

CONSTITUTION 101

Module 13: Voting Rights in America

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SHELBY COUNTY V. HOLDER (2013)

View the case on the Constitution Center's website [here](#).

SUMMARY

The Voting Rights Act of 1965, passed to protect the right to vote of minorities, required certain jurisdictions with a history of discriminatory voting practices to receive permission from the federal government before implementing changes in voting procedures. This process was known as “preclearance,” and Congress used a formula to determine which jurisdictions would be covered by this preclearance requirement. In *Shelby County v. Holder*, the Supreme Court assessed whether this feature of the VRA was constitutional under Congress's power to “enforce” the 14th and 15th Amendments, which prohibit racially discriminatory voting practices. The Court held that the relevant statutory provisions were now unconstitutional because Congress's requirements must be justified by *current* burdens and needs. This decision cleared the way for the passage of many recent voter laws, including Texas's photo ID law (announced within 24 hours of this ruling) and various statutes restricting poll hours, early voting, and pre- and same-day registration.

[Read the Full Opinion](#)

Excerpt: Majority Opinion, Chief Justice Roberts

The Voting Rights Act was a powerful measure that addressed a serious problem; its preclearance requirement departed from traditional federalism; the Court acknowledged that the VRA was strong medicine, but it concluded that it was needed to address pervasive racial discrimination in voting. The Voting Rights Act of 1965 employed extraordinary measures to address an extraordinary problem. Section 5 of the Act required States to obtain federal permission before enacting any law related to voting—a drastic departure from basic principles of federalism. And §4 of the Act applied that requirement only to some States—an equally dramatic departure from the principle that all States enjoy equal sovereignty. This was strong medicine, but Congress determined it was needed to address entrenched racial discrimination in voting, “an insidious and pervasive evil which had been perpetuated in certain parts of our country through unremitting and ingenious defiance of the Constitution.” As we explained in upholding the law, “exceptional conditions can justify legislative measures not otherwise appropriate.” . . . Reflecting the unprecedented nature of these measures, they were scheduled to expire after five years

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CONSTITUTION 101

Module 13: Voting Rights in America

13.4 Primary Source

The VRA is still in effect, and Congress has even strengthened it; but conditions have changed; we no longer see massively lower registration and voting rates among African Americans. Nearly 50 years later, they are still in effect; indeed, they have been made more stringent, and are now scheduled to last until 2031. There is no denying, however, that the conditions that originally justified these measures no longer characterize voting in the covered jurisdictions. By 2009, “the racial gap in voter registration and turnout [was] lower in the States originally covered by §5 than it [was] nationwide.” . . . Since that time, Census Bureau data indicate that African-American voter turnout has come to exceed white voter turnout in five of the six States originally covered by §5, with a gap in the sixth State of less than one half of one percent. . . .

Voting discrimination still exists; but the question remains whether the strong medicine of the VRA is justified by current conditions. At the same time, voting discrimination still exists; no one doubts that. The question is whether the Act’s extraordinary measures, including its disparate treatment of the States, continue to satisfy constitutional requirements. As we put it a short time ago, “the Act imposes current burdens and must be justified by current needs.” . . .

The original VRA was well-tailored to the conditions that existed at the time. When upholding the constitutionality of the coverage formula in 1966, we concluded that it was “rational in both practice and theory.” The formula looked to cause (discriminatory tests) and effect (low voter registration and turnout), and tailored the remedy (preclearance) to those jurisdictions exhibiting both.

However, Congress has not updated the formula that determines which states are covered by the preclearance requirement; it is no longer well-tailored to reflect current conditions. By 2009, however, we concluded that the “coverage formula raise[d] serious constitutional questions.” As we explained, a statute’s “current burdens” must be justified by “current needs,” and any “disparate geographic coverage” must be “sufficiently related to the problem that it targets.” The coverage formula met that test in 1965, but no longer does so.

The coverage formula is outdated, and the conditions on the ground have changed. Coverage today is based on decades-old data and eradicated practices. The formula captures States by reference to literacy tests and low voter registration and turnout in the 1960s and early 1970s. But such tests have been banned nationwide for over 40 years. And voter registration and turnout numbers in the covered States have risen dramatically in the years since. Racial disparity in those numbers was compelling evidence justifying the preclearance remedy and the coverage formula. There is no longer such a disparity.

The formula made sense in 1965; it doesn’t make sense today. In 1965, the States could be divided into two groups: those with a recent history of voting tests and low voter registration and turnout, and those without those characteristics. Congress based its coverage formula on that

CONSTITUTION 101

Module 13: Voting Rights in America

13.4 Primary Source

distinction. Today the Nation is no longer divided along those lines, yet the Voting Rights Act continues to treat it as if it were. . . .

We must always pause before exercising judicial review to strike down a law passed by Congress; in a previous case, we expressed our constitutional concerns and gave Congress time to update the formula; Congress didn't do so; now, we must declare the coverage formula unconstitutional. Striking down an Act of Congress “is the gravest and most delicate duty that this Court is called on to perform.” . . . We do not do so lightly. That is why, in 2009, we took care to avoid ruling on the constitutionality of the Voting Rights Act when asked to do so, and instead resolved the case then before us on statutory grounds. But in issuing that decision, we expressed our broader concerns about the constitutionality of the Act. Congress could have updated the coverage formula at that time, but did not do so. Its failure to act leaves us today with no choice but to declare §4(b) unconstitutional. The formula in that section can no longer be used as a basis for subjecting jurisdictions to preclearance.

Our ruling only addresses the coverage formula; it doesn't touch other parts of the VRA; and it still gives Congress the opportunity to craft a new coverage formula that addresses current conditions. Our decision in no way affects the permanent, nationwide ban on racial discrimination in voting found in §2. We issue no holding on §5 itself, only on the coverage formula. Congress may draft another formula based on current conditions. Such a formula is an initial prerequisite to a determination that exceptional conditions still exist justifying such an “extraordinary departure from the traditional course of relations between the States and the Federal Government.” . . . Our country has changed, and while any racial discrimination in voting is too much, Congress must ensure that the legislation it passes to remedy that problem speaks to current conditions.

Excerpt: Dissent, Justice Ruth Bader Ginsburg

Congress studied the problem of racial discrimination in voting and decided to reauthorize the Voting Rights Act; I would defer to Congress's judgment and uphold the VRA in its entirety. In the Court's view, the very success of §5 of the Voting Rights Act demands its dormancy. Congress was of another mind. Recognizing that large progress has been made, Congress determined, based on a voluminous record, that the scourge of discrimination was not yet extirpated. The question this case presents is who decides whether, as currently operative, §5 remains justifiable, this Court, or a Congress charged with the obligation to enforce the post-Civil War Amendments “by appropriate legislation.” With overwhelming support in both Houses, Congress concluded that, for two prime reasons, § 5 [the preclearance requirement] should continue in force, unabated. First, continuance would facilitate completion of the impressive gains thus far made; and second, continuance would guard against backsliding. Those assessments were well within Congress' province to make and should elicit this Court's unstinting approbation. . . .

CONSTITUTION 101

Module 13: Voting Rights in America

13.4 Primary Source

The Court admits that voting discrimination still exists, but it gets rid of the most powerful method for addressing it. “[V]oting discrimination still exists; no one doubts that.” But the Court today terminates the remedy that proved to be best suited to block that discrimination. The Voting Rights Act of 1965 (VRA) has worked to combat voting discrimination where other remedies had been tried and failed. Particularly effective is the VRA’s requirement of federal preclearance for all changes to voting laws in the regions of the country with the most aggravated records of rank discrimination against minority voting rights. . . .

The VRA has helped our nation make massive progress, but voting discrimination remains a problem; that’s why Congress reauthorized the VRA. But despite this progress, “second generation barriers constructed to prevent minority voters from fully participating in the electoral process” continued to exist, as well as racially polarized voting in the covered jurisdictions, which increased the political vulnerability of racial and language minorities in those jurisdictions. Extensive “[e]vidence of continued discrimination,” Congress concluded, “clearly show[ed] the continued need for Federal oversight” in covered jurisdictions. The overall record demonstrated to the federal lawmakers that, “without the continuation of the Voting Rights Act of 1965 protections, racial and language minority citizens will be deprived of the opportunity to exercise their right to vote, or will have their votes diluted, undermining the significant gains made by minorities in the last 40 years.” . . .

The Fifteenth Amendment grants Congress broad power to attack racial discrimination in voting; the Court has repeatedly reaffirmed Congress’s power in this area; we should defer to Congress here. In summary, the Constitution vests broad power in Congress to protect the right to vote, and in particular to combat racial discrimination in voting. This Court has repeatedly reaffirmed Congress’ prerogative to use any rational means in exercise of its power in this area. And both precedent and logic dictate that the rational-means test should be easier to satisfy, and the burden on the statute’s challenger should be higher, when what is at issue is the reauthorization of a remedy that the Court has previously affirmed, and that Congress found, from contemporary evidence, to be working to advance the legislature’s legitimate objective. . . .

The Court has given Congress considerable leeway in this area, deferring to its judgments; and Congress has studied this problem extensively, accumulating a massive record; we should honor its judgment here. The Court has time and again declined to upset legislation of this genre unless there was no or almost no evidence of unconstitutional action by States. . . . No such claim can be made about the congressional record for the 2006 VRA reauthorization. Given a record replete with examples of denial or abridgment of a paramount federal right, the Court should have left the matter where it belongs: in Congress’ bailiwick.

CONSTITUTION 101

Module 13: Voting Rights in America

13.4 Primary Source

Why should we throw away a part of the VRA that has worked so well? Instead, the Court strikes §4(b)'s coverage provision because, in its view, the provision is not based on “current conditions.” . . . It discounts, however, that one such condition was the preclearance remedy in place in the covered jurisdictions, a remedy Congress designed both to catch discrimination before it causes harm, and to guard against return to old ways. . . . Volumes of evidence supported Congress' determination that the prospect of retrogression was real. Throwing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet. . . .

The nation still needs the preclearance requirement to avoid backsliding. The sad irony of today's decision lies in its utter failure to grasp why the VRA has proven effective. The Court appears to believe that the VRA's success in eliminating the specific devices extant in 1965 means that preclearance is no longer needed. With that belief, and the argument derived from it, history repeats itself. The same assumption—that the problem could be solved when particular methods of voting discrimination are identified and eliminated—was indulged and proved wrong repeatedly prior to the VRA's enactment. Unlike prior statutes, which singled out particular tests or devices, the VRA is grounded in Congress' recognition of the “variety and persistence” of measures designed to impair minority voting rights. In truth, the evolution of voting discrimination into more subtle second-generation barriers is powerful evidence that a remedy as effective as preclearance remains vital to protect minority voting rights and prevent backsliding.

The Court is right that the VRA remains strong medicine, but that's because it was designed to address a massive problem; and it has worked. Beyond question, the VRA is no ordinary legislation. It is extraordinary because Congress embarked on a mission long delayed and of extraordinary importance: to realize the purpose and promise of the Fifteenth Amendment. For a half century, a concerted effort has been made to end racial discrimination in voting. Thanks to the Voting Rights Act, progress once the subject of a dream has been achieved and continues to be made.

In 2006, Congress studied the problem closely, built a massive record, and, in an overwhelmingly bipartisan vote, agreed to reauthorize the VRA; this move was consistent with Congress's power to enforce the Fifteenth Amendment's promise to end racial discrimination in voting. The record supporting the 2006 reauthorization of the VRA is also extraordinary. It was described by the Chairman of the House Judiciary Committee as “one of the most extensive considerations of any piece of legislation that the United States Congress has dealt with in the 27½ years” he had served in the House. . . . After exhaustive evidence-gathering and deliberative process, Congress reauthorized the VRA, including the coverage provision, with overwhelming bipartisan support. It was the judgment of Congress that “40 years has not been a sufficient amount of time to eliminate the vestiges of discrimination following nearly 100 years of disregard for the dictates of the 15th amendment and to ensure

CONSTITUTION 101

Module 13: Voting Rights in America

13.4 Primary Source

that the right of all citizens to vote is protected as guaranteed by the Constitution.” . . . That determination of the body empowered to enforce the Civil War Amendments “by appropriate legislation” merits this Court’s utmost respect. In my judgment, the Court errs egregiously by overriding Congress’ decision.

***Bold sentences give the big idea of the excerpt and are not a part of the primary source.**