

**SHELBY COUNTY, ALABAMA v.
HOLDER, ATTORNEY GENERAL, et al.**

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA CIRCUIT

No. 12–96. Argued February 27, 2013 — Decided June 25, 2013.

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

The Voting Rights Act of 1965 employed extraordinary measures to address an extraordinary problem. Section 5 of the Act required States to obtain federal permission before enacting any law related to voting — a drastic departure from basic principles of federalism. And §4 of the Act applied that requirement only to some States — an equally dramatic departure from the principle that all States enjoy equal sovereignty. This was strong medicine, but Congress determined it was needed to address entrenched racial discrimination in voting, “an insidious and pervasive evil which had been perpetuated in certain parts of our country through unremitting and ingenious defense of the Constitution.” As we explained in upholding the law, “exceptional conditions can justify legislative measures not otherwise appropriate.” Reflecting the unprecedented nature of these measures, they were scheduled to expire after five years.

Nearly 50 years later, they are still in effect; indeed, they have been made more stringent, and are now scheduled to last until 2031. There is no denying, however, that the conditions that originally justified these measures no longer characterize voting in the covered jurisdictions. By 2009, “the racial gap in voter registration and turnout [was] lower in the States originally covered by §5 than it [was] nationwide.” Since that time, Census Bureau data indicate that African-American voter turnout has come to exceed white voter turnout in five of the six States originally covered by §5, with a gap in the sixth State of less than ½ of one percent.

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."

I
A

The Fifteenth Amendment was ratified in 1870, in the wake of the Civil War. It provides that "[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude," and it gives Congress the "power to enforce this article by appropriate legislation."...

In the 1890s, Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Virginia began to enact literacy tests for voter registration and to employ other methods designed to prevent African-Americans from voting...

Inspired to action by the civil rights movement, Congress responded in 1965 with the Voting Rights Act. Section 2 was enacted to forbid, in all 50 States, 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." Section 2 is permanent, applies nationwide, and is not at issue in this case.

Other sections targeted only some parts of the country. At the time of the Act's passage, these "covered" jurisdictions were those States or political subdivisions that had maintained a test or device as a prerequisite to voting as of November 1, 1964, and had less than 50 percent voter registration or turnout in the 1964 Presidential election. Such tests or devices included literacy and knowledge tests...A covered jurisdiction could "bail out" of coverage if it had not used a test or device in the

preceding five years “for the purpose or with the effect of denying or abridging the right to vote on account of race or color.” In 1965, the covered States included Alabama, Georgia, Louisiana, Mississippi, South Carolina, and Virginia. The additional covered subdivisions included 39 counties in North Carolina and one in Arizona.

In those jurisdictions, §4 of the Act banned all such tests or devices. Section 5 provided that no change in voting procedures could take effect until it was approved by federal authorities in Washington, D. C. — either the Attorney General or a court of three judges. A jurisdiction could obtain such “preclearance” only by proving that the change had neither “the purpose [nor] the effect of denying or abridging the right to vote on account of race or color.”

In 1970, Congress reauthorized the Act for another five years...In 1975, Congress reauthorized the Act for seven more years...In 1982, Congress reauthorized the Act for 25 years...We upheld each of these reauthorizations against constitutional challenge...

B

Shelby County is located in Alabama, a covered jurisdiction...In 2010, the county sued the Attorney General in Federal District Court in Washington, D. C., seeking a declaratory judgment that §4(b) and §5 of the Voting Rights Act are facially unconstitutional...The District Court ruled against the county and upheld the Act...The Court of Appeals for the D. C. Circuit affirmed...We granted certiorari.

II

In *Northwest Austin*, we stated that “the Act imposes current burdens and must be justified by current needs.”...These basic principles guide our review of the question before us.

A

The Constitution and laws of the United States are “the supreme Law of the Land.” State legislation may not contravene federal law. The Federal Government does not, however, have a general right to review and veto state enactments before they go into effect...

Outside the strictures of the Supremacy Clause, States retain broad autonomy in structuring their governments and pursuing legislative objectives. Indeed, the Constitution provides that all powers not specifically granted to the Federal Government are reserved to the States or citizens...

More specifically, “the Framers of the Constitution intended the States to keep for themselves, as provided in the Tenth Amendment, the power to regulate elections.” Of course, the Federal Government retains significant control over federal elections. For instance, the Constitution authorizes Congress to establish the time and manner for electing Senators and Representatives. But States have “broad powers to determine the conditions under which the right of suffrage may be exercised.”...

Not only do States retain sovereignty under the Constitution, there is also a “fundamental principle of *equal* sovereignty” among the States...As we made clear in *Northwest Austin*, the fundamental principle of equal sovereignty remains highly pertinent in assessing subsequent disparate treatment of States.

The Voting Rights Act sharply departs from these basic principles...[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...

B

In 1966, we found these departures from the basic features of our system of government justified. . . . Several States had enacted a variety of requirements and tests “specifically designed to prevent” African-Americans from voting. Case-by-case litigation had proved inadequate to prevent such racial discrimination in voting, in part because States “merely switched to discriminatory devices not covered by the federal decrees,” “enacted difficult new tests,” or simply “defied and evaded court orders.” Shortly before enactment of the Voting Rights Act, only 19.4 percent of African-Americans of voting age were registered to vote in Alabama, only 31.8 percent in Louisiana, and only 6.4 percent in Mississippi. Those figures were roughly 50 percentage points or more below the figures for whites. . . .

C

Nearly 50 years later, things have changed dramatically. Shelby County contends that the preclearance requirement, even without regard to its disparate coverage, is now unconstitutional. Its arguments have a good deal of force. In the covered jurisdictions, “[v]oter turnout and registration rates now approach parity. Blatantly discriminatory evasions of federal decrees are rare. And minority candidates hold office at unprecedented levels.” The tests and devices that blocked access to the ballot have been forbidden nationwide for over 40 years.

Those conclusions are not ours alone. Congress said the same when it reauthorized the Act in 2006, writing that “significant progress has been made in eliminating first generation barriers experienced by minority voters, including increased numbers of registered minority voters, minority voter turnout, and minority representation in Congress, State legislatures, and local elected offices.”. . .

The following chart, compiled from the Senate and House Reports, compares voter registration numbers from 1965 to those from 2004 in the six originally covered States:

	1965			2004		
	White	Black	Gap	White	Black	Gap
Alabama	69.2	19.3	49.9	73.8	72.9	0.9
Georgia	62.[6]	27.4	35.2	63.5	64.2	-0.7
Louisiana	80.5	31.6	48.9	75.1	71.1	4.0
Mississippi	69.9	6.7	63.2	72.3	76.1	-3.8
South Carolina	75.7	37.3	38.4	74.4	71.1	3.3
Virginia	61.1	38.3	22.8	68.2	57.4	10.8

There is no doubt that these improvements are in large part *because of* the Voting Rights Act. The Act has proved immensely successful at redressing racial discrimination and integrating the voting process... Yet the Act has not eased the restrictions in §5 or narrowed the scope of the coverage formula in §4(b) along the way. Those extraordinary and unprecedented features were reauthorized — as if nothing had changed...

III A

When upholding the constitutionality of the coverage formula in 1966, we concluded that it was “rational in both practice and theory.” The formula looked to cause (discriminatory tests) and effect (low voter registration and turnout), and tailored the remedy (preclearance) to those jurisdictions exhibiting both.

By 2009, however, we concluded that the “coverage formula raised serious constitutional questions.” As we explained, a statute's “current

burdens” must be justified by “current needs,” and any “disparate geographic coverage” must be “sufficiently related to the problem that it targets.” The coverage formula met that test in 1965, but no longer does so.

Coverage today is based on decades-old data and eradicated practices. The formula captures States by reference to literacy tests and low voter registration and turnout in the 1960s and early 1970s. But such tests have been banned nationwide for over 40 years. And voter registration and turnout numbers in the covered States have risen dramatically in the years since. Racial disparity in those numbers was compelling evidence justifying the preclearance remedy and the coverage formula. There is no longer such a disparity.

In 1965, the States could be divided into two groups: those with a recent history of voting tests and low voter registration and turnout, and those without those characteristics. Congress based its coverage formula on that distinction. Today the Nation is no longer divided along those lines, yet the Voting Rights Act continues to treat it as if it were...

B

The Government falls back to the argument that because the formula was relevant in 1965, its continued use is permissible so long as any discrimination remains in the States Congress identified back then — regardless of how that discrimination compares to discrimination in States unburdened by coverage. This argument does not look to “current political conditions,” but instead relies on a comparison between the States in 1965.

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. To serve that purpose, 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. It cannot rely simply on the past. We made that clear in *Northwest Austin*, and we make it clear again today.

C

In defending the coverage formula, the Government, the intervenors, and the dissent also rely heavily on data from the record that they claim justify disparate coverage. Congress compiled thousands of pages of evidence before reauthorizing the Voting Rights Act... Regardless of how to look at the record, however, no one can fairly say that it shows anything approaching the “pervasive,” “flagrant,” “widespread,” and “rampant” discrimination that faced Congress in 1965...

But a more fundamental problem remains: Congress did not use the record it compiled to shape a coverage formula grounded in current conditions. It instead reenacted a formula based on 40-year-old facts having no logical relation to the present day... We cannot pretend that we are reviewing an updated statute, or try our hand at updating the statute ourselves. Contrary to the dissent's contention, we are not ignoring the record; we are simply recognizing that it played no role in shaping the statutory formula before us today.

The dissent also turns to the record to argue that, in light of voting discrimination in Shelby County, the county cannot complain about the provisions that subject it to preclearance. But that is like saying that a driver pulled over pursuant to a policy of stopping all redheads cannot complain about that policy, if it turns out his license has expired...

* * *

Striking down an Act of Congress “is the gravest and most delicate duty that this Court is called on to perform.” We do not do so lightly. That is why, in 2009, we took care to avoid ruling on the constitutionality of the Voting Rights Act when asked to do so, and instead resolved the case then before us on statutory grounds. But in issuing that decision, we expressed our broader concerns about the constitutionality of the Act. Congress could have updated the coverage formula at that time, but did not do so. Its failure to act leaves us today with no choice but to declare §4(b) unconstitutional. The formula in that section can no longer be used as a basis for subjecting jurisdictions to preclearance.

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.” 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.

The judgment of the Court of Appeals is reversed.

It is so ordered.

JUSTICE THOMAS, concurring.

I join the Court's opinion in full but write separately to explain that I would find §5 of the Voting Rights Act unconstitutional as well. The Court's opinion sets forth the reasons.

“The Voting Rights Act of 1965 employed extraordinary measures to address an extraordinary problem.” In the face of “unremitting and indigenous defense” of citizens' constitutionally protected right to vote, §5 was necessary to give effect to the Fifteenth Amendment in particular regions of the country. Though §5's preclearance requirement represented a “shar[p] depart[ure]” from “basic principles” of federalism and the equal sovereignty of the States, the Court upheld the measure against early constitutional challenges because it was necessary at the time to address “voting discrimination where it persist[ed] on a pervasive scale.”

Today, our Nation has changed. “[T]he conditions that originally justified [§5] no longer characterize voting in the covered jurisdictions.” As the Court explains: “Voter turnout and registration rates now approach parity. Blatantly discriminatory evasions of federal decrees are rare. And minority candidates hold office at unprecedented levels.”...

While the Court claims to “issue no holding on §5 itself,” its own opinion compellingly demonstrates that Congress has failed to justify “current burdens” with a record demonstrating “current needs.” 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.

JUSTICE GINSBURG, with whom JUSTICE BREYER, JUSTICE SOTOMAYOR, and JUSTICE KAGAN join, dissenting.

In the Court's view, the very success of §5 of the Voting Rights Act demands its dormancy. Congress was of another mind. Recognizing that large progress has been made, Congress determined, based on a voluminous record, that the scourge of discrimination was not yet extirpated. The question this case presents is who decides whether, as currently operative, §5 remains justifiable, this Court, or a Congress charged with the obligation to enforce the post-Civil War Amendments “by appropriate legislation.” 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 backsliding. Those assessments were well within Congress' province to make and should elicit this Court's unstinting approbation.

I

...Although the VRA wrought dramatic changes in the realization of minority voting rights, the Act, to date, surely has not eliminated all vestiges of discrimination against the exercise of the franchise by minority citizens. Jurisdictions covered by the preclearance requirement continued to submit, in large numbers, proposed changes to voting laws that the Attorney General declined to approve, auguring that barriers to minority voting would quickly resurface were the preclearance remedy eliminated. Congress also found that as “registration and voting of minority citizens increas[ed], other measures may be resorted to which would dilute increasing minority voting strength.” Efforts to reduce the impact of minority votes, in contrast to direct attempts to block access to the ballot, are aptly described as “second-generation barriers” to minority voting...

In response to evidence of these substituted barriers, Congress reauthorized the VRA for 5 years in 1970, for 7 years in 1975, and for 25

years in 1982. Each time, this Court upheld the reauthorization as a valid exercise of congressional power. As the 1982 reauthorization approached its 2007 expiration date, Congress again considered whether the VRA's preclearance mechanism remained an appropriate response to the problem of voting discrimination in covered jurisdictions.

Congress did not take this task lightly. Quite the opposite. The 109th Congress that took responsibility for the renewal started early and conscientiously. In October 2005, the House began extensive hearings...In April 2006, the Senate followed suit...In mid-July, the House passed the reauthorization by a vote of 390 yeas to 33 nays. The bill was read and debated in the Senate, where it passed by a vote of 98 to 0. President Bush signed it a week later, on July 27, 2006, recognizing the need for “further work...in the fight against injustice,” and calling the reauthorization “an example of our continued commitment to a united America where every person is valued and treated with dignity and respect.”

In the long course of the legislative process, Congress “amassed a sizable record.” The House and Senate Judiciary Committees held 21 hearings, heard from scores of witnesses...in all, the legislative record Congress compiled filled more than 15,000 pages...

After considering the full legislative record, Congress made the following findings: The VRA has directly caused significant progress in eliminating first-generation barriers to ballot access, leading to a marked increase in minority voter registration and turnout and the number of minority elected officials. But despite this progress, “second generation barriers constructed to prevent minority voters from fully participating in the electoral process” continued to exist...Extensive “[e]vidence of continued discrimination,” Congress concluded, “clearly show[ed] the continued need for Federal oversight” in covered jurisdictions. The overall record demonstrated to the federal lawmakers that, “without the continuation of the Voting Rights Act of 1965 protections, racial and language minority citizens will be deprived of the opportunity to exercise

their right to vote, or will have their votes diluted, undermining the significant gains made by minorities in the last 40 years.”

Based on these findings, Congress reauthorized preclearance for another 25 years, while also undertaking to reconsider the extension after 15 years to ensure that the provision was still necessary and effective. The question before the Court is whether Congress had the authority under the Constitution to act as it did.

II

In answering this question, the Court does not write on a clean slate. It is well established that Congress' judgment regarding exercise of its power to enforce the Fourteenth and Fifteenth Amendments warrants substantial deference. The VRA addresses the combination of race discrimination and the right to vote, which is “preservative of all rights.” When confronting the most constitutionally invidious form of discrimination, and the most fundamental right in our democratic system, Congress' power to act is at its height.

The basis for this deference is firmly rooted in both constitutional text and precedent. The Fifteenth Amendment, which targets precisely and only racial discrimination in voting rights, states that, in this domain, “Congress shall have power to enforce this article by appropriate legislation.”...

It cannot tenably be maintained that the VRA, an Act of Congress adopted to shield the right to vote from racial discrimination, is inconsistent with the letter or spirit of the Fifteenth Amendment, or any provision of the Constitution read in light of the Civil War Amendments. Nowhere in today's opinion, or in *Northwest Austin*, is there clear recognition of the transformative effect the Fifteenth Amendment aimed to achieve...

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. 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...

III

The 2006 reauthorization of the Voting Rights Act fully satisfies the standard stated in *McCulloch*: Congress may choose any means “appropriate” and “plainly adapted to” a legitimate constitutional end. As we shall see, it is implausible to suggest otherwise.

A

I begin with the evidence on which Congress based its decision to continue the preclearance remedy. The surest way to evaluate whether that remedy remains in order is to see if preclearance is still effectively preventing discriminatory changes to voting laws. On that score, the record before Congress was huge. In fact, Congress found there were *more* DOJ objections between 1982 and 2004 (626) than there were between 1965 and the 1982 reauthorization.

All told, between 1982 and 2006, DOJ objections blocked over 700 voting changes based on a determination that the changes were discriminatory. Congress found that the majority of DOJ objections included findings of discriminatory intent...

Congress also received evidence that litigation under §2 of the VRA was an inadequate substitute for preclearance in the covered

jurisdictions. Litigation occurs only after the fact, when the illegal voting scheme has already been put in place and individuals have been elected pursuant to it, thereby gaining the advantages of incumbency. An illegal scheme might be in place for several election cycles before a §2 plaintiff can gather sufficient evidence to challenge it. And litigation places a heavy financial burden on minority voters...

The number of discriminatory changes blocked or deterred by the preclearance requirement suggests that the state of voting rights in the covered jurisdictions would have been significantly different absent this remedy. Surveying the type of changes stopped by the preclearance procedure conveys a sense of the extent to which §5 continues to protect minority voting rights. Set out below are characteristic examples of changes blocked in the years leading up to the 2006 reauthorization:

- In 1995, Mississippi sought to reenact a dual voter registration system, “which was initially enacted in 1892 to disenfranchise Black voters,” and for that reason, was struck down by a federal court in 1987...
- In 2001, the mayor and all-white five-member Board of Aldermen of Kilmichael, Mississippi, abruptly canceled the town's election after “an unprecedented number” of African-American candidates announced they were running for office. DOJ required an election, and the town elected its first black mayor...
- In 1990, Dallas County, Alabama, whose county seat is the city of Selma, sought to purge its voter rolls of many black voters. DOJ rejected the purge as discriminatory, noting that it would have disqualified many citizens from voting “simply because they failed to pick up or return a voter update form, when there was no valid requirement that they do so.”

These examples, and scores more like them, fill the pages of the legislative record. The evidence was indeed sufficient to support Congress' conclusion that “racial discrimination in voting in covered jurisdictions [remained] serious and pervasive.”

Congress further received evidence indicating that formal requests of the kind set out above represented only the tip of the iceberg... True, conditions in the South have impressively improved since passage of the Voting Rights Act. Congress noted this improvement and found that the VRA was the driving force behind it. But Congress also found that voting discrimination had evolved into subtler second-generation barriers, and that eliminating preclearance would risk loss of the gains that had been made. Concerns of this order, the Court previously found, gave Congress adequate cause to reauthorize the VRA. Facing such evidence then, the Court expressly rejected the argument that disparities in voter turnout and number of elected officials were the only metrics capable of justifying reauthorization of the VRA.

B

I turn next to the evidence on which Congress based its decision to reauthorize the coverage formula in §4(b). Because Congress did not alter the coverage formula, the same jurisdictions previously subject to preclearance continue to be covered by this remedy. The evidence just described, of preclearance's continuing efficacy in blocking constitutional violations in the covered jurisdictions, itself grounded Congress' conclusion that the remedy should be retained for those jurisdictions.

There is no question, moreover, that the covered jurisdictions have a unique history of problems with racial discrimination in voting. Consideration of this long history, still in living memory, was altogether appropriate. The Court criticizes Congress for failing to recognize that “history did not end in 1965.” But the Court ignores that “what's past is prologue.” And “[t]hose who cannot remember the past are condemned to

repeat it.” Congress was especially mindful of the need to reinforce the gains already made and to prevent backsliding.

Of particular importance, even after 40 years and thousands of discriminatory changes blocked by preclearance, conditions in the covered jurisdictions demonstrated that the formula was still justified by “current needs.”

Congress learned of these conditions through a report, known as the Katz study, that looked at §2 suits between 1982 and 2004. Because the private right of action authorized by §2 of the VRA applies nationwide, a comparison of §2 lawsuits in covered and noncovered jurisdictions provides an appropriate yardstick for measuring differences between covered and noncovered jurisdictions...

Although covered jurisdictions account for less than 25 percent of the country's population, the Katz study revealed that they accounted for 56 percent of successful §2 litigation since 1982. Controlling for population, there were nearly *four* times as many successful §2 cases in covered jurisdictions as there were in non-covered jurisdictions. The Katz study further found that §2 lawsuits are more likely to succeed when they are filed in covered jurisdictions than in non-covered jurisdictions. From these findings — ignored by the Court — Congress reasonably concluded that the coverage formula continues to identify the jurisdictions of greatest concern...

The case for retaining a coverage formula that met needs on the ground was therefore solid. Congress might have been charged with rigidity had it afforded covered jurisdictions no way out or ignored jurisdictions that needed superintendence. Congress, however, responded to this concern. Critical components of the congressional design are the statutory provisions allowing jurisdictions to “bail out” of preclearance, and for court-ordered “bail ins.” The VRA permits a jurisdiction to bail out by showing that it has complied with the Act for ten years, and has

engaged in efforts to eliminate intimidation and harassment of voters. It also authorizes a court to subject a noncovered jurisdiction to federal preclearance upon finding that violations of the Fourteenth and Fifteenth Amendments have occurred there.

Congress was satisfied that the VRA's bailout mechanism provided an effective means of adjusting the VRA's coverage over time. Nearly 200 jurisdictions have successfully bailed out of the preclearance requirement, and DOJ has consented to every bailout application filed by an eligible jurisdiction since the current bailout procedure became effective in 1984. The bail-in mechanism has also worked. Several jurisdictions have been subject to federal preclearance by court orders...

IV

Congress approached the 2006 reauthorization of the VRA with great care and seriousness. The same cannot be said of the Court's opinion today. The Court makes no genuine attempt to engage with the massive legislative record that Congress assembled. Instead, it relies on increases in voter registration and turnout as if that were the whole story... One would expect more from an opinion striking at the heart of the Nation's signal piece of civil-rights legislation...

C

The Court has time and again declined to upset legislation of this genre unless there was no or almost no evidence of unconstitutional action by States. No such claim can be made about the congressional record for the 2006 VRA reauthorization. Given a record replete with examples of denial or abridgment of a paramount federal right, the Court should have left the matter where it belongs: in Congress' bailiwick.

Instead, the Court strikes §4(b)'s coverage provision because, in its view, the provision is not based on "current conditions." It discounts,

however, that one such condition was the preclearance remedy in place in the covered jurisdictions, a remedy Congress designed both to catch discrimination before it causes harm, and to guard against return to old ways. Volumes of evidence supported Congress' determination that the prospect of retrogression was real. Throwing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet.

But, the Court insists, the coverage formula is no good; it is based on “decades-old data and eradicated practices.” Even if the legislative record shows, as engaging with it would reveal, that the formula accurately identifies the jurisdictions with the worst conditions of voting discrimination, that is of no moment, as the Court sees it. Congress, the Court decrees, must “star[t] from scratch.” I do not see why that should be so...

Consider once again the components of the record before Congress in 2006. The coverage provision identified a known list of places with an undisputed history of serious problems with racial discrimination in voting. Recent evidence relating to Alabama and its counties was there for all to see. Multiple Supreme Court decisions had upheld the coverage provision, most recently in 1999. There was extensive evidence that, due to the preclearance mechanism, conditions in the covered jurisdictions had notably improved. And there was evidence that preclearance was still having a substantial real-world effect, having stopped hundreds of discriminatory voting changes in the covered jurisdictions since the last reauthorization... In light of this record, Congress had more than a reasonable basis to conclude that the existing coverage formula was not out of sync with conditions on the ground in covered areas.

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.” 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 citizenship 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.

The sad irony of today's decision lies in its utter failure to grasp why the VRA has proved 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. With that belief, and the argument derived from it, history repeats itself. The same assumption — that the problem could be solved when particular methods of voting discrimination are identified and eliminated — was indulged and proved wrong repeatedly prior to the VRA's enactment. Unlike prior statutes, which singled out particular tests or devices, the VRA is grounded in Congress' recognition of the “variety and persistence” of measures designed to impair minority voting rights. In truth, the evolution of voting discrimination into more subtle second-generation barriers is powerful evidence that a remedy as effective as preclearance remains vital to protect minority voting rights and prevent backsliding.

Beyond question, the VRA is no ordinary legislation. 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. For a half century, a concerted effort has been made to end racial discrimination in voting. Thanks to the VRA, progress once the subject of a dream has been achieved and continues to be made...In my judgment, the Court errs egregiously by overriding Congress' decision.

* * *

For the reasons stated, I would affirm the judgment of the Court of Appeals.