



Governance Studies

at BROOKINGS

Voting Rights after *Shelby County v. Holder*

July 1, 2013

Falk Auditorium, the Brookings Institution,
1775 Massachusetts Avenue, NW Washington, D.C.

Questions and Discussion Topics

10:15-12:30 – Reactions to the decision

1. Was the result a surprise or should we have expected it, especially after the Court's earlier decision in *Northwest Austin*?
2. What is the constitutional test for federal power that is applied in this case, and why does the Majority think the statute fails it? Did the Court change the test from *Katzenbach* or apply it to current circumstances? What happened to *Boerne*?
3. Does the age of the coverage formula make it "irrational"? In other words, did the mere repetition of the old formula make the reauthorized law unconstitutional?
4. Why did the majority conclude that the record was insufficient? There seems to be a disagreement about what Congress needed to demonstrate and what it did, in fact, demonstrate. Is the problem with section 4 that Congress did not adequately distinguish (in the 2006 record) the covered from the non-covered jurisdictions? Or is the mere fact that the formula used to determine coverage was based on data from the 1960s and 1970s enough to reject its continued use?
5. The dissent makes much of the Katz study that showed a greater likelihood of successful section 2 lawsuits in covered jurisdictions. Was this irrelevant to the case?
6. Did the significant rise in minority voter registration, turnout and office holding (even to the point of exceeding whites in some areas in 2012) doom section 4? And if so, could any geographically targeted antidiscrimination voting regime be justified along the lines of the original VRA?
7. What should Congress have done to craft a constitutional coverage formula?
8. Did the deterrent effect of the VRA on discriminatory laws make the creation of an adequate record impossible?
9. Does this case have spillover effects that threaten other statutes? Section 2 of the VRA? Other civil rights legislation? Does this formulation of rationality review portend greater changes in constitutional law?
10. What will be the effect of this decision on state voting laws? If the law's supporters were right about the importance of the section 5 deterrent, what should we expect to happen in the formerly covered jurisdictions in the next few years?
11. How should we read *Shelby County* and *Arizona v. Inter Tribal* together? In other words, has congressional power to regulate elections now reached its nadir?
12. What about Thomas's concurrence? Is there a majority to strike down section 5, in addition to section 4?



1:30-3:45: Possible responses to the decision

1. What types of reforms (if any) are now off the table as a result of the Court's decision?
2. Is a geographically targeted VRA the right (and constitutionally safe) way to proceed?
3. What should Congress do now if it wants to craft a constitutional coverage formula?
4. Is federal preclearance a system that should be retained?
5. If not, what other models should be used to protect minority voting rights (administrative law, normal plaintiff-initiated civil rights law, etc.)?
6. What would best protect minority voting rights: a law specifically protecting minorities against discrimination or one that applied more generally to regulate election practices?
7. So much of the "action" in section 5 has concerned redistricting? At the same time, the standards in the VRA leading to the creation and maintenance of majority-minority districts have come under fire both from within and outside the Court. Is this an area where national rules are possible? If so, what should they be with respect to minority vote dilution?
8. Are the needs of different minority groups the same? Should reforms focus on minority voting rights, in general, or on specific needs that individual groups may have?
9. What are the most important problems in the field of minority voting rights that need to be addressed? Voter ID, redistricting, felon disenfranchisement, others? At the level of federal, state or local elections?
10. Are there state law models that might be transferable to the federal level?
11. At a time of sharp partisan polarization, divided party government and overwhelming electoral support for Democrats among minorities, are bipartisan reforms possible in this area?