

THE *SHELBY* DISSENT AND THE CASE FOR ISRAEL

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I. INTRODUCTION

If you agree that there has not been an end to racial discrimination that justifies undermining the Voting Rights Act, then you should be supporting the right of the State of Israel to exist for the same reasons.

II. *SHELBY/LOUISIANA V. CALLAIS* DECISION

In April 2026, the United States Supreme Court ruled as unconstitutional Louisiana's use of race in creating its congressional map.¹ The Court's 6-3 decision "effectively nullified [a key provision of the Voting Rights Act], which had required states to draw electoral maps giving racial minorities a fair chance to elect their preferred candidates."² Almost immediately after the ruling, at least six states controlled by Republican legislatures began to redraw voting maps.³ Almost as swiftly as these proposed changes has been the outcry by many that the Court's decision and these new maps are Jim-Crow-like,

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¹ *Louisiana v. Callais*, 146 S. Ct. 1131 (2026).

² Makenzie Huber, *Supreme Court Ruling Robs Native Americans of 'Silent Partner' in Legislative Redistricting*, KOTA TERRITORY (May 26, 2026), <https://www.kotatv.com/2026/05/22/supreme-court-ruling-robs-native-americans-silent-partner-legislative-redistricting/> (on file with the Touro Law Review).

³ *Id.*

embolden further partisan gerrymandering, and raise concerns about electoral fairness.⁴

This case followed the Court's 2013 decision in *Shelby County v. Holder*.⁵ In the 5-4 decision, the Court suspended parts of the Voting Rights Act of 1965 which required the states to obtain federal approval before changing voting laws. The reasoning behind the Voting Rights Act was to ensure that any proposed changes to voting by the states did not "deny or abridge the right to vote on account of race, color, or membership in a language minority group."⁶ The *Shelby* decision ended the states' need to seek preclearance for the new voting changes.

III. *SHELBY/LOUISIANA V. CALLAIS* DISSENT

In *Louisiana v. Callais*, the Court's minority wrote a blistering dissent citing the *Shelby* case "in which the Court ordained itself the arbiter of when civil rights laws are no longer needed."⁷ The dissent noted that, essentially, the success of the Voting Rights Act in preventing discrimination led the majority to vanquish the safeguards that led to this success. Justice Ginsburg noted in her dissent the misjudgment of "throwing away your umbrella in a rainstorm because you are not getting wet."⁸ Essentially, the basis of the *Shelby* dissent and those who argue against the Court's decision is that the notion that the effectiveness of the Voting Rights Act should not be the reason for its abolition. Discrimination remains an issue that the Voting Rights Act needs to continue to address. After the decision, the Brennan Center for Justice released the following statement in part: "The Supreme Court's decision is at odds with recent history. The Voting Rights Act was vital in 2012, not just 1965. For nearly five decades, it has been the nation's most effective tool to eradicate racial discrimination in voting. And it is still critical today."⁹

⁴ *Id.*

⁵ 570 U.S. 529 (2013).

⁶ *About Section 5 of the Voting Rights Act*, U.S. DEP'T OF JUST., CIV. RTS. DIV. (Nov. 17, 2023), <https://www.justice.gov/crt/about-section-5-voting-rights-act> (on file with the Touro Law Review).

⁷ 146 S. Ct. 1131, 1187 (2026) (Kagan, J., dissenting).

⁸ *Id.*

⁹ *Section 5 Stands, Now Congress Must Strengthen Voting Rights Act*, BRENNAN CTR. FOR JUST. (June 25, 2013), <https://www.brennancenter.org/our-work/analysis-opinion/section-5-stands-now-congress-must-strengthen-voting-rights-act> (on file with the Touro Law Review).

Indeed, the majority in *Louisiana v. Callais* quoted *Shelby* recognizing that the Voting Rights Act was a huge catalyst in the United States toward eliminating racial discrimination in voting.¹⁰ A Time Magazine article noted that subsequent events have conclusively disproven the majority's assessment in *Shelby*, that discrimination in voting was a thing of the past.¹¹ Discrimination is still an issue in the United States.

IV. ANTISEMITISM IN THE UNITED STATES

Much like discrimination, antisemitism is still very much an issue in the United States. This was never more apparent than after the tragic events of October 7, 2023 in Israel. According to one report by the United Nations, Palestinian armed groups and civilians murdered more than 1,200 persons mostly consisting of civilian men, women, and children. It also reports "rape and gang rape . . . sexual violence, including genital mutilation, sexualized torture, or cruel, inhuman and degrading treatment" by the perpetrators against the victims.¹² Additionally, these culprits abducted and took 251 people hostage. In the week following the October 7th attack, long before Israel began its ground offenses against Gaza, there were approximately 150 anti-Israel rallies across the United States.¹³ Demonstrators voiced support for the October 7th attacks and displayed or voiced antisemitic tropes. In the months after October 7th, antisemitic incidents in the United States increased by about 361%.¹⁴

In addition to the rise of antisemitism awakened by the Palestinian attack against Israel on October 7, 2023, the rise of White

¹⁰ 146 S. Ct. at 1160 (majority opinion).

¹¹ Joyce W. Vance, *Ruth Bader Ginsburg Lost Her Battle to Save Voting Rights. Here's How We Can Take Up the Fight and Honor Her Legacy*, TIME (Sep. 21, 2020), <https://time.com/5890983/ruth-bader-ginsburg-voting-rights/> (on file with the Touro Law Review).

¹² U.N. HUM. RTS. COUNCIL, DETAILED FINDINGS ON ATTACKS CARRIED OUT ON AND AFTER 7 OCTOBER 2023 IN ISRAEL A/HRC/56/CRP.3 (2024).

¹³ *Support for Hamas Terror at Anti-Israel Rallies Across the U.S.*, ADL (Oct. 14, 2023), <https://www.adl.org/resources/article/support-hamas-terror-anti-israel-rallies-across-us> (on file with the Touro Law Review).

¹⁴ *U.S. Antisemitic Incidents Skyrocketed 360% in Aftermath of Attack in Israel, According to Latest ADL Data*, ADL (Jan. 17, 2024) <https://www.adl.org/resources/press-release/us-antisemitic-incidents-skyrocketed-360-aftermath-attack-israel-according> (on file with the Touro Law Review).

Christian Nationalism further threatens the Jewish people. “This time, however, its loyal adherents come well-prepared, armed with no less than [President Trump] seeking to reclaim his awesome powers; a group of U.S. Representatives, including the House Speaker himself; and yet again, possibly a Supreme Court Justice.”¹⁵

White Christian Nationalism and its supporters present a threat to American Jewry. Survey data indicated that one out of four American Jews was victimized by antisemitism in 2021.¹⁶ A 2025 report indicated that 33% of American Jews personally experienced antisemitism.¹⁷ Similarly, antisemitic incidents in the U.S. reached its highest level since the Antidefamation League began tracking antisemitism in 1979.¹⁸ This does not include the slew of recent violence committed against Jews.¹⁹ In a March 2024 story for The Atlantic, journalist Franklin Foer argued that the unprecedented era of safety, legal equality, and prosperity that Jewish Americans enjoyed for much of the recent past in the United States is actively ending.²⁰ Foer detailed how American Jews are facing an assault from both ends of the political spectrum, but he specifically focused on how right-wing movements have degraded the foundational systems keeping minority groups, including Jews, safe. Antisemitism remains a huge, and dangerous, problem for American Jewry regardless of political affiliation.

¹⁵ Doron Kalir, *White Christian Nationalism & Antisemitism: A True Threat*, 19 FIU L. REV. 709 (2025).

¹⁶ Hope D. LaFreniere Tamez, Natalie Anastasio & Arie Perlinger, Abstract, *Explaining the Rise of Antisemitism in the United States*, 49 STUD. IN CONFLICT & TERRORISM 828 (2024).

¹⁷ Callum Sutherland, *The Rise of Antisemitism and Political Violence in the U.S.*, TIME (June 2, 2025), <https://time.com/7287941/rise-of-antisemitism-political-violence-in-united-states/> (on file with the Touro Law Review).

¹⁸ Tamez, Anastasio & Perlinger, *supra* note 16.

¹⁹ Kalir, *supra* note 15; In October 2018, a White Supremacist killed eleven Jewish worshippers and wounded six at the Tree of Life Synagogue in Pittsburgh. More recently, violence against Jews included: A shooting at the Capital Jewish Museum in Washington, D.C.; an attack with Molotov cocktails at a Run for Their Lives event in Colorado; a firebombing of Governor Josh Shapiro’s residence in Pennsylvania, and; a stabbing of a Jewish man on the streets of New York. ADL, AUDIT OF ANTISEMITIC INCIDENTS 2025 (2026).

²⁰ Franklin Foer, *The Golden Age of American Jews Is Ending*, ATLANTIC (Mar. 4, 2024), <https://www.theatlantic.com/magazine/archive/2024/04/us-anti-semitism-jewish-american-safety/677469/> (on file with the Touro Law Review).

V. THE CONTENTION THAT ISRAEL IS NO LONGER NECESSARY

Zionism arose in late 19th-century Europe largely as a response to intense, systemic antisemitism and the failure of European emancipation (as evidenced by events like the Dreyfus Affair and Russian pogroms).²¹ Opponents of Israel and Zionism have scrambled for reasons to justify away Israel's right to exist. Even before the tragic events of October 7, 2023, and the subsequent war, many argued that the success and safety of Jews in Western democracies renders a separate ethno-state redundant or unnecessary.²² They see the historically unprecedented success of Jewish communities in modern Western democracies, particularly the United States, as proof that it is no longer necessary. This argument decrees that Jews in countries like America have achieved full legal equality, robust civil rights protection, and deep integration into the highest levels of political, economic, academic, and cultural life.²³

VI. ISRAEL IS NECESSARY

Ultimately, as the events of October 7, 2023, and the subsequent rise in antisemitism across the globe demonstrate, Jews still remain a targeted class. Antisemitism remains apparent from both sides of the American political spectrum despite the perpetuated successful codification of religious freedom and equal protection under the law. The era of safety, legal equality, and prosperity that Jewish Americans enjoyed for much of the recent past in the United States is actively ending.

And with it, the contention that Israel is no longer necessary should also end. If you believe the dissents in *Shelby* and *Callais* were right, and that we still need the Voting Rights Act to fight

²¹ Fred Strickert, *Zionist Movement*, EBSCO (2023), <https://www.ebsco.com/research-starters/history/zionist-movement> (on file with the Touro Law Review).

²² See William Safran, *Israel and the Diaspora: Problems of Cognitive Dissonance*, INT'L MIGRATION INST. UNIV. OF OXFORD WORKING PAPERS Paper 53, April 2012 at 6 "they refer to the existence of a 'global shtetl' marked by Jewish cross-polity relationships, point to a vibrant Jewish secular civilization in diaspora, and question whether the existence of Israel is even necessary for the perpetuation of Jewish civilization."

²³ Yossi Shain & Barry Bristman, *Diaspora, Kinship and Loyalty: The Renewal of Jewish National Security*, 78 INT'L AFF. 69 (2002).

discrimination, then you should support Israel's right to exist for the very same reason. The same logic that animated the dissents in *Shelby* and *Louisiana v. Callais*—namely, that persistent discrimination justifies robust institutional protections—applies equally to supporting the necessity of Israel's right to exist. Like the dissent in *Shelby*, the call for the dissolution of the State of Israel because Jews are protected is like “throwing away your umbrella in a rainstorm because you are not getting wet.” Israel is the Jewish people's umbrella.