

Supreme Court

Maricopa County Community Network Meeting
July 3rd, 2013



Meeting Agenda

1. Review of the Supreme Court website
2. Discussion of cases the Court ***did not*** review
3. National Voter Registration Act case
4. Voting Rights Act case

Supreme Court Homepage

www.supremecourt.gov

The screenshot shows the homepage of the Supreme Court of the United States. At the top left is the Court's seal and the text "SUPREME COURT OF THE UNITED STATES". To the right is a search bar with "All Documents" and "Docket Files" options, and buttons for "Search" and "Help". Below the header are four main sections: "Supreme Court Documents", "Supreme Court Information", "Recent Decisions", and "Calendar".

Supreme Court Documents

- Docket
- Oral Arguments
- Merits Briefs
- Bar Admissions
- Court Rules
- Case Handling Guides
- Opinions
- Orders and Journals

Supreme Court Information

- About the Supreme Court
- Visiting the Court
- Public Information
- Jobs
- Links

Recent Decisions

- 6/03/13 - Nevada v. Jackson
- 6/03/13 - Hillman v. Maretta
- 6/03/13 - Maryland v. King
- 5/28/13 - Trevino v. Thaler
- 5/28/13 - McQuiggin v. Perkins
- 5/20/13 - Sebellius v. Cloer
- 5/20/13 - Metrish v. Lancaster
- 5/20/13 - PPL Corp. v. Commissioner
- 5/20/13 - Arlington v. FCC
- 5/13/13 - Bowman v. Monsanto Co.

Calendar

June 2013

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

Legend:
Red square: Argument Days
Blue square: Non-argument Days
Green square: Conference Days
D in circle: Holiday

What's New

The Court has adopted a revised version of the Rules of the Court to take effect July 1, 2013.

Amendments to Federal Rules of Appellate, Bankruptcy, Criminal, Civil and Evidence prescribed by the Court and reported to Congress by the Chief Justice on April 16, 2013

A new exhibition, *In War and In Peace: The Supreme Court and the Civil War*, has been installed on the ground floor.

Documents

Information

Decisions

Calendar

Supreme Court Biographies

www.supremecourt.gov



Biographies of Current Justices of the Supreme Court



John G. Roberts, Jr., Chief Justice of the United States,

was born in Buffalo, New York, January 27, 1955. He married Jane Marie Sullivan in 1986 and they have two children - Josephine and John. He received an A.B. from Harvard College in 1976 and a J.D. from Harvard Law School in 1979. He served as a law clerk for Judge Henry J. Friendly of the United States Court of Appeals for the Second Circuit from 1979-1980 and as a law clerk for then-Associate Justice William H. Rehnquist of the Supreme Court of the United States during the 1980 Term. He was Special Assistant to the Attorney General, U.S. Department of Justice from 1981-1982, Associate Counsel to President Ronald Reagan, White House Counsel's Office from 1982-1986, and Principal Deputy Solicitor General, U.S. Department of Justice from 1986-1993. From 1986-1989 and 1993-2003, he practiced law in Washington, D.C. He was appointed to the United States Court of Appeals for the District of Columbia Circuit in 2003. President George W. Bush nominated him as Chief Justice of the United States, and he took his seat September 29, 2005.



Antonin Scalia, Associate Justice,

was born in Trenton, New Jersey, March 11, 1936. He married Maureen McCarthy and has nine children - Ann Forrest, Eugene, John Francis, Catherine Elisabeth, Mary Clare, Paul David, Matthew, Christopher James, and Margaret Jane. He received his A.B. from Georgetown University and the University of Fribourg, Switzerland, and his LL.B. from Harvard Law School, and was a Sheldon Fellow of Harvard University from 1960-1961. He was in private practice in Cleveland, Ohio from 1961-1967, a Professor of Law at the University of Virginia from 1967-1971, and a Professor of Law at the University of Chicago from 1977-1982, and a Visiting Professor of Law at Georgetown University and Stanford University. He was chairman of the American Bar Association's Section of Administrative Law, 1981-1982, and its Conference of Section Chairmen, 1982-1983. He served the federal government as General Counsel of the Office of Telecommunications Policy from 1971-1972, Chairman of the Administrative Conference of the United States from 1972-1974, and Assistant Attorney General for the Office of Legal Counsel from 1974-1977. He was appointed Judge of the United States Court of Appeals for the District of Columbia Circuit in 1982. President Reagan nominated him as an Associate Justice of the Supreme Court, and he took his seat September 26, 1986.



Anthony M. Kennedy, Associate Justice,

was born in Sacramento, California, July 23, 1936. He married Mary Davis and has three children. He received his B.A. from Stanford University and the London School of Economics, and his LL.B. from Harvard Law School. He was in private practice in San Francisco, California from 1961-1963, as well as in Sacramento, California from 1963-1975. From 1965 to 1968, he was a Professor of Constitutional Law at the McGeorge School of Law, University of the Pacific. He has served in numerous positions during his career, including a member of the California Army National Guard in 1961, the board of the Federal Judicial Center from 1987-1988, and two committees of the Judicial Conference of the United States: the Advisory Panel on Financial Disclosure Reports and Judicial Activities, subsequently renamed the Advisory Committee on Codes of Conduct, from 1979-1987, and the Committee on Pacific Territories from 1979-1990, which he chaired from 1982-1990. He was appointed to the United States Court of Appeals for the Ninth Circuit in 1975. President Reagan nominated him as an Associate Justice of the Supreme Court, and he took his seat February 18, 1988.



Clarence Thomas, Associate Justice,

was born in the Pin Point community of Georgia near Savannah June 23, 1948. He married Virginia Lamp in 1987 and has one child, Jamal Adeem, by a previous marriage. He attended Conception Seminary and received an A.B., cum laude, from Holy Cross College, and a J.D. from Yale Law School in 1974. He was admitted to law practice in Missouri in 1974, and served as an Assistant Attorney General of Missouri from 1974-1977, an attorney with the Monsanto Company from 1977-1979, and Legislative Assistant to Senator John Danforth from 1979-1981. From 1981-1982, he served as Assistant Secretary for Civil Rights, U.S. Department of Education, and as Chairman of the U.S. Equal Employment Opportunity Commission from 1982-1990. He became a Judge of the United States Court of Appeals for the District of Columbia Circuit in 1990. President Bush nominated him as an Associate Justice of the Supreme Court, and he took his seat October 23, 1991.



Ruth Bader Ginsburg, Associate Justice,

was born in Brooklyn, New York, March 15, 1933. She married Martin D. Ginsburg in 1954, and has a daughter, Jane, and a son, James. She received her B.A. from Cornell University, attended Harvard Law School, and received her LL.B. from Columbia Law School. She served as a law clerk to the Honorable Edmund L. Palmieri, Judge of the United States District Court for the Southern District of New York, from 1956-1961. From 1961-1963, she was a research associate and then associate director of the Columbia Law School Project on International Procedure. She was a Professor of Law at Rutgers University School of Law from 1963-1972, and Columbia Law School from 1972-1990, and a fellow at the Center for Advanced Study in the Behavioral Sciences in Stanford, California from 1977-1978. In 1971, she was instrumental in launching the Women's Rights Project of the American Civil Liberties Union, and served as the ACLU's General Counsel from 1973-1980, and on the National Board of Directors from 1974-1980. She was appointed a Judge of the United States Court of Appeals for the District of Columbia Circuit in 1980. President Clinton nominated her as an Associate Justice of the Supreme Court, and she took her seat August 10, 1993.



Stephen G. Breyer, Associate Justice,

was born in San Francisco, California, August 15, 1938. He married Joanna Hare in 1967, and has three children - Chloe, Nell, and Michael. He received an A.B. from Stanford University, a B.A. from Magdalen College, Oxford, and an LL.B. from Harvard Law School. He served as a law clerk to Justice Arthur Goldberg of the Supreme Court of the United States during the 1964 Term, as a Special Assistant to the Assistant U.S. Attorney General for Antitrust, 1965-1967, as an Assistant Special Prosecutor of the Watergate Special Prosecution Force, 1973, as Special Counsel of the U.S. Senate Judiciary Committee, 1974-1975, and as Chief Counsel of the committee, 1979-1980. He was an Assistant Professor, Professor of Law, and Lecturer at Harvard Law School, 1967-1994, a Professor at the Harvard University Kennedy School of Government, 1977-1980, and a Visiting Professor at the College of Law, Sydney, Australia and at the University of Rome. From 1980-1990, he served as a Judge of the United States Court of Appeals for the First Circuit, and as its Chief Judge, 1986-1994. He also served as a member of the Judicial Conference of the United States, 1990-1994, and of the United States Sentencing Commission, 1985-1989. President Clinton nominated him as an Associate Justice of the Supreme Court, and he took his seat August 3, 1994.



Samuel Anthony Alito, Jr., Associate Justice,

was born in Trenton, New Jersey, April 1, 1950. He married Martha Ann Domgardner in 1985, and has two children - Philip and Laura. He served as a law clerk for Leonard I. Garth of the United States Court of Appeals for the Third Circuit from 1976-1977. He was Assistant U.S. Attorney, District of New Jersey, 1977-1981, Assistant to the Solicitor General, U.S. Department of Justice, 1981-1985, Deputy Assistant Attorney General, U.S. Department of Justice, 1985-1987, and U.S. Attorney, District of New Jersey, 1987-1990. He was appointed to the United States Court of Appeals for the Third Circuit in 1990. President George W. Bush nominated him as an Associate Justice of the Supreme Court, and he took his seat January 31, 2006.



Sonia Sotomayor, Associate Justice,

was born in Bronx, New York, on June 25, 1954. She earned a B.A. in 1976 from Princeton University, graduating summa cum laude and receiving the university's highest academic honor. In 1979, she earned a J.D. from Yale Law School where she served as an editor of the Yale Law Journal. She served as Assistant District Attorney in the New York County District Attorney's Office from 1979-1984. She then litigated international commercial matters in New York City at Pavia & Harcourt, where she served as an associate and then partner from 1984-1992. In 1991, President George H.W. Bush nominated her to the U.S. District Court, Southern District of New York, and she served in that role from 1992-1998. She served as a judge on the United States Court of Appeals for the Second Circuit from 1999-2009. President Barack Obama nominated her as an Associate Justice of the Supreme Court on May 26, 2009, and she assumed this role August 8, 2009.



Elena Kagan, Associate Justice,

was born in New York, New York, on April 28, 1960. She received an A.B. from Princeton in 1981, an M. Phil. from Oxford in 1983, and a J.D. from Harvard Law School in 1988. She clerked for Judge Abner Mikva of the U.S. Court of Appeals for the D.C. Circuit from 1986-1987 and for Justice Thurgood Marshall of the U.S. Supreme Court during the 1987 Term. After briefly practicing law at a Washington, D.C. law firm, she became a law professor, first at the University of Chicago Law School and later at Harvard Law School. She also served for four years in the Clinton Administration, as Associate Counsel to the President and then as Deputy Assistant to the President for Domestic Policy. Between 2003 and 2009, she served as the Dean of Harvard Law School. In 2009, President Obama nominated her as the Solicitor General of the United States. After serving in that role for a year, the President nominated her as an Associate Justice of the Supreme Court on May 10, 2010. She took her seat on August 7, 2010.

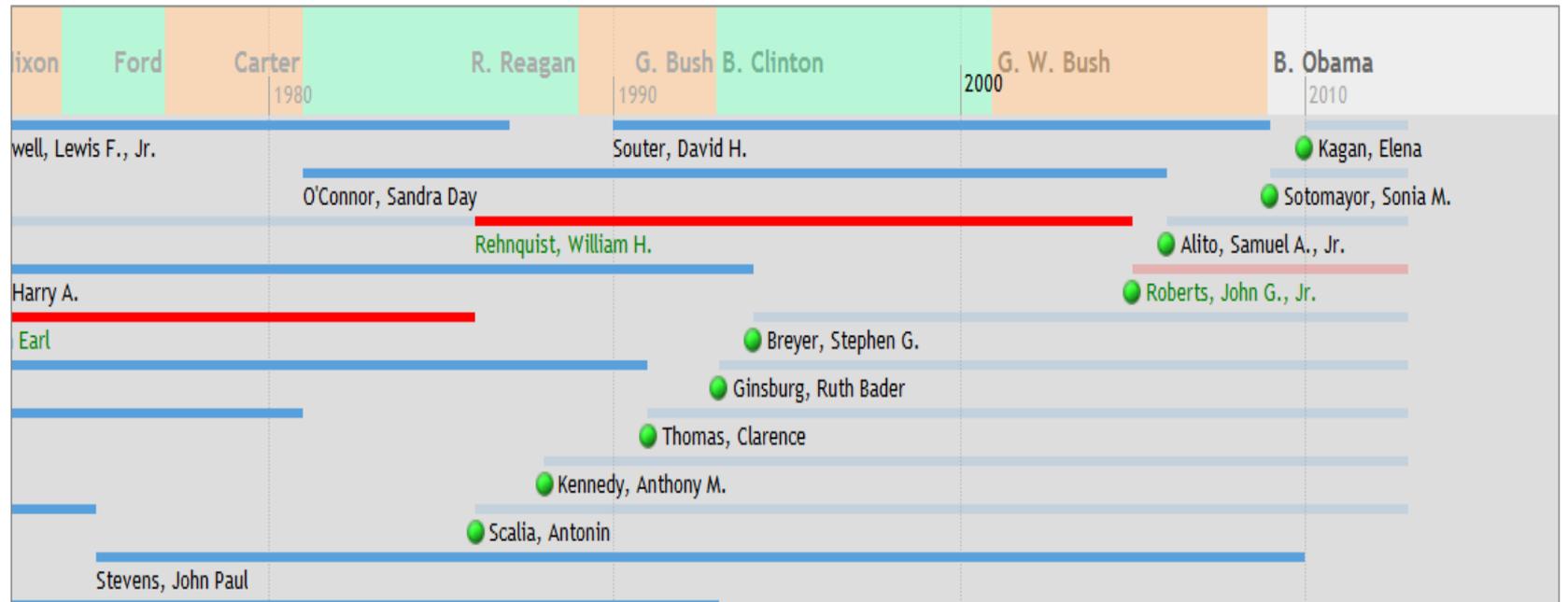
Supreme Court Justices Timeline

www.supremecourt.gov



Members of the Supreme Court of the United States

Members in the Timeline



Supreme Court

Although there are 2 high profile cases to discuss, sometimes what the Court decides NOT to hear is also important.

So we're going to start off there first.



12-1197

PG Publishing Co. V Aichele, Carol, et al.

This case was denied by the court:

CERTIORARI DENIED

12-802 BEHENNA, MICHAEL C. V. UNITED STATES
12-885 THOMPSON, WARDEN V. HARRIS, NICOLE
12-935 AMERICAN INDEP. MINES, ET AL. V. DEPT. OF AGRICULTURE
12-1060 HELENA SAND AND GRAVEL V. LEWIS AND CLARK PLANNING

4

12-1145 CLEMENTS, WARDEN V. RAY, ELLIOT D.
12-1187 HASSAN, ABDUL K. V. COLORADO, ET AL.
12-1188 WHITEHEAD, WILBUR D. V. CHESAPEAKE OPERATING, ET AL.
12-1189 GRANT, BRIAN, ET AL. V. FIA CARD SERVICES
12-1197 PG PUBLISHING CO. V. AICHELE, CAROL, ET AL.
12-1198 MOTEN, IRMA V. BROWARD CTY. MEDICAL EXAMINER
12-1215 FLINT, EDWARD H. V. COACH HOUSE, INC., ET AL.



12-1197

PG Publishing Co. V Aichele, Carol, et al.

What was this case all about?

In 2012 Pennsylvania enacted a voter ID law.

The Pittsburgh Post-Gazette wanted access to the polling places on Election Day to observe & they were denied by local election officials based on Pennsylvania law which only allows access to:

"election officers, clerks, machine inspectors, overseers, watchers, persons in the course of voting, persons lawfully giving assistance to voters, and peace and police officers, when permitted by the provisions of this act"

(their "watchers" are similar to our political party observers)

12-1197

PG Publishing Co. V Aichele, Carol, et al.

The decision was challenged & appealed.

Federal Appeals Court: Media Has No Right of Access to Polling Places

By Doug Chapin on January 18, 2013

 SHARE



[Image courtesy of loc.gov]

12-1197

PG Publishing Co. V Aichele, Carol, et al.

3rd Circuit:



The heart of the opinion involves three basic conclusions by the court:

1. members of the media should not be allowed any greater access to information than members of the general public;

2. access to information for newsgathering purposes is different from access to a place for the purpose of engaging in speech; therefore,

3. an "experience and logic" test from similar cases involving other government activities applies in this case.

12-1197

PG Publishing Co. V Aichele, Carol, et al.

Supreme Court:

The Supreme Court decided not to hear this case, so the 3rd Circuit ruling stands.



12-71

National Voter Registration Act: Proof of Citizenship

SUPREME COURT OF THE UNITED STATES

Syllabus

ARIZONA ET AL. *v.* INTER TRIBAL COUNCIL OF
ARIZONA, INC., ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT

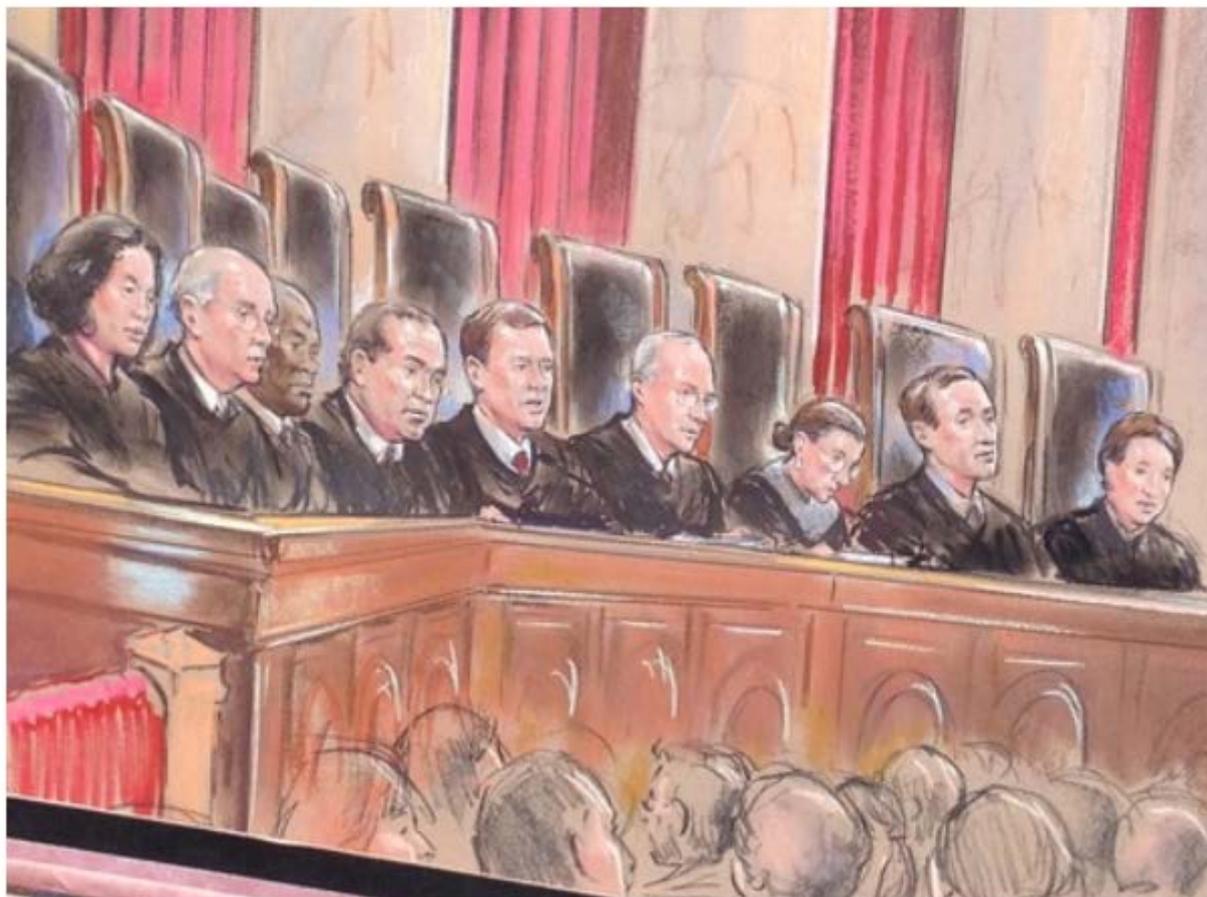
No. 12–71. Argued March 18, 2013—Decided June 17, 2013

National Voter Registration Act: Proof of Citizenship

- It is important to remember which parts of Proposition 200 are in question here:
 - The requirement to provide documentation of citizenship when registering using a federal voter registration form.
- *NOT in question:*
 - The same requirement when using the state form, FPCA, or FWAB (although they are federal forms, they were not mentioned in the suit and are not maintained by the EAC)
 - ID at the polls

12-71

National Voter Registration Act: Proof of Citizenship



12-71

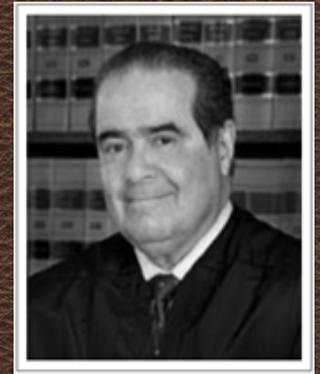
National Voter Registration Act: Proof of Citizenship

SCALIA, J., delivered the opinion of the Court, in which ROBERTS, C. J., and GINSBURG, BREYER, SOTOMAYOR, and KAGAN, JJ., joined, and in which KENNEDY, J., joined in part. KENNEDY, J., filed an opinion concurring in part and concurring in the judgment. THOMAS, J., and ALITO, J., filed dissenting opinions.

7 to 2

to uphold & affirm the lower court

12-71 AZ v ITCA et al



Supreme Court Decision: 7-2

The Ninth Circuit affirmed in part but reversed as relevant here, holding that the state law's documentary-proof-of-citizenship requirement is pre-empted by the NVRA.

Held: Arizona's evidence-of-citizenship requirement, as applied to Federal Form applicants, is pre-empted by the NVRA's mandate that States "accept and use" the Federal Form. Pp. 4–18.

12-71 AZ v ITCA et al

Supreme Court Decision: 7-2



12-71 AZ v ITCA et al

AZ Argument: The Election Clause

The Elections Clause, Art. I, §4, cl. 1, provides:

“The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the places of chusing Senators.”

There is much discussion about the “Election Clause”, so lets review that first before we get into the decision itself.

12-71 AZ v ITCA et al

AZ Argument: The Election Clause

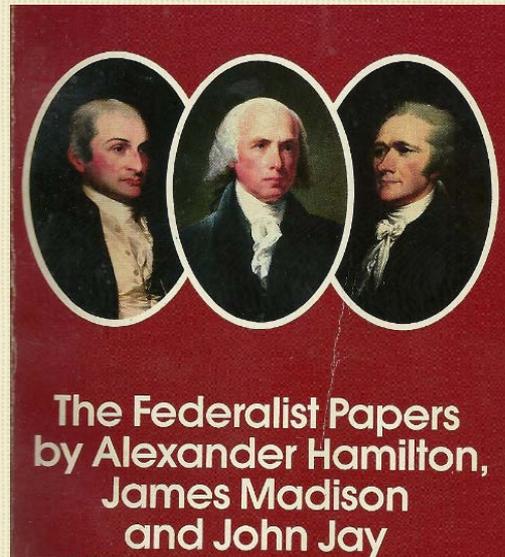
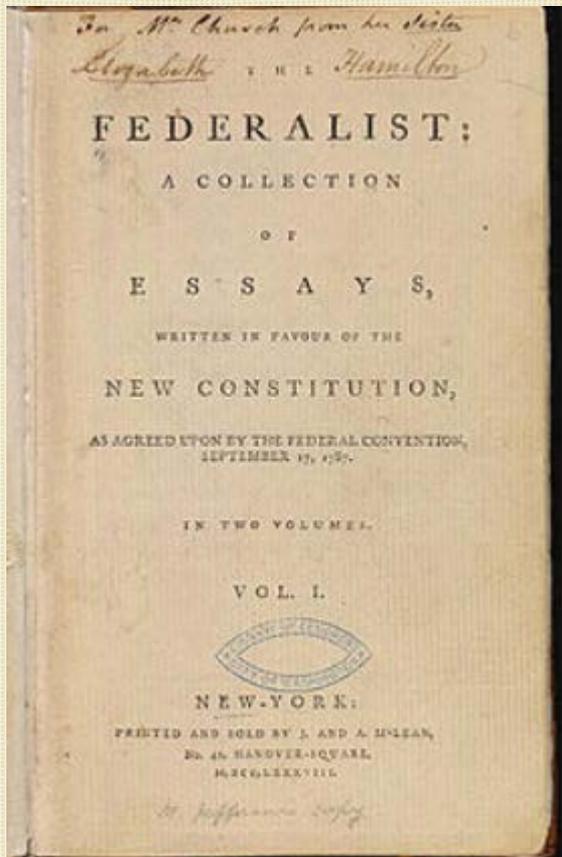
The Clause empowers Congress to pre-empt state regulations governing the “Times, Places and Manner” of holding congressional elections. The question here is whether the federal statutory requirement that States “accept and use” the Federal Form pre-empts Arizona’s state-law require-

Verbiage that is from the body of the decision is outlined in green & included to clarify summary.

The Elections Clause has two functions. Upon the States it imposes the duty (“*shall* be prescribed”) to prescribe the time, place, and manner of electing Representatives and Senators; upon Congress it confers the power to alter those regulations or supplant them altogether. See *U. S. Term Limits, Inc. v. Thornton*, 514 U. S. 779, 804–805 (1995); *id.*, at 862 (THOMAS, J., dissenting). This grant of congressional power was the Framers’ insurance against the possibility that a State would refuse to provide for the election of representatives to the Federal Congress. “[E]very government ought to contain in itself the means of its own preservation,” and “an exclusive power of regulating elections for the national government, in the hands of the State legislatures, would leave the existence of the Union entirely at their mercy. They could at any moment annihilate it by neglecting to provide for the choice of persons to administer its affairs.” The Federalist No. 59, pp. 362–363 (C. Rossiter ed. 1961) (A. Hamilton) (emphasis deleted). That prospect seems fanciful today, but the widespread, vociferous opposition to the proposed Constitution made it a very real concern in the founding era.

This was seen as insurance that the states would elect representatives to Congress and was discussed at length in the Federalist Papers (No. 59)

12-71 AZ v ITCA et al



Yes, this is going back to the Federalist Papers!

12-71 AZ v ITCA et al

Supreme Court Decision: Election Clause

(a) The Elections Clause imposes on States the duty to prescribe the time, place, and manner of electing Representatives and Senators, but it confers on Congress the power to alter those regulations or supplant them altogether. See *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 804–805. This Court has said that the terms “Times, Places, and Manner” “embrace authority to provide a complete code for congressional elections,” including regulations relating to “registration.” *Smiley v. Holm*, 285 U.S. 355, 366. Pp. 4–6.

12-71 AZ v ITCA et al

Supreme Court Decision: Election Clause

tends, ceases to be operative.” *Siebold, supra*, at 384. In Arizona’s view, these seemingly incompatible obligations can be read to operate harmoniously: The NVRA, it contends, requires merely that a State receive the Federal Form willingly and use that form as one element in its (perhaps lengthy) transaction with a prospective voter.

12-71 AZ v ITCA et al

Supreme Court Decision: Election Clause

fy. Arizona's reading is also difficult to reconcile with neighboring NVRA provisions, such as §1973gg-6(a)(1)(B) and §1973gg-4(a)(2).

Arizona's appeal to the presumption against pre-emption invoked in this Court's Supremacy Clause cases is inapposite. The power the Elections Clause confers is none other than the power to pre-empt. Because Congress, when it acts under this Clause, is always on notice that its legislation will displace some element of a pre-existing legal regime erected by the States, the reasonable assumption is that the text of Elections Clause legislation accurately communicates the scope of Congress's pre-emptive intent.

12-71 AZ v ITCA et al

Supreme Court Decision: Election Clause

in·ap·po·site

/in'apəzɪt/ 

Adjective

Not apposite; out of place; inappropriate.

Synonyms

inappropriate - unbecoming - improper - inapt

ap·po·site

'apəzɪt/ 

Adjective

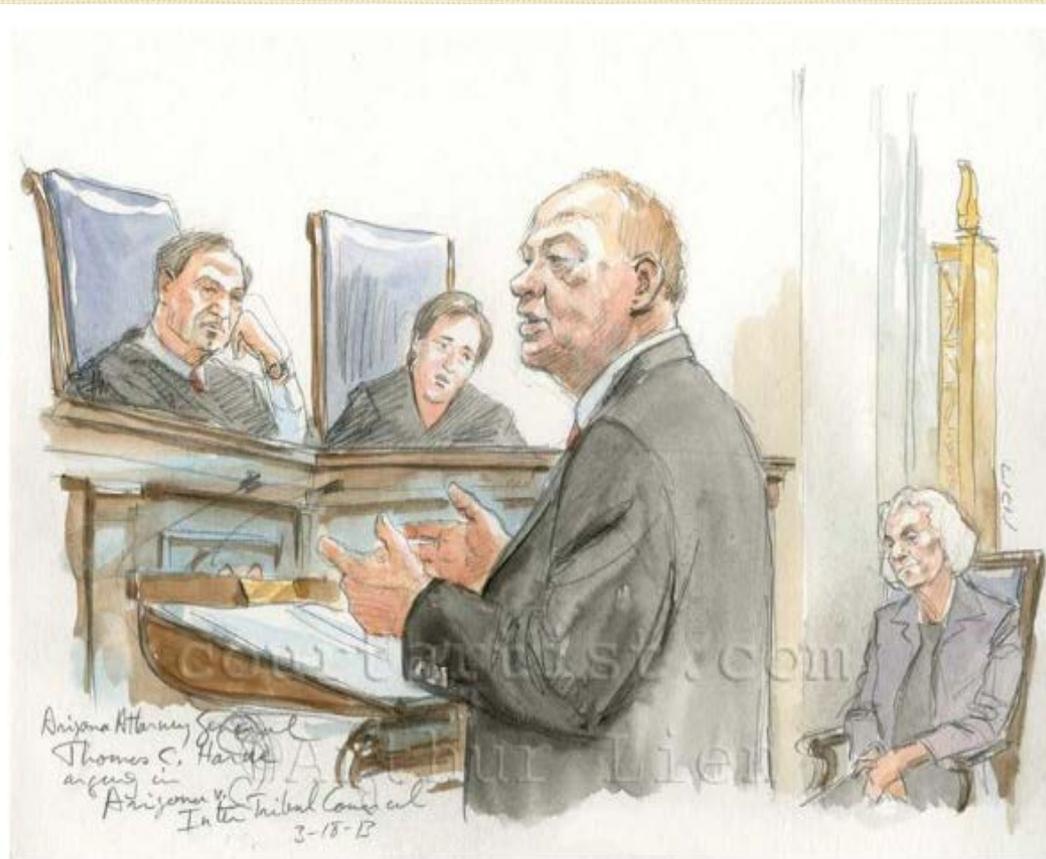
Apt in the circumstances or in relation to something.

Synonyms

appropriate - proper - suitable - apt - pertinent - fit

12-71 AZ v ITCA et al

Supreme Court Decision: Election Clause



12-71 AZ v ITCA et al

Supreme Court Decision: Election Clause



Last year, a divided 10-judge panel of the United States Court of Appeals for the Ninth Circuit ruled that the federal and state laws “do not operate harmoniously” and “are seriously out of tune with each other in several ways.” The court blocked the state law.

The decision from that panel effectively affirmed a 2010 ruling from a three-judge panel that included Justice Sandra Day O’Connor, who retired from the Supreme Court in 2006 but occasionally acts as a visiting appeals court judge. She joined the majority in ruling that the state law was inconsistent with the federal one and so could not survive.

Justice O’Connor was in the Supreme Court’s courtroom on Monday to see the announcement of the decision.



The New York Times

12-71 AZ v ITCA et al

§1973gg-6(a)(1)(B)

§1973gg-4(a)(2).

What does that mean?

Arizona's reading is also difficult to reconcile with neighboring provisions of the NVRA. Section 1973gg-6(a)(1)(B) provides that a State shall "ensure that any eligible applicant is registered to vote in an election . . . if the *valid voter registration form* of the applicant is post-marked" not later than a specified number of days before the election. (Emphasis added.) Yet Arizona reads the phrase "accept and use" in §1973gg-4(a)(1) as permitting it to *reject* a completed Federal Form if the applicant does not submit additional information required by state law. That reading can be squared with Arizona's obligation

12-71 AZ v ITCA et al

§1973gg-6(a)(1)(B)

§1973gg-4(a)(2).

What does that mean?

under §1973gg-6(a)(1) only if a completed Federal Form is not a “valid voter registration form,” which seems unlikely. The statute empowers the EAC to create the Federal Form, §1973gg-7(a), requires the EAC to prescribe its contents within specified limits, §1973gg-7(b), and requires States to “accept and use” it, §1973gg-4(a)(1). It is improbable that the statute envisions a completed copy of the form it takes such pains to create as being anything less than “valid.”

12-71 AZ v ITCA et al

What does that mean?

the Federal Form. States retain the flexibility to design and use their own registration forms, but the Federal Form provides a backstop: No matter what procedural hurdles a State's own form imposes, the Federal Form guarantees that a simple means of registering to vote in federal elections will be available.⁴ Arizona's reading

12-71 AZ v ITCA et al

Supreme Court Decision: Election Clause

Nonetheless, while the NVRA forbids States to demand that an applicant submit additional information beyond that required by the Federal Form, it does not preclude States from “deny[ing] registration based on information in their possession establishing the applicant’s ineligibility.” Pp. 6–13.

12-71 AZ v ITCA et al

What does that mean?

Plaintiffs' Legal Comm., 531 U. S. 341, 347 (2001). In sum, there is no compelling reason not to read Elections Clause legislation simply to mean what it says.

We conclude that the fairest reading of the statute is that a state-imposed requirement of evidence of citizenship not required by the Federal Form is “inconsistent with” the NVRA’s mandate that States “accept and use” the Federal Form. *Siebold, supra*, at 397. If this reading prevails, the Elections Clause requires that Arizona’s rule give way.

We note, however, that while the NVRA forbids States to demand that an applicant submit additional information beyond that required by the Federal Form, it does not preclude States from “deny[ing] registration based on information in their possession establishing the applicant’s ineligibility.”⁷ Brief for United States as *Amicus*

It does not mean an automatic registration—if there is evidence presented that demonstrates ineligibility (age, citizenship, civil rights status/felony conviction, etc.)

12-71 AZ v ITCA et al

Supreme Court Decision: Election Clause

(c) Arizona is correct that the Elections Clause empowers Congress to regulate *how* federal elections are held, but not *who* may vote in them. The latter is the province of the States. See U. S. Const., Art. I, §2, cl. 1; Amdt. 17. It would raise serious constitutional doubts if a federal statute precluded a State from obtaining the information necessary to enforce its voter qualifications. The NVRA can be read to avoid such a conflict, however. Section 1973gg-7(b)(1) permits the EAC to include on the Federal Form information “necessary to enable the appropriate State election official to assess the eligibility of the applicant.” That validly conferred discretionary executive authority is properly exercised (as the Government has proposed) to require the inclusion of Arizona’s concrete-evidence requirement if such evidence is necessary to enable Arizona to enforce its citizenship qualification.

12-71 AZ v ITCA et al

Supreme Court Decision: Election Clause



The NVRA permits a State to request the EAC to include state-specific instructions on the Federal Form, see 42 U. S. C. §1973gg-7(a)(2), and a State may challenge the EAC's rejection of that request (or failure to act on it) in a suit under the Administrative Procedure Act. That alternative means of enforcing its constitutional power to determine voting qualifications remains open to Arizona here. Should the EAC reject or decline to act on a renewed request, Arizona would have the opportunity to establish in a reviewing court that a mere oath will not suffice to effectuate its citizenship requirement and that the EAC is therefore under a nondiscretionary duty to in-



12-71 AZ v ITCA et al

What does that mean?

Since, pursuant to the Government's concession, a State may request that the EAC alter the Federal Form to include information the State deems necessary to determine eligibility, see §1973gg-7(a)(2); Tr. of Oral Arg. 55 (United States), and may challenge the EAC's rejection of that request in a suit under the Administrative Procedure Act, see 5 U. S. C. §701-706, no constitutional doubt is raised by giving the "accept and use" provision of the NVRA its fairest reading. That alternative means of enforcing its constitutional power to determine voting qualifications remains open to Arizona here. In 2005, the EAC divided 2-to-2 on the request by Arizona to include the evidence-of-citizenship requirement among the state-specific instructions on the Federal Form, App. 225, which meant that no action could be taken, see 42 U. S. C. §15328 ("Any action

The decision
lays out the
method for
requesting the
information be
included by the
EAC in the
Federal Form
State
Instructions, and
how to proceed
if that is denied.

12-71 AZ v ITCA et al

What does that mean?

from renewing its request.¹⁰ Should the EAC's inaction persist, Arizona would have the opportunity to establish in a reviewing court that a mere oath will not suffice to effectuate its citizenship requirement and that the EAC is therefore under a nondiscretionary duty to include Arizona's concrete evidence requirement on the Federal Form. See 5 U. S. C. §706(1). Arizona might also assert (as it has argued here) that it would be arbitrary for the EAC to refuse to include Arizona's instruction when it has accepted a similar instruction requested by Louisiana.¹¹

12-71 AZ v ITCA et al

What does that mean?

¹⁰We are aware of no rule promulgated by the EAC preventing a renewed request. Indeed, the whole request process appears to be entirely informal, Arizona's prior request having been submitted by e-mail. See App. 181.

The EAC currently lacks a quorum—indeed, the Commission has not a single active Commissioner. If the EAC proves unable to act on a renewed request, Arizona would be free to seek a writ of mandamus to “compel agency action unlawfully withheld or unreasonably delayed.” 5 U. S. C. §706(1). It is a nice point, which we need not resolve here, whether a court can compel agency action that the agency itself, for lack of the statutorily required quorum, is incapable of taking. If the answer to that is no, Arizona might then be in a position to assert a constitutional right to demand concrete evidence of citizenship apart from the Federal Form.

¹¹The EAC recently approved a state-specific instruction for Louisiana requiring applicants who lack a Louisiana driver's license, ID card, or Social Security number to attach additional documentation to the completed Federal Form. See National Mail Voter Registration Form, p. 9; Tr. of Oral Arg. 57 (United States).

12-71 AZ v ITCA et al

* * *

We hold that 42 U. S. C. §1973gg-4 precludes Arizona from requiring a Federal Form applicant to submit information beyond that required by the form itself. Arizona may, however, request anew that the EAC include such a requirement among the Federal Form's state-specific instructions, and may seek judicial review of the EAC's decision under the Administrative Procedure Act.

The judgment of the Court of Appeals is affirmed.

It is so ordered.

12-71 AZ v ITCA et al



But there were dissenting opinions by in part by Justice Kennedy, and in the whole by Justice Thomas & Justice Alito.

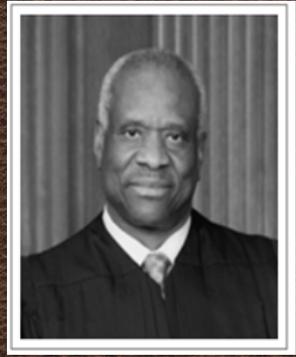
12-71 AZ v ITCA et al



Justice Kennedy

Here, in my view, the Court is correct to conclude that the National Voter Registration Act of 1993 is unambiguous in its pre-emption of Arizona's statute. For this reason, I concur in the judgment and join all of the Court's opinion except its discussion of the presumption against pre-emption. See *ante*, at 10–12.

12-71 AZ v ITCA et al



Justice Thomas

Instead of adopting respondents' definition of "accept and use" and offering Arizona the dubious recourse of bringing an APA challenge within the NVRA framework, I would adopt an interpretation of §1973gg-4(a)(1) that avoids the constitutional problems with respondents' interpretation. The States, not the Federal Government, have the exclusive right to define the "Qualifications requisite for Electors," U. S. Const., Art. I, §2, cl. 1, which includes the corresponding power to verify that those qualifications have been met. I would, therefore, hold that Arizona may "reject any application for registration that is not accompanied by satisfactory evidence of United States citizenship," as defined by Arizona law. Ariz. Rev. Stat. Ann. §16-166(F).

I respectfully dissent.

12-71 AZ v ITCA et al

Justice Alito



Properly interpreted, the NVRA permits Arizona to require applicants for federal voter registration to provide proof of eligibility. I therefore respectfully dissent.

What changes?

Nothing.

This affirms the ruling by Judge Silver last year, so we will continue those procedures.

What changes?

Federal forms submitted *containing identification information* in field 6 will be keyed into the system and an attempted match with MVD will be made.

- If the voter is identified & eligible, they are put on the active voter file.
- If the voter is identified & ineligible, they receive a letter.
- If the voter is not identified they will be mailed the appropriate registration verification letter (DL mismatch, DOB error, etc.)

What changes?

Federal forms submitted *lacking identification information* in field 6 will be keyed into the system and an attempted match with MVD will be made.

- If the voter is identified they are put on the active voter file.
- If the voter is identified & ineligible, they receive a letter.
- If the voter is not identified they will be mailed the Recorder's Certificate letter & they will have to vote in person the first time they vote if they do not resolve.



COUNTY RECORDER'S CERTIFICATE

This certificate counts as one piece of acceptable, non-photo ID required for voting in-person.

FULL NAME: [REDACTED]
 RESIDENCE ADDRESS: [REDACTED] ADALUPE AZ 85283
 MAILING ADDRESS:
 AFFIDAVIT NO: 458000070
 RELATED ELECTION: TOWN OF GUADALUPE, PRIMARY ELECTION

Helen Purcell
Maricopa County Recorder

Dated: January 30, 2013

SEE OTHER SIDE FOR SPANISH / VER OTRO LADO PARA ESPAÑOL

Dear Voter,

Because you submitted a registration request using a FEDERAL VOTER REGISTRATION FORM and did not provide information that would allow us to validate your identity (e.g. Arizona driver's license number, verifiable social security number, etc.), you are then required, by Federal law, to vote in-person in order to prove identity. Once your identity is proven, your record will be fully activated for all future elections.

In order to vote in the upcoming March 12, 2013 TOWN OF GUADALUPE PRIMARY ELECTION, you must appear in-person to vote. This can be done at any early voting site beginning Thursday, February 14, 2013 through Friday, March 8, 2013 (during normal business hours). For more info on in-person early voting hours and locations, please call 602-506-1511 or visit us online at: www.recorder.maricopa.gov

In-person voting can also be done on Election Day (March 12, 2013) from 6am to 7pm at the location noted below. To receive a standard ballot on Election Day, you will need to prove identity. To prove identity, you can present one (1) form of PHOTO ID such as valid Arizona driver's license or provide two (2) forms of NON-PHOTO ID such as this Recorder's Certificate, along with a utility bill, bank statement, vehicle registration, etc. For a full list of valid ID's that can be used or if you have any questions, please call 602-506-1511 or visit us online at: www.recorder.maricopa.gov

ELECTION DAY FACILITY NAME:	EL TIANGUIS MERCADO
ELECTION DAY FACILITY ADDRESS:	9201 S AVENIDA DEL YAQUI, GUADALUPE
PREC. / CPC NUM. & NAME:	5521 - PPNO 1
BOD CODE:	7-5521-00
BALLOT HEADER INFO:	5521-00-00 (WITH BALLOT COLOR: <u>WHITE</u>)

BOARD WORKER (POLLING PLACE - ELECTION DAY) INSTRUCTIONS: If the voter provides valid proof of identity (ONE photo ID or TWO alternate ID's), add this voter as the next consecutive number in the Signature Roster and place this page in the front of the Roster. The voter votes a standard ballot if they have one other form of identification from List 1 OR List 2 with this address on it; if not, then they will vote a provisional ballot. Use the "Ballot Header Info" above to determine party and ballot stripe color if applicable for the election and your precinct. If you have any questions, please call the Hotline number.

This is the most recent version of the Recorder's Certificate, there were slight changes earlier this year to accommodate all-mail elections.

SPANISH / ESPAÑOL - Use esta página como referencia



CERTIFICADO DEL REGISTRADOR DEL CONDADO

Este certificado cuenta como una pieza aceptable de ID, sin foto requerida para votar en persona.

NOMBRE COMPLETO:

DOMICILIO:

DIRECCIÓN DE CORREOS:

NÚM. DE DECLARACIÓN JURADA:

ELECCIÓN RELACIONADA:

PARA ESTA INFORMACIÓN, VER EL OTRO LADO

Helen Purcell

Registradora del Condado Maricopa

Estimado Votante,

VER EL OTRO LADO PARA INGLÉS / SEE OTHER SIDE FOR ENGLISH

Debido a que presentó una solicitud de registro a través de UN FORMULARIO DE REGISTRO FEDERAL DE VOTANTE y no proporcionó información que nos permita validar su identidad (por ejemplo, *número de licencia de conducir de Arizona, número de seguro social verificable, etc.*), entonces se requiere, por ley Federal, que vote en-persona con el fin de comprobar la identidad. Una vez comprobada su identidad, su registro será completamente activado para todas las elecciones futuras.

Para poder votar en la elección próxima (VER EL OTRO LADO), usted debe presentarse a votar en persona. Esto se puede hacer en cualquier sitio de votación temprana comenzando (VER EL OTRO LADO) hasta (VER EL OTRO LADO) (*durante horas normales de oficina*). Para más información sobre horas y lugares de votación temprana en persona, por favor llame al 602-506-1511 o visítenos en línea a: www.recorder.maricopa.gov

La votación en persona también se puede hacer el Día de la Elección (VER EL OTRO LADO) de 6am a 7pm en el lugar que se indica a continuación. Para recibir una boleta estándar el Día de Elección, usted debe probar identidad. Para probar identidad, puede presentar una (1) forma de ID con FOTO como una licencia de conducir válida de Arizona o proporcionar dos (2) formas de ID SIN-FOTO como este Certificado del Registrador, junto con una factura de servicios públicos, estado de cuenta bancaria, registro de vehículo, etc. Para una lista completa de ID's válidas que pueden ser utilizadas o si tiene alguna pregunta, por favor llame al 602-506-1511 o visítenos en línea a: www.recorder.maricopa.gov

(DÍA DE ELECCIÓN) NOMBRE DE LA INSTALACIÓN:

(DÍA DE ELECCIÓN) DIRECCIÓN DE LA INSTALACIÓN:

NÚM. y NOMBRE DEL RECINTO / CPC:

CÓDIGO DE LA BOLETA:

INFORMACIÓN DE ENCABEZADO DE LA BOLETA:

PARA ESTA INFORMACIÓN, VER EL OTRO LADO

INSTRUCCIONES AL TRABAJADOR ELECTORAL (LUGAR DE VOTACIÓN – DÍA DE ELECCIÓN):

Si el votante proporciona prueba válida de identidad (UNA ID con foto o DOS ID's suplentes), agregue este votante como el siguiente número consecutivo en la Lista de Firmas y coloque esta página en el frente de la Lista. El votante vota una boleta estándar si tiene una forma de identificación de la Lista 1 O Lista 2 con esta dirección; si no, entonces ellos votan una boleta provisional. Utilice la "Información de Encabezado de la Boleta" arriba para determinar el partido y el color de raya de la boleta si es aplicable para esta elección y su recinto. Si usted tiene alguna pregunta, por favor llame al número directo.

This is the
common
Spanish
back to the
letter

What changes?

The Secretary of State has already sent a letter to the EAC requesting the Arizona requirements be added to the Federal Form state-specific instruction pages.



KEN BENNETT
SECRETARY OF STATE
STATE OF ARIZONA



June 19, 2013

The U.S. Election Assistance Commission
Ms. Alice P. Miller
1201 New York Avenue, N.W., Suite 300
Washington, DC 20005

Re: State-specific identification requirements for Arizona.

Dear Acting Director Miller:

In the case of *Arizona v. Inter Tribal Council of Arizona, Inc.*, the United States Supreme Court held that "Arizona may ... request anew that the EAC include such a requirement [i.e., the state requirement that applicants submit some evidence of citizenship] among the federal form's state-specific instructions, and may seek judicial review of the EAC's decision under the Administrative Procedures Act." Opinion at 18. The Court also stated:

Since the power to establish voting requirements is of little value without the power to enforce those requirements, Arizona is correct that it would raise serious constitutional doubts if a federal statute precluded a State from obtaining the information necessary to enforce its voter qualification.

Opinion at 15.

In light of the Supreme Court's opinion, Arizona is renewing its request that you include Arizona-specific instructions in the federal form that instruct Arizona voters about Arizona's requirement in A.R.S. § 16-166(F) as follows:

If this is your first time registering to vote in Arizona or you have moved to another county in Arizona, your voter registration form must also include proof of citizenship or the form will be rejected. If you have an Arizona driver license or non-operating identification issued after October 1, 1996, write the number in box 6 on the front of the federal form. This will serve as proof of citizenship and no additional documents are needed. If not, you must attach proof of citizenship to the form. Only one acceptable form of proof is needed to register to vote.

1700 W. Washington Street, 7th Floor
Phoenix, Arizona 85007-2808
Telephone (602) 542-4285 Fax (602) 542-1575
www.azsos.gov

- A legible photocopy of a birth certificate that verifies citizenship and supporting legal documentation (i.e. marriage certificate) if the name on the birth certificate is not the same as your current legal name
- A legible photocopy of the pertinent pages of your passport
- Presentation to the County Recorder of U.S. naturalization documents or fill in your Alien Registration Number in box 6
- Your Indian Census Number, Bureau of Indian Affairs Card Number, Tribal Treaty Card Number, or Tribal Enrollment Number in box 6
- A legible photocopy of your Tribal Certificate of Indian Blood or Tribal or Bureau of Indian Affairs Affidavit of Birth.

Thank you in advance for your assistance in this matter.

Sincerely,

Ken Bennett
Arizona Secretary of State

What changes?

Louisiana Language

www.eac.gov

State Instructions

Louisiana

Updated: 08-14-2012

Registration Deadline — 30 days before the election.

6. ID Number. You must provide your Louisiana driver's license number or Louisiana special identification card number, if issued. If not issued, you must provide at least the last four digits of your social security number, if issued. The full social security number may be provided on a voluntary basis. If the applicant has neither a Louisiana driver's license, a Louisiana special identification card, or a social security number, the applicant shall attach one of the following items to his application: (a) a copy of a current and valid photo identification; or (b) a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of applicant. Neither the registrar nor the Department of State shall disclose the social security number of a registered voter or circulate the social security numbers of registered voters on commercial lists (R.S. 18:104 and 154; 42 U.S.C. § 405).

7. Choice of Party. If you do not list a party affiliation, you cannot vote in the Presidential Preference Primary and party committee elections. Political party affiliation is not required for any other election.

8. Race or Ethnic Group. You are requested to fill in this box. See the list of choices under the Application Instructions for Box 8 (on page 2).

9. Signature. To register in Louisiana you must:

- be a citizen of the United States
- be a resident of Louisiana (Residence address must be address where you claim homestead exemption, if any, except for a resident in a nursing home or veteran's home who may select to use the address of the nursing home or veterans' home or the home where he has a homestead exemption. A college student may elect to use his home address or his address while away at school.)
- be at least 17 years old, and be 18 years old prior to the next election to vote
- not currently be under an order of imprisonment for conviction of a felony
- not currently be under a judgment of interdiction for mental incompetence

Mailing address:

Secretary of State
Attention: Voter Registration
P.O. Box 94125
Baton Rouge, LA 70804-9125

Maine

Updated: 08-14-2012

Registration Deadline — Delivered 21 business days before the election (or a voter may register *in-person* up to and including election day).

6. ID Number. You must list your valid Maine driver's license number. If you don't have a valid Maine driver's license, then you must provide the last four digits of your Social Security Number. Voters who don't have either of these forms of ID must write "NONE" in this space.

What changes?

Introduced Legislation in Congress

113TH CONGRESS
1ST SESSION

H. R. 2409

To amend the National Voter Registration Act of 1993 to permit a State to require an applicant for voter registration in the State who uses the Federal mail voter registration application form developed by the Election Assistance Commission under such Act to provide documentary evidence of citizenship as a condition of the State's acceptance of the form.

IN THE HOUSE OF REPRESENTATIVES

JUNE 18, 2013

Mr. SALMON (for himself, Mr. FRANKS of Arizona, Mr. SCHWEIKERT, and Mr. GOSAR) introduced the following bill; which was referred to the Committee on House Administration

A BILL

To amend the National Voter Registration Act of 1993 to permit a State to require an applicant for voter registration in the State who uses the Federal mail voter registration application form developed by the Election Assistance Commission under such Act to provide documentary evidence of citizenship as a condition of the State's acceptance of the form.

HR 2409 has been referred to the House Administration Committee

12-96

Voting Rights Act: Section 5 Preclearance



12-96

Voting Rights Act: Section 5 Preclearance

(Slip Opinion)

OCTOBER TERM, 2012

1

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

**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

12-96 Shelby County, AL v. Holder

Supreme Court Decision: 5-4



679 F. 3d 848, reversed.

ROBERTS, C. J., delivered the opinion of the Court, in which SCALIA, KENNEDY, THOMAS, and ALITO, JJ., joined. THOMAS, J., filed a concurring opinion. GINSBURG, J., filed a dissenting opinion, in which BREYER, SOTOMAYOR, and KAGAN, JJ., joined.

5-4

to reverse the lower court

12-96 Shelby County, AL v. Holder

Supreme Court Decision: 5-4



12-96 Shelby County, AL v. Holder

Supreme Court Decision: 5-4

The Voting Rights Act of 1965 was enacted 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 defiance of the Constitution.” *South Carolina v. Katzenbach*, 383 U. S. 301, 309. Section 2 of the Act, which bans any “standard, practice, or procedure” that “results in a denial or abridgement of the right of any citizen . . . to vote on account of race or color,” 42 U. S. C. §1973(a), applies nationwide, is permanent, and is not at issue in this case. Other sections apply only to some parts of the country. Section 4 of the Act provides the “coverage formula,” defining the “covered jurisdictions” as States or political subdivisions that maintained tests or devices as prerequisites to voting, and had low voter registration or turnout, in the 1960s and early 1970s. §1973b(b). In those covered jurisdictions, §5 of the Act provides that no change in voting procedures can take effect until approved by specified federal authorities in Washington, D. C. §1973c(a). Such approval is known as “preclearance.”

The coverage formula and preclearance requirement were initially set to expire after five years, but the Act has been reauthorized several times. In 2006, the Act was reauthorized for an additional 25 years, but the coverage formula was not changed. Coverage still turned on whether a jurisdiction had a voting test in the 1960s or 1970s, and had low voter registration or turnout at that time. Shortly after the 2006 reauthorization, a Texas utility district sought to bail out from the Act’s coverage and, in the alternative, challenged the Act’s constitutionality. This Court resolved the challenge on statutory grounds, but expressed serious doubts about the Act’s con-

The decision focused on Section 4 which is the formula under which a jurisdiction is covered under Section 5.

12-96 Shelby County, AL v. Holder

What does that mean?

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." *Northwest Austin*, 557 U. S., at 203.

The Court cites its decision in the Northwest Austin case from a few years ago where they intimated how this case would go.

12-96 Shelby County, AL v. Holder

What does that mean?

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.”

The Court refers to the 15th Amendment and the power it gives Congress to enforce voting equality.

12-96 Shelby County, AL v. Holder

What does that mean?

voting laws from going into effect, see 42 U.S.C. §1973j(d). Section 2 is permanent, applies nationwide, and is not at issue in this case.

Other sections targeted only some parts of the country.

They acknowledge that this is the case under Section 2 coverage of the VRA which applies to the entire Nation.

12-96 Shelby County, AL v. Holder

Supreme Court Decision: 5-4

Petitioner Shelby County, in the covered jurisdiction of Alabama, sued the Attorney General in Federal District Court in Washington, D. C., seeking a declaratory judgment that sections 4(b) and 5 are facially unconstitutional, as well as a permanent injunction against their enforcement. The District Court upheld the Act, finding that the evidence before Congress in 2006 was sufficient to justify reauthorizing §5 and continuing §4(b)'s coverage formula. The D. C. Circuit affirmed. After surveying the evidence in the record, that court accepted Congress's conclusion that §2 litigation remained inadequate in the covered jurisdictions to protect the rights of minority voters, that §5 was therefore still necessary, and that the coverage formula continued to pass constitutional muster.

12-96 Shelby County, AL v. Holder

Supreme Court Decision: 5-4

It is important to note here that the Congressional Reauthorization in 2007 passed unanimously in the Senate (98-0) and by a vote of 390 to 33 in the House prior to being signed by President Bush:



12-96 Shelby County, AL v. Holder

Sections 4 and 5 were intended to be temporary; they were set to expire after five years. See §4(a), *id.*, at 438; *Northwest Austin, supra*, at 199. In *South Carolina v. Katzenbach*, we upheld the 1965 Act against constitutional challenge, explaining that it was justified to address “voting discrimination where it persists on a pervasive scale.” 383 U. S., at 308.

In 1970, Congress reauthorized the Act for another five years, and extended the coverage formula in §4(b) to jurisdictions that had a voting test and less than 50 percent voter registration or turnout as of 1968. Voting Rights Act Amendments of 1970, §§3–4, 84 Stat. 315. That swept in several counties in California, New Hampshire, and New York. See 28 CFR pt. 51, App. Congress also extended the ban in §4(a) on tests and devices nationwide. §6, 84 Stat. 315.

In 1975, Congress reauthorized the Act for seven more years, and extended its coverage to jurisdictions that had a voting test and less than 50 percent voter registration or

1965:

Originally set to expire in 5 years.

1970:

Reauthorized for 5 more years and extended to voting tests and 50% registration.

1975:

Reauthorized for 7 more years and extended to include 50% turnout. “Test or Device” = English only. AZ added.

12-96 Shelby County, AL v. Holder

Supreme Court Decision: 5-4

In 1982, Congress reauthorized the Act for 25 years, but did not alter its coverage formula. See Voting Rights Act Amendments, 96 Stat. 131. Congress did, however, amend the bailout provisions, allowing political subdivisions of covered jurisdictions to bail out. Among other prerequisites for bailout, jurisdictions and their subdivisions must not have used a forbidden test or device, failed to receive preclearance, or lost a §2 suit, in the ten years prior to seeking bailout. §2, *id.*, at 131–133.

We upheld each of these reauthorizations against constitutional challenge. See *Georgia v. United States*, 411 U. S. 526 (1973); *City of Rome v. United States*, 446 U. S. 156 (1980); *Lopez v. Monterey County*, 525 U. S. 266 (1999).

1982:

Reauthorized for 25 more years and amended the bailout provision

12-96 Shelby County, AL v. Holder

Supreme Court Decision: 5-4

479 (2003). Section 5 now forbids voting changes with “any discriminatory purpose” as well as voting changes that diminish the ability of citizens, on account of race, color, or language minority status, “to elect their preferred candidates of choice.” 42 U. S. C. §§1973c(b)–(d).

2006:

Reauthorized for 25 more years and expanded to include changes with any discriminatory purpose or which diminish a voter’s ability as citizens to elect their preferred candidate.

12-96 Shelby County, AL v. Holder

Held: Section 4 of the Voting Rights Act is unconstitutional; its formula can no longer be used as a basis for subjecting jurisdictions to pre-clearance. Pp. 9–25.

(a) In *Northwest Austin*, this Court noted that the Voting Rights Act “imposes current burdens and must be justified by current needs” and concluded that “a departure from the fundamental principle of equal sovereignty requires a showing that a statute’s disparate geographic coverage is sufficiently related to the problem that it targets.” 557 U. S., at 203. These basic principles guide review of the question presented here. Pp. 9–17.

(1) State legislation may not contravene federal law. States retain broad autonomy, however, in structuring their governments and pursuing legislative objectives. Indeed, the Tenth Amendment reserves to the States all powers not specifically granted to the Federal Government, including “the power to regulate elections.” *Gregory v. Ashcroft*, 501 U. S. 452, 461–462. There is also a “fundamental principle of equal sovereignty” among the States, which is highly pertinent in assessing disparate treatment of States. *Northwest Austin, supra*, at 203.

The Voting Rights Act sharply departs from these basic principles. It requires States to beseech the Federal Government for permission to implement laws that they would otherwise have the right to enact and execute on their own. And despite the tradition of equal sovereignty, the Act applies to only nine States (and additional counties). That is why, in 1966, this Court described the Act as “stringent” and “potent,” *Katzenbach*, 383 U. S., at 308, 315, 337. The Court nonetheless upheld the Act, concluding that such an “uncommon exercise of congressional power” could be justified by “exceptional conditions.” *Id.*, at 334. Pp. 9–12.

The disparity in how states are treated, and the autonomy of the states, weighs heavily in the ruling decision.

12-96 Shelby County, AL v. Holder

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.” *Gregory v. Ashcroft*, 501 U. S. 452, 461–462 (1991) (quoting *Sugarman v. Dougall*, 413 U. S. 634, 647 (1973); some internal quotation marks omitted). 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. Art. I, §4, cl. 1; see also *Arizona v. Inter Tribal Council of Ariz., Inc.*, *ante*, at 4–6. But States have “broad powers to determine the conditions under which the right of suffrage may be exercised.” *Carrington v. Rash*, 380 U. S. 89, 91 (1965) (internal quotation marks omitted); see also *Arizona*, *ante*, at 13–15. And “[e]ach

The Court
cites its ruling
not only in
Northwest, but
also in the
very recent
Arizona v.
ITCA

12-96 Shelby County, AL v. Holder

Supreme Court Decision: 5-4

Court narrowed scope from Section 5 to Section 4: the formula for coverage.



(3) Nearly 50 years later, things have changed dramatically. Largely because of the Voting Rights Act, “[v]oter turnout and registration rates” in covered jurisdictions “now approach parity. Blatantly discriminatory evasions of federal decrees are rare. And minority candidates hold office at unprecedented levels.” *Northwest Austin, supra*, at 202. The tests and devices that blocked ballot access have been forbidden nationwide for over 40 years. Yet the Act has not eased §5’s restrictions or narrowed the scope of §4’s coverage formula along the way. Instead those extraordinary and unprecedented features have been reauthorized as if nothing has changed, and they have grown even stronger. Because §5 applies only to those jurisdictions singled out by §4, the Court turns to consider that provision. Pp. 13–17.



12-96 Shelby County, AL v. Holder

Supreme Court Decision: 5-4

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. §6, 84 Stat. 315; §102, 89 Stat. 400. And voter registration and turnout numbers in the covered States have risen dramatically in the years since. H. R. Rep. No. 109-478, at 12. Racial disparity in those numbers was compelling evidence justifying the preclearance remedy and the coverage formula. See, e.g., *Katzenbach, supra*, at 313, 329-330. There is no longer such a disparity.

12-96 Shelby County, AL v. Holder

Supreme Court Decision: 5-4

(3) Respondents also rely heavily on data from the record compiled by Congress before reauthorizing the Act. Regardless of how one looks at that record, no one can fairly say that it shows anything approaching the “pervasive,” “flagrant,” “widespread,” and “rampant” discrimination that clearly distinguished the covered jurisdictions from the rest of the Nation in 1965. *Katzenbach, supra*, at 308, 315, 331. But a more fundamental problem remains: Congress did not use that record to fashion a coverage formula grounded in current conditions. It instead re-enacted a formula based on 40-year-old facts having no logical relation to the present day. Pp. 21–22.

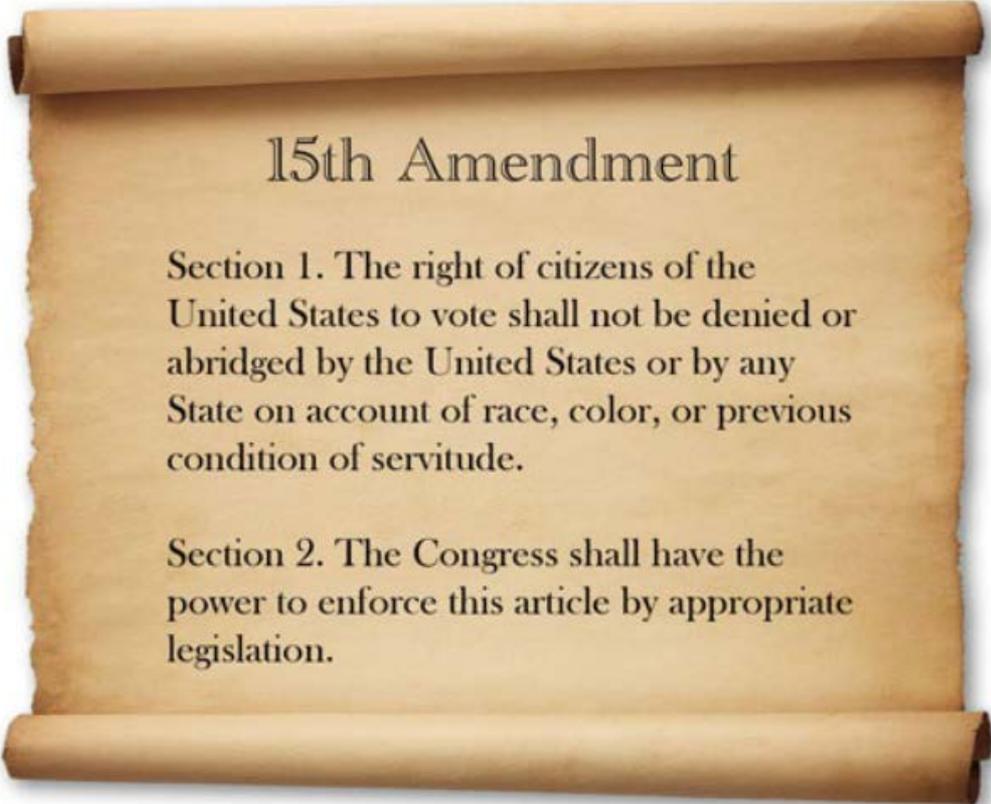
12-96 Shelby County, AL v. Holder

Supreme Court Decision: 5-4

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. See *Rice v. Cayetano*, 528 U. S. 495, 512 (2000) (“Consistent with the design of the Constitution, the [Fifteenth] Amendment is cast in fundamental terms, terms transcending the particular controversy which was the immediate impetus for its enactment.”). 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.

12-96 Shelby County, AL v. Holder

15th Amendment Refresher:



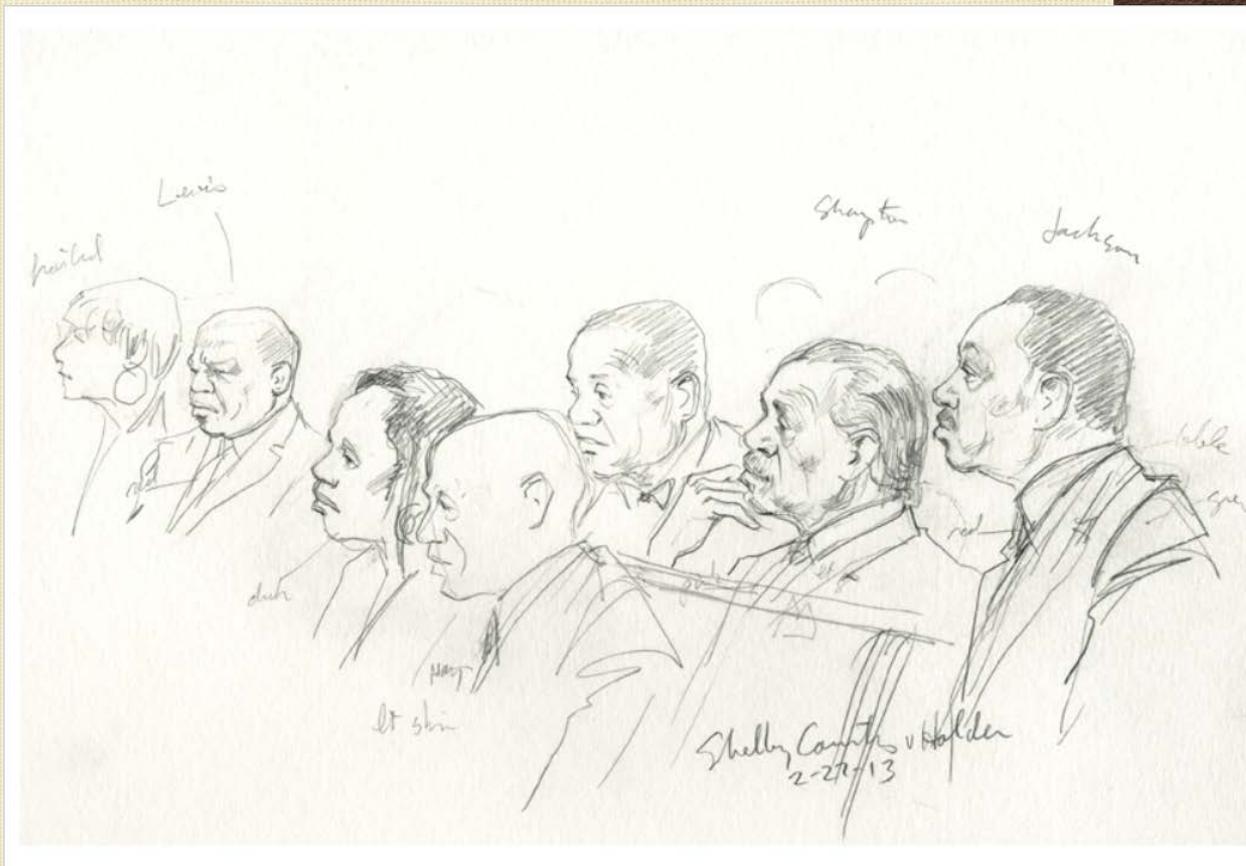
15th Amendment

Section 1. The 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.

Section 2. The Congress shall have the power to enforce this article by appropriate legislation.

12-96 Shelby County, AL v. Holder

Supreme Court Decision: 5-4



12-96 Shelby County, AL v. Holder

Supreme Court Decision: 5-4

Striking down an Act of Congress “is the gravest and most delicate duty that this Court is called on to perform.” *Blodgett v. Holden*, 275 U. S. 142, 148 (1927) (Holmes, J., concurring). 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.

Nutshell: we told you in Northwest to change Sec 4 formula, you didn't so we're striking it down now.

12-96 Shelby County, AL v. Holder

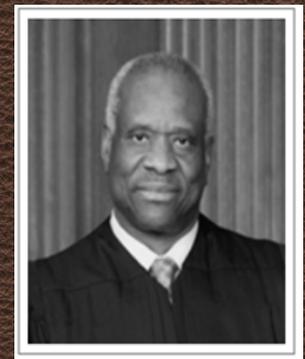
Our decision in no way affects the permanent, nationwide ban on racial discrimination in voting found in §2. We issue no holding on §5 itself, only on the coverage formula. Congress may draft another formula based on current conditions. Such a formula is an initial prerequisite to a determination that 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.

The judgment of the Court of Appeals is reversed.

It is so ordered.

The Court defers to Congress to draft a new formula for Section 5 coverage.

12-96 Shelby County, AL v. Holder



Justice Thomas disagrees:

SHELBY COUNTY, ALABAMA, PETITIONER *v.* ERIC
H. HOLDER, JR., ATTORNEY GENERAL, ET AL.

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

[June 25, 2013]

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.

12-96 Shelby County, AL v. Holder

Dissenting Opinions



Justice Ginsburg dissents (Art Lien)

12-96 Shelby County, AL v. Holder

GINSBURG, J., dissenting

SUPREME COURT OF THE UNITED STATES

No. 12-96

SHELBY COUNTY, ALABAMA, PETITIONER *v.* ERIC
H. HOLDER, JR., ATTORNEY GENERAL, ET AL.

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

[June 25, 2013]

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



12-96 Shelby County, AL v. Holder

Congress learned from experience that laws targeting particular electoral practices or enabling case-by-case litigation were inadequate to the task. In the Civil Rights Acts of 1957, 1960, and 1964, Congress authorized and then expanded the power of “the Attorney General to seek injunctions against public and private interference with the right to vote on racial grounds.” *Katzenbach*, 383 U. S., at 313. But circumstances reduced the ameliorative potential of these legislative Acts:

“Voting suits are unusually onerous to prepare, sometimes requiring as many as 6,000 man-hours spent combing through registration records in preparation for trial. Litigation has been exceedingly slow, in part because of the ample opportunities for delay afforded voting officials and others involved in the proceedings. Even when favorable decisions have finally been obtained, some of the States affected have merely switched to discriminatory devices not covered by the federal decrees or have enacted difficult new tests designed to prolong the existing disparity between white and Negro registration. Alternatively, certain local officials have defied and evaded court orders or have simply closed their registration offices to freeze the voting rolls.” *Id.*, at 314 (footnote omitted).

This is perhaps foreshadowing what we will see now: lengthy, costly litigation.

12-96 Shelby County, AL v. Holder

Second-generation barriers come in various forms. One of the blockages is racial gerrymandering, the redrawing of legislative districts in an “effort to segregate the races for purposes of voting.” *Id.*, at 642. Another is adoption of a system of at-large voting in lieu of district-by-district voting in a city with a sizable black minority. By switching to at-large voting, the overall majority could control the election of each city council member, effectively eliminating the potency of the minority’s votes. Grofman & Davidson, *The Effect of Municipal Election Structure on Black Representation in Eight Southern States*, in *Quiet Revolution in the South* 301, 319 (C. Davidson & B. Grofman eds. 1994) (hereinafter *Quiet Revolution*).

Interesting in light of the fact that the addition of at-large districts were withdrawn from preclearance in recent years in Maricopa for the Community College Districts (more on this in a minute...)

12-96 Shelby County, AL v. Holder

persisted in covered jurisdictions”). The House and Senate Judiciary Committees held 21 hearings, heard from scores of witnesses, received a number of investigative reports and other written documentation of continuing discrimination in covered jurisdictions. In all, the legislative record Congress compiled filled more than 15,000 pages. H. R. Rep. 109–478, at 5, 11–12; S. Rep. 109–295, at 2–4, 15. The compilation presents countless “examples of flagrant racial discrimination” since the last reauthorization; Congress also brought to light systematic evidence that “intentional racial discrimination in voting remains so serious and widespread in covered jurisdictions that section 5 preclearance is still needed.” 679 F. 3d, at 866.

The dissenting Justices looked at the most recent Congressional Reauthorization

12-96 Shelby County, AL v. Holder

Based on these findings, Congress reauthorized pre-clearance for another 25 years, while also undertaking to reconsider the extension after 15 years to ensure that the provision was still necessary and effective. 42 U. S. C. §1973b(a)(7), (8) (2006 ed., Supp. V). The question before the Court is whether Congress had the authority under the Constitution to act as it did.

12-96 Shelby County, AL v. Holder

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 (490). 1 Voting Rights Act: Evidence of Continued Need, Hearing before the Subcommittee on the Constitution of the House Committee on the Judiciary, 109th Cong., 2d Sess., p. 172 (2006) (hereinafter Evidence of Continued Need).

All told, between 1982 and 2006, DOJ objections blocked over 700 voting changes based on a determination that the changes were discriminatory. H. R. Rep. No. 109-478, at 21. Congress found that the majority of DOJ objections included findings of discriminatory intent, see 679 F. 3d, at 867, and that the changes blocked by preclearance were “calculated decisions to keep minority voters from fully participating in the political process.” H. R. Rep. 109-478, at 21. On top of that, over the same time period the DOJ and private plaintiffs succeeded in more than 100 actions to enforce the §5 preclearance requirements. 1 Evidence of Continued Need 186, 250.

Over 700
submissions
were denied
between
1982 and
2006, and
MORE
during the
period of
1982 to 2004
than were
denied from
1965 to 1982

12-96 Shelby County, AL v. Holder

deterred without need for formal objection. Congress received evidence that more than 800 proposed changes were altered or withdrawn since the last reauthorization in 1982. H. R. Rep. No. 109-478, at 40-41.⁴ Congress also received empirical studies finding that DOJ's requests for more information had a significant effect on the degree to which covered jurisdictions "compl[ied] with their obligatio[n]" to protect minority voting rights. 2 Evidence of Continued Need 2555.

When asked for more information from DOJ more than 800 submissions were changed or withdrawn.

12-96 Shelby County, AL v. Holder

Congress was satisfied that the VRA's bailout mechanism provided an effective means of adjusting the VRA's coverage over time. H. R. Rep. No. 109-478, at 25 (the success of bailout "illustrates that: (1) covered status is neither permanent nor over-broad; and (2) covered status has been and continues to be within the control of the jurisdiction such that those jurisdictions that have a genuinely clean record and want to terminate coverage have the ability to do so"). 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. Brief for Federal Respondent 54. The bail-in mechanism has also worked. Several jurisdictions have been subject to federal preclearance by court orders, including the States of New Mexico and Arkansas. App. to Brief for Federal Respondent 1a-3a.

This experience exposes the inaccuracy of the Court's portrayal of the Act as static, unchanged since 1965.

Almost 200
jurisdictions
have bailed
out of
Section 5
since 1984

12-96 Shelby County, AL v. Holder

Broadrick, 413 U. S., at 610. Yet the Court's opinion in this case contains not a word explaining why Congress lacks the power to subject to preclearance the particular plaintiff that initiated this lawsuit—Shelby County, Alabama. The reason for the Court's silence is apparent, for as applied to Shelby County, the VRA's preclearance requirement is hardly contestable.

The dissenting Justices did not feel the Congressional power question was asked, nor answered.

12-96 Shelby County, AL v. Holder

Supreme Court Decision: 5-4



In the end, what does that all mean?

Maricopa County

- Although we will no longer be writing and sending in voting changes to the Civil Rights Division, we will:
 - Continue to make all changes with potential retrogression and discriminatory impact in mind, with all possible mitigations.
 - Continue to prepare all reports, data collection & analysis as we always have.
 - Continue our partnership with voter coalitions

It is important to note that every single submission by MCED was precleared, & rarely after the request for additional information.

In the end, what does that all mean?

Issues to address:

- In the past when a statutory submission was withdrawn or denied, the language was removed in the subsequent legislative session.
- Some states have already moved to enact those pieces of legislation:

Texas to immediately enact voter ID law following Supreme Court ruling

In the end, what does that all mean?

Issues to address:

- There is an issue however in that the language relating to the MCCC at-large districts were never removed from statute in subsequent sessions:

[ARS TITLE PAGE](#) [NEXT DOCUMENT](#) [PREVIOUS DOCUMENT](#)

[15-1441. Selection of precincts; district board members; terms; qualifications; vacancies](#)

I. Beginning July 1, 2012, in addition to the governing board members who are elected from each of the five precincts in a community college district, a county with a population of at least three million persons shall elect two additional governing members from the district at large. At the first general election held to elect at-large governing board members, the two candidates having the most votes shall be declared elected, if each candidate is a qualified elector who resides in that county. The elected member who receives the highest number of votes of the at-large candidates shall serve a four year term and the elected member who receives the next highest number of votes shall serve a two year term. Thereafter each member's term is four years.

In the end, what does that all mean?

Section 3

- 
- Section 3 of the VRA allows for jurisdictions to be placed under Section 5 coverage based on actions other than those established in Section 4 (which is the formula that was struck down).
 - This could be the manner with which jurisdictions are placed under Section 5 as there does not appear to be the political will to create a new formula that would get passed.

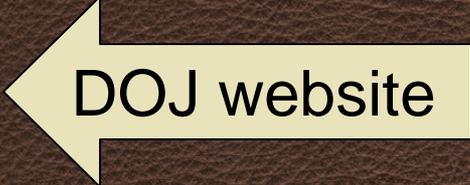
In the end, what does that all mean?

Section 2

Sec. 1973 Denial or abridgement of right to vote on account of race or color through voting qualifications or prerequisites; establishment of violation

(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, as provided in subsection (b) of this section.

(b) A violation of subsection (a) of this section is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: Provided, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.



DOJ website

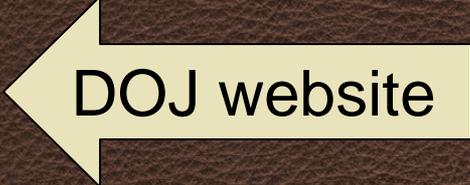
In the end, what does that all mean?

Section 2

Operation of the amended Section 2

The Senate Committee on the Judiciary issued a report to accompany the 1982 legislation. In that report, it suggested several factors for courts to consider when determining if, within the totality of the circumstances in a jurisdiction, the operation of the electoral device being challenged results in a violation of Section 2. These factors include:

- the history of official voting-related discrimination in the state or political subdivision;
- the extent to which voting in the elections of the state or political subdivision is racially polarized;
- the extent to which the state of political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group, such as unusually large election districts, majority-vote requirements, and prohibitions against bullet voting;
- the exclusion of members of the minority group from candidate slating processes;
- the extent to which minority group members bear the effects of discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process;
- the use of overt or subtle racial appeals in political campaigns; and
- the extent to which members of the minority group have been elected to public office in the jurisdiction.



DOJ website

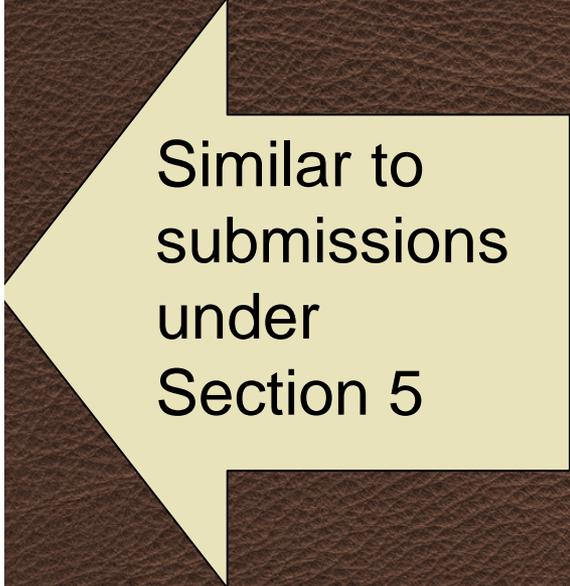
In the end, what does that all mean?

Section 3

SEC. 3. (a) Whenever the Attorney General institutes a proceeding under any statute to enforce the guarantees of the fifteenth amendment in any State or political subdivision the court shall authorize the appointment of Federal examiners by the United States Civil Service Commission in accordance with section 6 to serve for such period of time and for such political subdivisions as the court shall determine is appropriate to enforce the guarantees of the fifteenth amendment (1) as part of any interlocutory order if the court determines that the appointment of such examiners is necessary to enforce such guarantees or (2) as part of any final judgment if the court finds that violations of the fifteenth amendment justifying equitable relief have occurred in such State or subdivision: *Provided*, That the court need not authorize the appointment of examiners if any incidents of denial or abridgement of the right to vote on account of race or color (1) 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.

(b) If in a proceeding instituted by the Attorney General under any statute to enforce the guarantees of the fifteenth amendment in any State or political subdivision the court finds that a test or device has been used for the purpose or with the effect of denying or abridging the right of any citizen of the United States to vote on account of race or color, it shall suspend the use of tests and devices in such State or political subdivisions as the court shall determine is appropriate and for such period as it deems necessary.

(c) If in any proceeding instituted by the Attorney General under any statute to enforce the guarantees of the fifteenth amendment in any State or political subdivision the court finds that violations of the fifteenth amendment justifying equitable relief have



Similar to
submissions
under
Section 5

In the end, what does that all mean?

Section 3

occurred within the territory of such State or political subdivisions, the court in addition to such relief as it may grant, shall retain jurisdiction for such period as it may deem appropriate and during such period no voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect at the time the proceeding was commenced shall be enforced unless and until the court finds that such qualifications, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color: *Provided*, That such qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, except that neither the court's findings nor the Attorney General's failure to object shall bar a subsequent action to enjoin enforcement of such qualifications, prerequisite, standard, practice, or procedure.

Questions?

