The Voting Rights Act

The right to vote is guaranteed by the Fifteenth Amendment, which ensures the right to vote will not be denied due to a person’s race. The Fifteenth Amendment also delegates authority to Congress to enforce the Fifteenth Amendment. During the first century after the Fifteenth Amendment was enacted, many states instituted regulatory hoops through which people wishing to vote must jump. For example, some states required potential voters to pass literacy tests, which in effect eliminated significant numbers of minorities from the right to vote. The Voting Rights Act of 1965 was originally enacted according to authority delegated to Congress by the Fifteenth Amendment to remedy discrimination implemented through election procedures. §2 of the Voting Rights Act of 1965 gave teeth to the Fifteenth Amendment’s prohibition of discrimination by forbidding 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.”

Certain sections of the Act initially applied only to six states, the states Congress found were the violators of the right to vote. Violators were identified by whether the states required prerequisites before allowing a person to vote. § 5 of the Act instituted what is known as “preclearance”; § 5 required changes to voting procedures to be approved by federal authorities before such procedures could take effect. The states must prove that the change had neither “the purpose [nor] the effect of denying or abridging the right to vote on account of race or color.” § 5 was set to expire after five years. Each time the Act was to expire, Congress reauthorized it. Congress also made various amendments to the Act, including prohibitions of providing only English voting materials where five percent of voting-age citizens spoke only a language other than English. As Congress amended the Act, states came into and “bailed” out of coverage. States came into coverage when states violated the Act. States “bailed” out of the Act when states went a certain number of years without any issues under the Act.

The infringement on the sovereignty of only these states was justified by the exceptional circumstances. “The formula looked to cause (discriminatory tests) and effect (low voter registration and turnout), and tailored the remedy (preclearance) to those jurisdictions exhibiting both.” *Shelby County Ala. v. Holder*, 133 S.Ct. 2612, 2627 (2013).
Shelby County, Ala. v. Holder, 133 S.Ct. 2612 (2013), addressed the crucial issue of whether the extreme standards provided by the Act remain constitutional. The Supreme Court evaluates the constitutionality by the standard that burdens must be justified by the needs. *Id.* at 2619. The Supreme Court begins by outlining the authority granted to the states by the Constitution – “all powers not specifically granted to the Federal Government are reserved to the States or citizens.” With regard to elections, the Federal Government retains certain control over aspects of federal elections, but the States were delegated the power to regulate most aspects of elections. The Constitution also dictates that all states should have equal sovereignty. The Voting Rights Act infringes on both principles – federalism and equal sovereignty.

First, preclearance requires that states gain permission from the Federal Government before enacting laws regarding elections that states otherwise have the power to enact. At the time of Shelby County, only nine states were subject to the preclearance provisions. In effect, the Act allowed one state to enact voting laws with no federal government oversight and another state to go through the preclearance process, which may delay the law months or years or not allow the law to go into effect. When the Act was originally enacted, the “exceptional conditions” justified the “stringent” and “potent” law. *Id.* at 2624. At that time, the statistics on the number of minority voters that were registered to vote were shocking. For example, in the regulated states, the percentage of minority voters was approximately fifty percentage points below the percentage number of whites. *Id.* at 2625. Congress chose to bring states within the Act’s governance when states used tests for voter registration and the voting rate was at least 12 points below the nation average. *Id.* When the Supreme Court first evaluated the constitutionality of the Act, this seemed like a rational test for which states should be regulated. However, almost 50 years have passed since these procedures were enacted and originally justified. A general consensus concludes the problems the country faced in 1965 are not the problems the country faces today. Today, minority voters turn out at comparable rates as whites, and minority representation in the legislatures has increased. Tests are no longer used to block minorities from registering to vote.

The last time the Act was reauthorized in 2006, Congress reauthorized the act for an additional 25 years and expanded the prohibition to laws that could have favored the minority groups but did not do so because of a discriminatory purpose or may diminish the ability of
citizens to elect their preferred candidate on the basis of race, color, or language minority status. *Id.* at 2626. This is a stretch from the original Act in 1965, authorized only for five years and requiring laws have a discriminatory purpose or effect. The Court notes the irony – the bar for preclearance has been raised while the status of discrimination in voting procedures in the United States has dramatically improved. *Id.* at 2627. Unlike in 1965, there is no longer a division between the states based on discriminatory voting practices. *Id.* at 2628. The Supreme Court insists that the Act must be justified based on the current state of society, not the past. Although Congress performed new studies and gathered new statistics based on the state of the law today, Congress did not base its formula for determining which states would be governed by the Act on the new studies but kept the 40-year-old formula. Ultimately, the Supreme Court held the formula determining coverage is unconstitutional. The effect of the holding in *Shelby County* was to render the Voting Rights Act inoperative until Congress amends the formula to place states within the coverage of the Voting Rights Act.