language in *Shelby County* with the evocative language on contemporary racism in *Lewis*: "Today, racism is no longer pledged from the portico of the capitol or exclaimed from the floor of the constitutional convention; it hides, abashed, cloaked beneath ostensibly neutral laws and legitimate bases, steering government power toward no less invidious ends."[57] While explicitly acknowledging that "things" have indeed changed, the *Lewis* court recognized that racism remains pervasive, even if camouflaged. This particular understanding enabled the court to draw the inferences necessary to find a claim of intentional discrimination where the Supreme Court likely would not.

The *Lewis* court's race-conscious approach better reflects the lived experiences of Black Americans. While white Americans "tend to believe that equal opportunity exists . . . regardless of race,"[58] most Black Americans experience race-based disadvantage as a "substantial obstacle to their advancement."[59] This latter perception is supported not only by evidence of systemic racism and inequality,[60] which the Supreme Court refuses to recognize as constitutionally relevant,[61] but also by instances in which policymakers' explicit bigotry is revealed.[62] By contrast, the Supreme Court's post-racial approach allows these modern manifestations of racial subordination to go on unfettered by ignoring the ways that racism has evolved.[63] As the Supreme Court ignores the

---

[56] *Id.*

[57] *Lewis*, 896 F.3d at 1296–97 (footnotes omitted).

[58] Darren Lenard Hutchinson, *Preventing Balkanization or Facilitating Racial Domination: A Critique of the New Equal Protection*, 22 VA. J. SOC. POL'Y & L. 1, 45–46 (2015).

[59] Darren Lenard Hutchinson, *Undignified: The Supreme Court, Racial Justice, and Dignity Claims*, 69 FLA. L. REV. 1, 46 (2017).

[60] *See, e.g.*, Lori Latrice Martin, *Low-Wage Workers and the Myth of Post-Racialism*, 16 LOY. J. PUB. INT. L. 405, 410–11, 418 (2015) (discussing the overrepresentation of Black workers among low-wage workers in connection with histories of racism and subordination); Vickie M. Mays et al., *Race, Race-Based Discrimination, and Health Outcomes Among African Americans*, 58 ANN. REV. PSYCHOL. 201, 204–05 (2007); Lincoln Quillian et al., *Hiring Discrimination Against Black Americans Hasn't Declined in 25 Years*, HARV. BUS. REV. (Oct. 11, 2017), https://hbr.org/2017/10/hiring-discrimination-against-black-americans-hasnt-declined-in-25-years [https://perma.cc/35P6-CMDC].

[61] *See* Olatunde C.A. Johnson, *Disparity Rules*, 107 COLUM. L. REV. 374, 375–76 (2007).

[62] *See, e.g.*, CIVIL RIGHTS DIV., U.S. DEP'T OF JUSTICE, INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 70–75 (2015), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf [https://perma.cc/8J3V-8L9Z] (reporting on racist emails within the Ferguson Police Department and finding that the city's "law enforcement practices are directly shaped and perpetuated by racial bias," *id.* at 70).

[63] *See* Neil Gotanda, *A Critique of "Our Constitution Is Color-Blind,"* 44 STAN. L. REV. 1, 43–46 (1991) (arguing that ignoring that racism is "complex and systemic . . . helps maintain white

continued salience of race, *Lewis* diverges, affirming what many Americans already know — racial animus persists in state institutions and continues to inhibit social and economic equality for Black Americans.[64]

Because the race-conscious approach better reflects most Black Americans' understandings of reality, it may play a part in bolstering judicial legitimacy — defined here as community perception of the courts as fair and judicial decisions as worthy of consent.[65] Professor Dan Kahan and others draw a connection between the law's tendency to "take ordinary citizens' understandings of reality into account"[66] and legitimacy, which includes the law's "power to command voluntary compliance" and the degree to which the law is "morally worthy of assent."[67] Courts' ability to reflect community understandings of reality may support perceptions of procedural fairness and legitimacy not just among litigants themselves but also among the wider community.[68] The *Lewis* court's reflection of Black Americans' lived experiences may contribute, then, to bolstering the legitimacy of the courts among Black Americans, particularly as their realities are ignored or rejected by the Supreme Court's post-racial jurisprudence.[69]

Lewis's candid discussion of racism's contemporary manifestations highlights the growing gap between the Court's post-racial approach and Black Americans' lived experiences. Admittedly, *Lewis* is only one case. Its legitimizing effects and rhetorical power can have only a correspondingly narrow impact. However, if lower courts are concerned about the Supreme Court's failure to reflect Black Americans' understandings of reality, they can and should look to *Lewis* for instruction.

---

privilege by limiting discussion or consideration of racial subordination," *id.* at 46); *see also* Selmi, *supra* note 46, at 284–85.

64 *See* Hutchinson, *supra* note 58, at 46; *see also* Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1377–79 (1988).

65 This definition reflects concepts of moral and sociological judicial legitimacy as described in Richard H. Fallon, Jr., *Legitimacy and the Constitution*, 118 HARV. L. REV. 1787, 1828–36 (2005).

66 Dan M. Kahan et al., *Whose Eyes Are You Going to Believe?* Scott v. Harris *and the Perils of Cognitive Illiberalism*, 122 HARV. L. REV. 837, 883 (2009).

67 *Id.* at 884 (emphasis omitted).

68 *See* Rebecca Hollander-Blumoff, *The Psychology of Procedural Justice in the Federal Courts*, 63 HASTINGS L.J. 127, 143–45 (2011).

69 Legitimacy's normative value may appear obvious for several reasons: perceptions of legal institutions as fair may encourage people to abide by the law, *see* PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING, FINAL REPORT OF THE PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING 9–10 (2015), and legitimacy is likely essential to the success of the judiciary as an institution, *see* Tom R. Tyler, *Psychological Perspectives on Legitimacy and Legitimation*, 57 ANN. REV. PSYCHOL. 375, 377–78 (2006). However, judicial legitimacy may be an undesirable goal if it protects an immoral status quo. *Cf.* Peter Gabel & Duncan Kennedy, *Roll Over Beethoven*, 36 STAN. L. REV. 1, 26 (1984) (arguing that the notion of rights is a "passivizing illusion"). From that perspective, sporadic decisions, like *Lewis*, affirming the experiences of Black citizens might distract from a more fundamental restructuring of the legal system. *Cf.* Crenshaw, *supra* note 64, at 1349 (arguing that the "limited gains" of the 1960s civil rights reforms may have "hamper[ed] efforts of African-Americans to name their reality and to remain capable of engaging in collective action in the future"). This tension is one that judges, litigants, and advocates must consider in their decisionmaking on individual cases.