SHELBY COUNTY V. HOLDER

Background

- On June 25, 2013, in a plurality opinion delivered by Chief Justice Roberts, the Supreme Court struck down the coverage formula for jurisdictions subject to preclearance Section 5 of the Voting Rights Act of 1965 (VRA). This eviscerated federal preclearance in the covered jurisdictions and heightened the likelihood of retrogression – the fundamental idea that in fighting discrimination in voting, we should not go backwards in history.

Justice Scalia Mischaracterized the VRA

- Recognizing it as the most effective civil rights legislation, Congress continuously reauthorized the VRA to expand its voting protections, and Republican presidents signed those reauthorizations into law.
- During oral argument in *Shelby*, however, Justice Scalia called the VRA "a racial entitlement," which was surprising considering he was typically a strict constructionist who deferred to the will of Congress.

Chief Justice Roberts' States' Rights Theory

- The Roberts opinion relies on two pre-Reconstruction cases to generate a new theory that the VRA "sharply departs" from states' rights to equal protection in voting matters. *Shelby County v. Holder*, 133 S. Ct. 2612, 2616 (2013).

The Court Made Clear That Its Decision Impacts the §4 Coverage Formula Only, Not Other VRA Provisions

- The Court ruled that the coverage formula preventing retrogression in voting rights was no longer constitutional, and therefore, could no longer be used as a basis for subjecting jurisdictions to preclearance." *Id.* at 2631.
- The Court made clear, however, that the decision "in no way affects the permanent, nation-wide ban on racial discrimination in voting found in §2," and issued, "no holding on §5 itself, only on the coverage formula." *Id.* at 2631.

What Is The Impact of *Shelby County*?

- Now that the umbrella of federal oversight is down, as Justice Ginsberg predicted in her dissent, there is a deluge of attempted discrimination in voting in previously monitored jurisdictions.
    - **Since the decision, discriminatory voting laws and regulations have been proposed, passed, or implemented in AL, AK, AZ, FL, GA, MS, LA, NC, NY, SC, SD, TX and VA.** [1]
    - Post-*Shelby* voting restrictions include: the passage of a monster voter suppression law in North Carolina, strict voter ID laws in Alabama and Texas, attempts to shorten or cancel early-voting periods in Georgia, and polling place consolidations and reductions leading to long lines in Arizona.
      2016 is the first presidential election without the full protections of the VRA since 1965.

It Is Up To Congress To Pass A New Preclearance Coverage Formula

- The Court clearly stated that "Congress may draft another formula based on current conditions." *Id.* at 2631. According to the Court, "Congress must ensure that the legislation it passes to remedy [racial discrimination in voting] speaks to current conditions." *Id.*
- Accordingly, a coalition of civil rights groups have been urging Congress to pass The Voting Rights Advancement Act (H.R.2867/S.1659), which seeks to remedy the portions of the VRA that were declared unconstitutional by the Court in *Shelby County*. The Advancement Act would ensure that jurisdictions with recent histories of voting rights violations will be subject to preclearance under the VRA before they can introduce changes to their election practices.

[1] http://www.naacpldf.org/news/new-york-times-editorial-board-highlights-ldfs-post-shelby-tally-potentially-discriminatory-vot