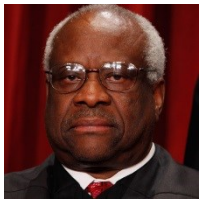
Folks: A question for you to ponder as you go through this document: Who benefits from the Supreme Court ruling in *Shelby County v. Holder* that struck down section 4 of the *Voting Rights Act of 1965* on June 25, 2013? (Notice, by the way, that this was a 5-4 decision. For which side did Clarence Thomas vote?)



Justice Clarence Thomas

PBS NEWSHOUR

DEBATE AIR DATE: Feb. 27, 2013

Is Discrimination History Provision of Voting Rights Act Still Relevant?

SUMMARY

Does the U.S. still need the Voting Rights Act? Or have we made extraordinary progress fighting racial discrimination, making it obsolete? Judy Woodruff talks with representatives from both sides of the argument: Hans von Spakovsky of the Heritage Foundation and Sherrilyn Ifill from the NAACP Legal Defense and Educational Fund.

Transcript (of audio available here: http://www-tc.pbs.org/newshour/rss/media/2013/02/27/20130227_votingrights2.mp3)

JUDY WOODRUFF: And now each side gets a chance to weigh in.

Hans Von Spakovsky is a senior legal fellow at the Heritage Foundation and he filed a brief in this case alongside former Justice Department officials. And Sherrilyn Ifill is president and director-counsel of the NAACP Legal Defense and Educational Fund. An attorney from her group argued before the court today.

Full disclosure: She is Gwen's cousin.

And welcome to you both.

SHERRILYN IFILL, NAACP Legal Defense and Educational Fund: Thank you.

JUDY WOODRUFF: So, Hans Von Spakovsky, here first -- to you first. What is the best argument for keeping the Voting Rights Act -- for getting rid of Section 5 of the Voting Rights Act?

Click here for "Oral History: Remembering the Voting Rights Act of 1965"

HANS VON SPAKOVSKY, Heritage Foundation: Section 5 was an emergency provision. It was supposed to be temporary, only supposed to last five years.

And it was put in place because of widespread and persistent discrimination. The conditions that justified it in 1965 don't exist today. And, in fact, the Supreme Court said back in 1966 that it was an extraordinary intrusion into state sovereignty, but it was justified by the unique circumstances.

That kind of widespread, systematic official discrimination doesn't exist. There are still incidents of discrimination, but those can be remedied by Section 2 of the Voting Rights Act. That's the nationwide permanent provision that bans racial discrimination in voting.

JUDY WOODRUFF: Sherrilyn Ifill, his argument is widespread racial discrimination doesn't exist anymore; therefore, that provision, Section 5, isn't needed.

SHERRILYN IFILL: Well, Congress had to take up that question in 2006, and they did. And over the course of nine months, they determined that it does exist.

The 15,000 pages of testimony that were described earlier, the 90 witnesses who testified, the 1,200 objections that the Justice Department had to make to voting changes, the 650 objections, over 400 of which were a determination that there was discriminatory purpose in voting changes throughout the jurisdictions that are covered by Section 5, that was the evidence that was before Congress in 2006.

And based on that evidence, not opinion, they determined that we still do need Section 5.

JUDY WOODRUFF: How does that square, Hans Von Spakovsky, with what you are saying, that there is no widespread racial discrimination? If there are that many examples of violations or alleged violations, how does that square with what you're saying?

HANS VON SPAKOVSKY: Let's talk about Alabama for just a second.

In the last 12 years, there's been exactly one objection made in Alabama. And over the last 20 years ...

JUDY WOODRUFF: When you say objection, objection to?

HANS VON SPAKOVSKY: An objection to a voting change that was submitted to the Justice Department for pre-clearance.

Out of the 12,000 jurisdictions that are covered, that's all states, municipalities, counties, city governments, in the last 10 years, there have only been 37 objections. In fact, today, the chief justice asked the solicitor general, in 2005, the year before renewal, how many submissions were made of voting changes? Thirty-seven hundred. How many objections were made? Just one.

The point of that is, there is no longer systematic widespread discrimination. And the record that Congress established didn't show that.

JUDY WOODRUFF: Sherrilyn Ifill?

SHERRILYN IFILL: That's simply too narrow a vision of what Section 5 does.

Objections are when the community or the jurisdiction proposes a plan, the Justice Department reviews it, and determines that that plan is going to discriminate against minority voters. But there are other things that happen as well. Sometimes, the jurisdiction submits a plan. The Justice Department says, we think this plan is problematic. Give us more information.

And the jurisdiction at that point will decide to withdraw the plan. There are over 800 instances in the period that Congress studied in which a jurisdiction did precisely that.

JUDY WOODRUFF: So what about that point, Hans Von Spakovsky?

HANS VON SPAKOVSKY: Look, over the lifetime of Section 5, there have been something like over 120,000 submissions. The number of objections is extremely small, even when taking into account that particular factor.

And the point is ...

JUDY WOODRUFF: When a provision was -- when a jurisdiction brought -- took it back and changed it; is that what you're saying?

HANS VON SPAKOVSKY: Yes.

But the point of that is those instances can be remedied through Section 2. That's when the government or private citizen goes to court and proves discrimination. Section 5, like I said, it's an intrusion into state sovereignty, because you can't make a change without getting the pre-approval of the government.

And that violates basic notions of sovereignty. And you can only do it if you have extraordinary circumstances. Those don't exist anymore.

JUDY WOODRUFF: Sherrilyn Ifill, why isn't Section 2 -- I know we're using a lot of terminology here.

SHERRILYN IFILL: Yes. Yes.

JUDY WOODRUFF: But the provision that applies to the whole country, why isn't that ...

SHERRILYN IFILL: Right. The provision that applies to the whole country enables you to sue after discrimination has happened.

But what do you do in a circumstance in which the polling place, as happened in a native Alaskan village just in 2008, that the jurisdiction decides to move the polling place out of that native Alaskan village to a location that would require those villagers to take either a plane or a boat to vote?

What do you do when that polling place change happens right before an election? Is it enough to say, I can file a lawsuit? What Congress wanted under Section 5 was to stop the discrimination before it happened. And what they said in 1965 wasn't just that they recognized that it was an intrusion, but what they said is, we need something that allows us to get at voting discrimination we can't even imagine yet, that will allow us to capture all of the ingenious methods that jurisdictions might use to discriminate against minority voters.

JUDY WOODRUFF: So, why isn't it better to move ahead of time, rather than waiting until after a violation has happened?

HANS VON SPAKOVSKY: Well, that issue came up in the court today. And one of the justices said, well, apparently the government hasn't heard of the fact that you can go immediately to court and get a temporary restraining order to stop that kind of behavior.

The point of this is that, under Section 5, we do something that is just unique in American jurisprudence. The burden of proof is not on the government is to show that discrimination has occurred. The burden of proof is on submitting jurisdictions to somehow prove a negative that they didn't discriminate.

And you can only put that kind of burden on if you have the kind of circumstances that justify it. And under the Supreme Court's own holding in 1966, that doesn't apply today.

JUDY WOODRUFF: How do you answer that?

SHERRILYN IFILL: This is precisely what Congress intended.

What Congress wanted was for the burden to be removed from the victims of discrimination and placed on the jurisdiction. And the Supreme Court has looked at this four times. The Voting Rights Act and the constitutionality of Section 5 has been challenged four times -- four times -- and each time, they have upheld the authority of Congress, who has the power under the 15th Amendment to protect the right to vote and to keep denials of the right to vote based on race and color from being enacted.

And what Congress tried to do was to make sure that not the victims of discrimination could bring lawsuits, costly lawsuits, but that instead the jurisdiction would have to submit to the federal authority to determine whether or not that voting change was discriminatory.

JUDY WOODRUFF: What about his other point about the option of doing a temporary injunction?

SHERRILYN IFILL: That still requires those native Alaskan villagers to find a lawyer, to go into court and to find a lawsuit.

And that's what Congress didn't want. It's actually ironic that people are saying it's better to have costly litigation that lasts years than to have an administrative process in which a jurisdiction can simply submit the documentation to the Department of Justice and get pre-clearance.

JUDY WOODRUFF: She's talking about what Congress intended when it wrote this law.

HANS VON SPAKOVSKY: I know, but what Congress said when it wrote this law was that this was supposed to be a temporary provision that would only last five years.

We have now renewed it for a fourth time. It is going to last until 2031. And an important issue we haven't discussed is the triggering formula. The jurisdictions that are covered today are covered based on registration and turnout data in the 1964, 1968, and 1972 elections. If you updated it, they would no longer be covered, because registration and turnout is now so good.

JUDY WOODRUFF: Just quickly, what about this out-of-date point?

SHERRILYN IFILL: We're talking about reauthorization.

In 2006, what Congress did was, they looked at these jurisdictions to determine what is happening in those jurisdictions now. That's the 15,000 pages of testimony. And it's based on that determination of the ongoing nature of discrimination in those jurisdictions that they reauthorized.

Moreover, the act has built into it a process for getting out from under Section 5. It's called bailout. And every jurisdiction that's sought bailout has been granted bailout. You have a clean voting record for 10 years, you can get out from under Section 5. New Hampshire has a pending bailout petition right now. Many people think that the state of Virginia is very close to be able to bail out.

All the jurisdiction has to do is have clean hands, which Alabama -- and almost every justice on the court conceded that today -- does not.

JUDY WOODRUFF: We are going to leave it there.

Sherrilyn Ifill, Hans Von Spakovsky, we thank you both.

HANS VON SPAKOVSKY: Thanks for having us.

SHERRILYN IFILL: Thank you, Judy.

GWEN IFILL: You can listen online to a collection of viewer stories about the Voting Rights Act as part of our special oral history project.

Source: http://www.pbs.org/newshour/bb/law/jan-june13/votingrights2_02-27.html

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The New York Times

June 25, 2013

Supreme Court Invalidates Key Part of Voting Rights Act

By ADAM LIPTAK

WASHINGTON — The Supreme Court on Tuesday effectively struck down the heart of the Voting Rights Act of 1965 by a 5-to-4 vote, freeing nine states, mostly in the South, to change their election laws without advance federal approval.

Wade Henderson, president and C.E.O. of the Leadership Conference on Civil and Human Rights, criticized the decision on Tuesday.

The court divided along ideological lines, and the two sides drew sharply different lessons from the history of the civil rights movement and the nation's progress in rooting out racial discrimination in voting. At the core of the disagreement was whether racial minorities continued to face barriers to voting in states with a history of discrimination.

"Our country has changed," Chief Justice John G. Roberts Jr. wrote for the majority. "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."

The decision will have immediate practical consequences. Texas announced shortly after the decision that a voter identification law that had been blocked would go into effect immediately, and that redistricting maps there would no longer need federal approval. Changes in voting procedures in the places that had been covered by the law, including ones concerning restrictions on early voting, will now be subject only to after-the-fact litigation.

President Obama, whose election as the nation's first black president was cited by critics of the law as evidence that it was no longer needed, said he was "deeply disappointed" by the ruling.

Justice Ruth Bader Ginsburg summarized her dissent from the bench, an unusual move and a sign of deep disagreement. She cited the words of the Rev. Dr. Martin Luther King Jr. and said his legacy and the nation's commitment to justice had been "disserved by today's decision."

She said the focus of the Voting Rights Act had properly changed from "first-generation barriers to ballot access" to "second-generation barriers" like racial gerrymandering and laws requiring at-large voting in places with a sizable black minority. She said the law had been effective in thwarting such efforts.

The law had applied to nine states — Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas and Virginia — and to scores of counties and municipalities in other states, including Brooklyn, Manhattan and the Bronx.

Chief Justice Roberts wrote that Congress remained free to try to impose federal oversight on states where voting rights were at risk, but must do so based on contemporary data. But the chances that the current Congress could reach agreement on where federal oversight is required are small, most analysts say.

Justices Antonin Scalia, Anthony M. Kennedy, Clarence Thomas and Samuel A. Alito Jr. joined the majority opinion. Justice Ginsburg was joined in dissent by Justices Stephen G. Breyer, Sonia Sotomayor and Elena Kagan.

The majority held that the coverage formula in Section 4 of the Voting Rights Act, originally passed in 1965 and most recently updated by Congress in 1975, was unconstitutional. The section determined which states must receive clearance from the Justice Department or a federal court in Washington before they made minor changes to voting procedures, like moving a polling place, or major ones, like redrawing electoral districts.

Section 5, which sets out the preclearance requirement, was originally scheduled to expire in five years. Congress repeatedly extended it: for five years in 1970, seven years in 1975, and 25 years in 1982. Congress renewed the act in 2006 after holding extensive hearings on the persistence of racial discrimination at the polls, again extending the preclearance requirement for 25 years. But it relied on data from the 1975 reauthorization to decide which states and localities were covered.

The current coverage system, Chief Justice Roberts wrote, is "based on 40-year-old facts having no logical relationship to the present day."

"Congress — if it is to divide the states — must identify those jurisdictions to be singled out on a basis that makes sense in light of current conditions," he wrote. "It cannot simply rely on the past."

The decision did not strike down Section 5, but without Section 4, the later section is without significance — unless Congress passes a new bill for determining which states would be covered.

It was hardly clear, at any rate, that the court's conservative majority would uphold Section 5 if the question returned to the court in the unlikely event that Congress enacted a new coverage formula. In a concurrence, Justice Thomas called for striking down Section 5 immediately, saying that the majority opinion had provided the reasons and had merely left "the inevitable conclusion unstated."

The Supreme Court had repeatedly upheld the law in earlier decisions, saying that the preclearance requirement was an effective tool to combat the legacy of lawless conduct by Southern officials bent on denying voting rights to blacks.

Critics of Section 5 say it is a unique federal intrusion on state sovereignty and a badge of shame for the affected jurisdictions that is no longer justified.

The Voting Rights Act of 1965 was one of the towering legislative achievements of the civil rights movement, and Chief Justice Roberts said its "strong medicine" was the right response to "entrenched racial discrimination." When it was first enacted, he said, black voter registration stood at 6.4 percent in Mississippi, and the gap between black and white registration rates was more than 60 percentage points.

In the 2004 election, the last before the law was reauthorized, the black registration rate in Mississippi was 76 percent, almost four percentage points higher than the white rate. In the 2012 election, Chief Justice Roberts wrote, "African-American voter turnout exceeded white voter turnout in five of the six states originally covered by Section 5."

The chief justice recalled the Freedom Summer of 1964, when the civil rights workers James Chaney, Andrew Goodman and Michael Schwerner were murdered near Philadelphia, Miss., while seeking to register black voters. He mentioned Bloody Sunday in 1965, when police officers beat marchers in Selma, Ala.

"Today," Chief Justice Roberts wrote, "both of those towns are governed by African-American mayors. Problems remain in these states and others, but there is no denying that, due to the Voting Rights Act, our nation has made great strides."

Justice Ginsburg, in her dissent from the bench, drew a different lesson from those events, drawing on the words of Dr. King.

"The great man who led the march from Selma to Montgomery and there called for the passage of the Voting Rights Act foresaw progress, even in Alabama," she said. " 'The arc of the moral universe is long,' he said, but 'it bends toward justice,' if there is a steadfast commitment to see the task through to completion."

In her written dissent, Justice Ginsburg said that Congress was the right body to decide whether the law was still needed and where. Congress reauthorized the law in 2006 by large majorities; the vote was 390 to 33 in the House and unanimous in the Senate. President George W. Bush, a Republican, signed the bill into law, saying it was "an example of our continued commitment to a united America where every person is valued and treated with dignity and respect."

The Supreme Court considered the constitutionality of the 2006 extension of the law in a 2009 decision, Northwest Austin Municipal Utility District Number One v. Holder. But it avoided answering the central question, and it seemed to give Congress an opportunity to make adjustments. Congress, Chief Justice Roberts noted on Tuesday, did not respond.

Justice Ginsburg suggested in her dissent that an era had drawn to a close with the court's decision on the Voting Rights Act, in Shelby County v. Holder, No. 12-96.

"Beyond question, the V.R.A. is no ordinary legislation," she wrote. "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," the Reconstruction-era amendment that barred racial discrimination in voting and authorized Congress to enforce it.

"For a half century," she wrote, "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."

"The court errs egregiously," she concluded, "by overriding Congress's decision."

This article has been revised to reflect the following correction:

Correction: June 25, 2013

An earlier version of this article misstated the name of a civil rights worker murdered in 1964. He was Michael Schwerner, not Schwermer.

Source: http://www.nytimes.com/2013/06/26/us/supreme-court-ruling.html

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The New York Times

Published: June 25, 2013

SHELBY COUNTY V. HOLDER

Between the Lines of the Voting Rights Act Opinion

By JOHN SCHWARTZ

Supreme Court's Voting Rights Act Decision **View Full Document »**

The decision in *Shelby County v. Holder* revolves around Section 4 of the Voting Rights Act, which establishes a "coverage formula" to determine which states and local governments fall under Section 5, and therefore need to get approval before changing their voting laws. The justices ruled that Section 4 is unconstitutional, and that the formula used for decades — revised and extended several times by Congress — can no longer be used to establish those "preclearance" requirements: "The conditions that originally justified these measures no longer characterize voting in the covered jurisdictions."

Chief Justice John G. Roberts, who has previously expressed skepticism about the continued need for parts of the Voting Rights Act, delivered the majority opinion. In the 5-to-4 ruling, he was joined by Justices Antonin Scalia, Anthony M. Kennedy, Clarence Thomas and Samuel A. Alito. Justice Thomas wrote a concurring opinion, and Justice Ruth Bader Ginsburg wrote a dissent, joined by Justices Stephen G. Breyer, Sonia Sotomayor and Elena Kagan.

Opinion of the Court

Page 1

Page 6
Chief Justice Roberts opens his opinion by stating that "the Voting Rights Act of 1965 employed extraordinary measures to address an extraordinary problem," using the "strong medicine" of applying heavy requirements on some states and not others to fight suppression of voting rights. He then suggests that those rules have outlived their usefulness.

> 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."

Page 15
Invoking the 10th Amendment, which reserves powers to the states that are not specifically granted to the federal government, and citing doctrines claiming that states should be treated equally, Chief Justice Roberts argues that the Voting Rights Act "sharply departs" from these principles of states' rights.

> The Voting Rights Act sharply departs from these basic principles. It suspends "*all* changes to state election law— however innocuous—until they have been precleared by federal authorities in Washington, D. C." *Id.,* at 202. States must beseech the Federal Government for permission to implement laws that they would otherwise have the right to enact and execute on their

> own, subject of course to any injunction in a §2 action. The Attorney General has 60 days to object to a preclearance request, longer if he requests more information. See 28 CFR §§51.9, 51.37. If a State seeks preclearance from a three-judge court, the process can take years.
>
> And despite the tradition of equal sovereignty, the Act applies to only nine States (and several additional counties). While one State waits months or years and expends funds to implement a validly enacted law, its neighbor can typically put the same law into effect immediately, through the normal legislative process. Even if a noncovered jurisdiction is sued, there are important differences between those proceedings and preclearance proceedings; the preclearance proceeding "not only switches the burden of proof to the supplicant jurisdiction, but also applies substantive standards quite different from those governing the rest of the nation."

Page 24

The chief justice concludes that times have changed: the formulas that govern singling out one state from another for different treatment, which once "made sense," have lost their relevance, and "nearly 50 years later, things have changed dramatically." But the rules governing which jurisdictions must be overseen have been repeatedly passed by Congress without change.

> But history did not end in 1965. By the time the Act was reauthorized in 2006, there had been 40 more years of it. In assessing the "current need[]" for a preclearance system that treats States differently from one another today, that history cannot be ignored. During that time, largely because of the Voting Rights Act, voting tests were abolished, disparities in voter registration and turnout due to race were erased, and African-Americans attained political office in record numbers. And yet the coverage formula that Congress reauthorized in 2006 ignores these developments, keeping the focus on decades-old data relevant to decades-old problems, rather than current data reflecting current needs.
>
> The Fifteenth Amendment commands that the right to vote shall not be denied or abridged on account of race or color, and it gives Congress the power to enforce that command. The Amendment is not designed to punish for the past; its purpose is to ensure a better future.

Page 28

Chief Justice Roberts closes his opinion by explaining what the decision does not do. It does not overturn the Voting Rights Act's ban on discriminatory voting rules. Furthermore, it does not directly affect the preclearance requirement in Section 5, which leaves Congress the opportunity to draft new rules -- based on current conditions -- to determine which states or local governments should be subject to preclearance. The decision allows those affected by voting rule changes to sue under Section 2 of the act, but that is a longer and more expensive process that places the burden of proof on those challenging the changes.

> 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." *Presley,* 502 U. S., at 500–501. 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.

Concurring Opinion from Justice Thomas

Page 29

Page 31

Justice Thomas argues that the majority opinion does not go far enough. Not only would he have struck down Section 4 of the act and its formula for determining which states deserve strong oversight, he would have eliminated Section 5 entirely and its requirement that some state and local governments still get clearance for any changes in voting law before putting them into practice.

> While the Court claims to "issue no holding on §5 itself," *ante,* at 24, its own opinion compellingly demonstrates that Congress has failed to justify "'current burdens'" with a record demonstrating "'current needs.'" See *ante,* at 9 (quoting *Northwest Austin, supra,* at 203). By leaving the inevitable conclusion unstated, the Court needlessly prolongs the demise of that provision. For the reasons stated in the Court's opinion, I would find §5 unconstitutional.

Dissenting Opinion from Justice Ginsburg

Page 32

Justice Ginsburg, who was a civil rights lawyer specializing in gender issues before joining the Supreme Court, writes a strongly worded dissent. While her fellow justices believe the "very success" of the act "demands its dormancy," she notes that Congress "was of another mind" and had reauthorized the act repeatedly.

> With overwhelming support in both Houses, Congress concluded that, for two prime reasons, §5 should continue in force, unabated. First, continuance would facilitate completion of the impressive gains thus far made; and second, continuance would guard against back sliding. Those assessments were well within Congress' province to make and should elicit this Court's unstinting approbation.

Page 41

In voting rights cases, she wrote, the court should defer to Congress, which has been given sweeping powers under the Constitution, and especially in amendments passed after the Civil War, to protect such rights. Applying different rules to different states is nothing so unusual, she wrote, and the court should only ask if the methods used by Congress to address the problem are rational, and not subject them to a tougher test. "Congress approached the 2006 reauthorization of the VRA with great care and seriousness," she said. "The same cannot be said of the court's opinion today."

> The stated purpose of the Civil War Amendments was to arm Congress with the power and authority to protect all persons within the Nation from violations of their rights by the States. In exercising that power, then, Congress may use "all means which are appropriate, which are plainly adapted" to the constitutional ends declared by these Amendments. *McCulloch,* 4 Wheat., at 421. So when Congress acts to enforce the right to vote free from racial discrimination, we ask not whether Congress has chosen the means most wise, but whether Congress has rationally selected means appropriate to a legitimate end. "It is not for us to review the congressional resolution of [the need for its chosen remedy]. It is enough that we be able to perceive a basis upon which the Congress might resolve the conflict as it did." *Katzenbach v. Morgan,* 384 U. S. 641, 653 (1966).
>
> Until today, in considering the constitutionality of the VRA, the Court has accorded Congress the full measure of respect its judgments in this domain should garner.

Page 66

The struggle for fairness in elections, she argues, is not over, though the tactics of those who would suppress voting have changed. The court, she said, "errs egregiously by overriding Congress's decision."

> The Court holds §4(b) invalid on the ground that it is "irrational to base coverage on the use of voting tests 40 years ago, when such tests have been illegal since that time." *Ante,* at 23. But the Court disregards what Congress set about to do in enacting the VRA. That extraordinary legislation scarcely stopped at the particular tests and devices that happened to exist in 1965. The grand aim of the Act is to secure to all in our polity equal citizen ship stature, a voice in our democracy undiluted by race. As the record for the 2006 reauthorization makes abundantly clear, second-generation barriers to minority voting rights have emerged in the covered jurisdictions as attempted *substitutes* for the first-generation barriers that originally triggered preclearance in those jurisdictions. See *supra,* at 5–6, 8, 15–17. 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. *Ante,* at 21–22, 23–24. With that belief, and the argument derived from it, history repeats itself.

Source:
http://www.nytimes.com/interactive/2013/06/25/us/annotated-supreme-court-decision-on-voting-rights-act.html

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NAACP Outraged by the Supreme Court Decision to Invalidate Section 4

June 25, 2013

(WASHINGTON) –The NAACP released the following statements in response to the U.S. Supreme Court's decision to invalidate Section 4 of the Voting Rights Act.

From Roslyn M. Brock, Chairman, NAACP National Board of Directors:
"This decision has the potential to set voting rights back more than fifty years," stated NAACP Chairman Roslyn M. Brock. "It is especially unsettling in a year when we commemorate Medgar Evers, a man who gave his life to expand and protect the right to vote. But in the spirit of Medgar, who said 'You can kill a man but you can't kill an idea,' we will stand our ground and bring this debate to Congress."

From Benjamin Todd Jealous, President and CEO, NAACP:
"This decision is outrageous. The Court's majority put politics over decades of precedent and the rights of voters," stated NAACP President and CEO Benjamin Todd Jealous. "Congress must resurrect its bipartisan efforts from 2006 to ensure that the federal government has the power to preemptively strike racially discriminatory voting laws. Without that power, we are more vulnerable to the flood of attacks we have seen in recent years."

Jealous continued, "While Section 2 is powerful after the fact, we must have a tool to protect against stolen elections proactively."

From Kim Keenan, General Counsel, NAACP:

"The Supreme Court's ruling in Shelby sets the stage for a fight to ensure that people of color are not turned away from the ballot box using modern pretextual devices like photo identification. Section 5 is the reason why minority voting is up. Until we demand a fix for this problem, equal rights under the law and a fair vote will be no more than a promise to millions of voters."

From Jotaka Eaddy, Sr. Director for Voting Rights, NAACP:

"Today's decision puts Congress in the center of the battle for voting rights in our nation," said Jotaka Eaddy, NAACP Senior Director for Voting Rights. "While the Supreme Court's decision to invalidate section 4 is a setback, it is not the end of the fight. It is time for all Americans to take this fight to Congress and ensure that every vote is protected. Our democracy demands it."

On February 27th, 2013, the NAACP and thousands of activists from across the country rallied outside of the Supreme Court to urge the Supreme Court to protect voting rights for all citizens and uphold Section 5.

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Founded in 1909, the NAACP is the nation's oldest and largest nonpartisan civil rights organization. Its members throughout the United States and the world are the premier advocates for civil rights in their communities. You can read more about the NAACP's work and our five "Game Changer" issue areas here.

Text VOTE to 62227 to get the latest on the NAACP's fight to protect voting rights across the nation.

Source:
http://www.naacp.org/press/entry/naacp-outraged-by-the-supreme-court-decision-to-invalidate-section-4

PBS NEWSHOUR

DEBATE AIR DATE: July 5, 2013

What the Voting Rights Act Ruling Means for Voters

SUMMARY

Without Section 4, will what remains of the Voting Rights Act of 1965 be enough to protect the interests of minority voters? Ray Suarez discusses the practical effects of the Supreme Court decision with Nina Perales of the Mexican American Legal Defense and Educational Fund and James Burling of the Pacific Legal Foundation.

Transcript (of audio available here: http://pbs-ingest.s3.amazonaws.com/newshour/mp3/2013/07/05/20130705_vra.mp3)

JEFFREY BROWN: And we turn next to the continued reverberations of the Supreme Court's end-of-term rulings. The justices struck down a key provision of the Voting Rights Act.

Ray Suarez recently hosted a debate on how the decision will play out at polling places across the country.

RAY SUAREZ: Looking ahead to the practical effect of the high court's voting rights ruling in coming election cycles in a changing America, I'm joined by Nina Perales vice president of litigation for MALDEF, the Mexican American Legal Defense and Education Fund, and James Burling, director of litigation for the Pacific Legal Foundation.

Ms. Perales, minus Section 4, will what remains of the Voting Rights Act be enough to protect the voting rights and interests of minority voters?

NINA PERALES, Vice President of Litigation, Mexican American Legal Defense and Education Fund: Well, we're going have to work with what we have.

But the decision invalidating Section 4 has removed protections from millions of African-American, Latino and other voters. And, certainly, it is incumbent on Congress to try to restore those protections as quickly as possible.

SEE MORE: Remembering the Voting Rights Act of 1965

RAY SUAREZ: James Burling, how do you see it?

JAMES BURLING, Director of Litigation, Pacific Legal Foundation: I see it very differently.

I think this is a tremendous step in the right direction. I think that we are going to continue and we must continue to have protections for minority voters in this country, but we can do it in a much more nuanced way. We can do it in a way that reflects the fact that we are right now in 2013, no longer in 1965. Times have changed tremendously, and the law must change with the times.

RAY SUAREZ: Well, Mr. Burling, there are lots of moving parts involved in running elections, re-maps following census, each state and jurisdiction's laws about how you sign up to vote and where you vote.

With the authority to create these jurisdictions, these pre-clearance jurisdictions for now taken away, how do individual voters and groups of voters around the country protect their right if they feel that they have been violated?

JAMES BURLING: The same way they protect them in all the other states that are not subject to pre-clearance. You can file a lawsuit.

And, more importantly, the political dynamics, I think, make it very difficult and rare for the sort of discrimination that occurred in the 1960s to happen again. You have states like Mississippi that has a higher percentage of African-Americans registered to vote than white Americans. And I think the idea that we need to have pre-clearance only for the Southern states or just at any state actually is just outdated.

And I really think this does give us a good opportunity through Section 2 of the Voting Rights Act, which allows people to bring lawsuits if there are discrimination problems, and through other civil rights statutes as well. I think that we can move forward. And this is a way of moving forward.

RAY SUAREZ: Ms. Perales, Mr. Burling bring up a good point. When the Voting Rights Act was passed in the mid-'60s, we were just coming out of the struggles of the civil rights era. Now, almost 50 years later, Asian Americans and Latino Americans are the fastest growing voter groups in the country.

What is different about assuring their rights from the days when the United States was trying to get out from under Jim Crow?

NINA PERALES: Well, luckily, the Voting Rights Act has been vibrant and evolving.

Congress reauthorized the Voting Rights Act in 2006 after looking at exactly that, what is the state of voting and discrimination against minority voters in 2006, and amassed a tremendous record in support of the reauthorization.

Latinos, of course, have been in the United States since before even it was those parts of the United States where you find many Latinos today, California, Arizona, Colorado, Texas, New Mexico. And Latinos have struggled, as many other minority voters have, to cast an effective ballot.

So, for instance, the practical implications of the court's ruling on Section 4 is that Texas doesn't have to pre-clear, for example, its redistricting plans, which are currently in litigation. And Texas in every round of redistricting since the '60s has been found to have discriminated against Latinos in its drawing of boundaries.

RAY SUAREZ: So, Mr. Burling, the who has changed, but maybe not the what?

JAMES BURLING: Well, you still do have Section 2, which allows people to bring lawsuits if there is discrimination.

And, yes, the things -- things are more complicated today than they were in the 1960s, because we have a variety of other immigrant groups that didn't play the political role that they do today back then. But I think, despite the fact that the composition of minority groups is changing, this country's commitment to civil rights, this country's commitment to voting rights is undiminished.

And this decision doesn't diminish that at all. It just, as I said before, brings it into the future.

RAY SUAREZ: Well, outside of the states of the Confederacy and a scattering of other counties across the country, minority groups are growing apace. And Mr. Burling suggests they have the same remedies under Section 2 that all Americans have always had, without that pre-clearance requirement in place.

NINA PERALES: That is true.

We still have portions of the Voting Rights Act remaining. But Section 2 cases are very different than the protections that we have under Section 5. For example, we have litigated Section 2 cases to the U.S. Supreme Court. It takes years. It takes many, many dollars. And during that time, minority voters have to suffer under what will eventually be proven as a discriminatory system, right?

So hundreds of thousands of Latinos were casting ballots under a discriminatory redistricting system before it was struck down by the Supreme Court in 2006. And that was the last round. In this round, we had the ability to have Section 5 prevent those changes before they went into effect.

And, later, a court found that they were intentionally racially discriminatory, and that was the decision in 2012. And because of Section 5 and its shifting of the burden onto the jurisdiction to prove nondiscrimination, Latino voters were not subjected to discriminatory voting schemes in the interim.

RAY SUAREZ: Let me start with you, just check with you both before we go.

One of the least talked-about parts of Section 4 was one that required foreign language voting materials in many places in the country. Now that Section 4 has been struck down by the high court, James Burling, is providing foreign language voting materials to Spanish speakers in Texas, to Vietnamese speakers in Louisiana now an option in a way that it wasn't when Section 4 still stood?

JAMES BURLING: I think that those jurisdictions will still continue to provide voting language materials and voting materials in foreign languages because it's the right thing to do.

With Section 4 gone, I don't think it's going to take very long for Congress to mend the act in a way that makes sense. And if you can show that the denial of alternative language voting materials is a violation of somebody's right to vote, then there are effective remedies.

Yes, it was just pointed out that utilizing Section 2 in individual lawsuits can be a long and difficult way of doing things, but sometimes the right way of doing things, sometimes the constitutional way of doing things is not the easiest, but that is our system of government. The pre-clearance provisions put an undue burden on a select number of states, based on analyses that were from the 1960s.

And now it is time to move forward and to make sure that there is no discrimination in voting. And that could include foreign language voting materials it.

RAY SUAREZ: Quick reply before we go?

NINA PERALES: Well, the Voting Rights Act has not been hanging around since the 1960s. It has been a vital tool.

What has been unconstitutional are the acts of discrimination. And Section 5 has served that important role to block it, until now. Congress is going to have to step in and restore those protections.

RAY SUAREZ: Nina Perales, James Burling, thank you both.

NINA PERALES: You're welcome.

Source: http://www.pbs.org/newshour/bb/politics/july-dec13/vra_07-05.html

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Section 4 of the 1965 Voting Rights Act

Source: http://www.ourdocuments.gov

> SEC. 4. (a) To assure that the right of citizens of the United States to vote is not denied or abridged on account of race or color, no citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under subsection (b) or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no such test or device has been used during the five years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color: Provided, That no such declaratory judgment shall issue with respect to any plaintiff for a period of five years after the entry of a final judgment of any court of the United States, other than the denial of a declaratory judgment under this section, whether entered prior to or after the enactment of this Act, determining that denials or abridgments of the right to vote on account of race or color through the use of such tests or devices have occurred anywhere in the territory of such plaintiff. An action pursuant to this subsection shall be heard and determined

by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court. The court shall retain jurisdiction of any action pursuant to this subsection for five years after judgment and shall reopen the action upon motion of the Attorney General alleging that a test or device has been used for the purpose or with the effect of denying or abridging the right to vote on account of race or color.

If the Attorney General determines that he has no reason to believe that any such test or device has been used during the five years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color, he shall consent to the entry of such judgment

(b) The provisions of subsection (a) shall apply in any State or in any political subdivision of a state which (1) the Attorney General determines maintained on November 1, 1964, any test or device, and with respect to which (2) the Director of the Census determines that less than 50 percentum of the persons of voting age residing therein were registered on November 1, 1964, or that less than 50 percentum of such persons voted in the presidential election of November 1964.

A determination or certification of the Attorney General or of the Director of the Census under this section or under section 6 or section 13 shall not be reviewable in any court and shall be effective upon publication in the Federal Register.

(c) The phrase "test or device" shall mean any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class.

(d) For purposes of this section no State or political subdivision shall be determined to have engaged in the use of tests or devices for the purpose or with the effect of denying or abridging the right to vote on account of race or color if (1) incidents of such use have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future.

(e)
(1) Congress hereby declares that to secure the rights under the fourteenth amendment of persons educated in American-flag schools in which the predominant classroom language was other than English, it is necessary to prohibit the States from conditioning the right to vote of such persons on ability to read, write, understand, or interpret any matter in the English language.
(2) No person who demonstrates that he has successfully completed the sixth primary grade in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English, shall be denied the right to vote in any Federal, State, or local election because of his inability to read, write, understand, or interpret any matter in the English language, except that, in States in which State law provides that a different level of education is presumptive of literacy, he shall demonstrate that he has successfully completed an equivalent level of education in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English.