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Jim Crow Is Dead. Long Live the Constitution.

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In striking down Section 4 of the Voting Rights Act, the U.S. Supreme Court has restored a measure of constitutional order. Based on 40-year-old voting data that doesn't reflect current political conditions, this provision subjected a seemingly random assortment of states and localities to onerous burdens and unusual federal oversight.

To be clear, neither minority voting rights nor the ability of the federal government to enforce those rights were at stake in Shelby County v. Holder. Both of those were, are and will be secure regardless of this case and its consequences.

Instead, the court was considering whether the "exceptional conditions" and "unique circumstances" of the Jim Crow South still exist such that an "uncommon exercise of congressional power" is still constitutionally justified -- to quote the 1966 ruling that approved Section 5 of the Voting Rights Act as an emergency measure.

As Chief Justice John Roberts wrote for the court in 2009, the last time it looked at this law, the "historic accomplishments of the Voting Rights Act are undeniable," but the modern uses of Section 5 -- which requires federal "pre-clearance" of any changes in election regulation in certain jurisdictions -- "raises serious constitutional concerns." The provision maintains antiquated assumptions and flies in the face of the 15th Amendment's requirement that all voters be treated equally.

Yet Congress renewed Section 5 in 2006 without updating Section 4's coverage formula, and it ignored the court's warning that "the Act imposes current burdens and must be justified by current needs."

Racial Gap

Accordingly, it should be no surprise that the chief justice, again writing for the court, began his opinion by noting that "the conditions that originally justified these measures no longer characterize voting in the covered jurisdictions."

For example, the racial gap in voter registration and turnout is lower in states originally covered by Section 5 than it is nationwide. Blacks in some covered states have actually registered and voted at higher rates than whites. Facetious tests and sinister devices are now permanently

banned; even individual violations are exceedingly rare, and no more likely to occur in jurisdictions that Section 4 sweeps in than in the rest of the country.

The list of "covered" jurisdictions is bizarre: six states of the old Confederacy, plus Alaska, Arizona and parts of other states including New Hampshire and South Dakota. Three New York counties are covered, all New York City boroughs. What's going on in the Bronx, Brooklyn and Manhattan that isn't in Queens or Staten Island?

Moreover, it is Section 2 -- the ban on racial discrimination in voting that applies nationwide -- that is the heart of the Voting Rights Act, and it remains untouched. Section 2 provides for both federal prosecution and private lawsuits, and has proved more than sufficient to remedy disenfranchisement.

Sections 4 and 5, meanwhile, were to be temporary tools that supplemented Section 2. They succeeded, overcoming "widespread and persistent discrimination in voting" and thus eliminating the circumstances that originally justified it.

In other words, three generations of federal intrusion on state sovereignty have been more than enough to kill Jim Crow. As Justice Clarence Thomas wrote in 2009, an acknowledgment of the unconstitutionality of the existing regime "represents a fulfillment of the Fifteenth Amendment's promise of full enfranchisement and honors the success achieved by the VRA."

That's why the court acted as it did, recognizing that the nation had changed and that "extraordinary measures" could no longer be justified in a nation where widespread racial disenfranchisement is, thankfully, consigned to history books.

Statistics Cited

"If Congress had started from scratch in 2006, it plainly could not have enacted the present coverage formula," Roberts wrote for the majority. "It would have been irrational for Congress to distinguish between States in such a fundamental way based on 40-year-old data, when today's statistics tell an entirely different story." And so this law had to fall.

Of course, the court really should have gone further, as Thomas pointed out in his concurring opinion. The court's explanation of Section 4's anachronism applies equally to Section 5.

In practice, however, Congress will be hard-pressed to enact any new coverage formula because the pervasive, systemic discrimination in voting that justified a deviation from the normal constitutional order is now gone.

That's a good thing. We can finally move on to a healthier stage of race relations, particularly with respect to how the American people govern themselves.

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