ALABAMA POLICY INSTITUTE

GUIDE TO THE ISSUES

Shelby County, Alabama v. Holder (Section 4 of the Voting Rights Act)

Background

When the Voting Rights Act (VRA) was enacted in 1965, minority voters, specifically African-Americans, were intentionally denied their right to vote by many state governments. The VRA forbade states from sanctioning any "standard, practice, or procedure . . . imposed or applied . . . to deny or abridge the right of any citizen of the United States to vote on account of race or color."[i]

The VRA further targeted "covered" jurisdictions with less than 50% voter registration or turnout in the 1964 Presidential election, as well as jurisdictions that had developed a prerequisite to vote, such as literacy or knowledge test.[ii] The provisions pertaining to the "covered" jurisdictions, sections 4 and 5, were intended to be temporary and were set to expire after five years; however, the Act was reauthorized in 1970, 1975, 1982, and 2006. Each time, Congress failed to alter or update the original formula in section 4 except to expand the criteria for coverage under section 5.[iii]

The VRA sharply departs from the basic principles of federalism. It requires states to request permission from the federal government to implement laws that they would otherwise have the right to enact and execute on their own. A constitutional challenge to the law in 1966 found that the law was justified to address "voting discrimination where it persists on a pervasive scale,"[iv] concluding that such an "uncommon exercise of congressional power" could be justified by "exceptional conditions."[v]

ISSUE SNAPSHOT

Sections 4 and 5 of the Voting Rights Act of 1965 pertaining to the "covered" jurisdictions were set to expire after five years but were reauthorized in 1970, 1975, 1982, and 2006.

In 2009, the racial gap in voter registration and turnout was lower in the states originally covered than it was nationwide.

In June 2013, the U.S. Supreme Court ruled in a 5-4 decision that the formula in section 4 of the VRA is no longer appropriate since "the conditions that originally justified these measures no longer characterize voting in the covered jurisdictions."

Section 5 requires that the jurisdiction obtain permission from the U.S. Attorney General before making any changes in regard to local, state, or federal elections. The suit by Shelby County began in 2010 after the U.S. Attorney General Holder objected to voting changes within Shelby County. In response, Shelby County filed suit seeking relief from sections 4(b) and 5 of the VRA under the argument that the law was fundamentally unconstitutional. Shelby County based its argument on the notion that the purpose of the law, ensuring the minority vote, was no longer necessary because the minority vote was no longer being discriminated against in many of the areas that were "covered" under the VRA.

The Supreme Court ruled in a 5-4 decision that the formula in section 4 of the VRA is no longer appropriate since "the conditions that originally justified these

measures no longer characterize voting in the covered jurisdictions."[vi] The Court submitted that the "pervasive," "flagrant," "widespread," and "rampant" discrimination that clearly distinguished the covered jurisdictions from the rest of the nation in 1965 no longer exists to remotely the same degree.[vii]

Policy Consideration

In 2009, "the racial gap in voter registration and turnout [was] lower in the States originally covered by §5 than it [was] nationwide."[viii] The Court also noted this difference by referencing voter registration comparisons. This information showed a 50 percentage point difference in Alabama voter registration between white and black groups in 1965. However, according to Alabama voter turnout data from 2012, 62.8% of the African-American citizens in Alabama voted, compared with 59.3% of the white population.[ix]

The Court noted that their "decision in no way affects the permanent, nationwide ban on racial discrimination in voting found in [Section] 2. [The Court offered] no holding on [Section] 5 itself, only on the coverage formula. Congress may draft another formula based on current conditions."[x] The Court has essentially provided Congress an avenue to continue the pre-clearance requirements of section 5, provided Congress devises a new constitutionally-compliant formula. By refusing to strike down sections 4 and 5 in their entirety, the Court permits the issue to be debated again by Congress in regard to the states' voting abilities.

Also, this decision will not allow previously covered states to once again segregate the vote or enact new Jim Crow laws; all states are still bound by the 15th Amendment and other anti-discrimination laws. With this decision, the Supreme Court has restored the proper balance between state sovereignty and federal power with respect to election laws.

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[i] 42 U.S.C.A. § 1973 (West); http://library.clerk.house.gov/reference-files/PPL_VotingRightsAct_1965.pdf.
[ii] *Shelby Co., Al., v. Holder, 570 U.S. 2, 3 (2013); See §4(c), id., at 438–439;* *http://www.supremecourt.gov/opinions/12pdf/12-96_6k47.pdf*.
[iii] *See Shelby Co., Al, 570 U.S.* at 6.
[iv] *State of S.C. v. Katzenbach*, 383 U.S. 301, 86 S. Ct. 808, 15 L. Ed. 2d 769 (U.S.S.C. 1966).
[v] *Shelby Co., Al., 570 U.S.* at 4; See *Katzenbach* at 334.
[vi] *Shelby Co., Al., 570 U.S.* at *3*.
[vii] Northwest Austin Municipal Util. Dist. No. One v. Holder, 557 U. S., 201(2009), *available at* *http://www2.bloomberglaw.com/public/desktop/document/Northwest_Austin_Mun_Utility_Dist_No_One_v_Holder_129_S_Ct_2504_1*.
[viii] *Northwest Austin Municipal Util. Dist. No. One* at 203-204.
[ix] See Dept. of Commerce, U.S. Census Bureau, Reported Voting and Registration, by Sex, Race and Hispanic Origin, for States (Nov. 2012) (Table 4b), http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2012/tables.html.
[x] *Shelby Co., Al.,* 570 U.S. at 24.