THE DAILY CALLER

A historic affirmation of racial progress

By: Trevor Burrus, Legal Associate, Cato Institute
June 25, 2013

By ruling Section 4 of the Voting Rights Act unconstitutional, the Supreme Court validated an obvious fact: we now live in a changed world, no longer suffused with the same racial prejudice and bias that existed in 1965. The Court's decision should be a cause for celebration, as should our national progress in curtailing pervasive and overt racial discrimination.

Of course racial prejudice still exists. Yet to say, as some do, that there is little difference between the racism of 1965 and the racism of 2013 is to ignore the obvious, to deny our laudable progress, and, frankly, to be stuck in the past.

In 1965, Congress took the drastic step of allowing the federal government to oversee election law in certain states and districts with histories of racial discrimination in voting. In the face of recalcitrant and unyielding local governments, the act was a necessary step in overcoming our country's shameful history of racial discrimination.

Section 2 of the act outlaws voter discrimination on the basis of race or color and allows both the federal government and individuals to sue for enforcement. That section remains on the books, and rightfully so. Another part of the act (Section 4), however, presumed that certain areas of America were racist, while others were not. Those areas, so-called "covered" jurisdictions, were required to prove to the satisfaction of the federal government that any change in voting laws did not infringe on the voting rights of minority groups. In other words, covered jurisdictions are guilty until proven innocent.

What parts of the country were essentially presumed racist? Manhattan, Brooklyn, and the Bronx, but not Queens; all of Alaska, along with most Southern states; as well as two counties in South Dakota and, until last year, some parts of New Hampshire, to name a few. This hodge-podge of jurisdictions has nothing in common except for their failure to satisfy a federal test devised over 40 years ago. This is the test that the Supreme Court struck down.

By using an antiquated test that has not been adjusted to the modern realities of diminished, yet still present, racism, Congress committed the constitutional sin of unjustified arbitrariness. Usually, states are presumed to be on equal footing in relation to the federal government. If Congress is going to treat a state differently, it must have a good, non-arbitrary reason to do so. Those reasons existed in 1965. The same reasons do not exist today.

In the first years of the act, the federal government objected to 14.2 percent of voting law changes in covered jurisdictions. More recently, the government has objected to only 0.16 percent of changes. Gone are the days of blatantly discriminatory literacy tests or "grandfather clauses." Now, covered jurisdictions often have to seek federal approval for

simple changes in election practices, such as moving a polling place, because the move may have the effect of "abridging" minority voting rights.

We should celebrate the fact that moving polling places is now a more common problem than pretextual literacy tests designed to disenfranchise African-Americans. Next, we must update our laws to reflect that fact.

The Supreme Court ruling gives Congress an opportunity to modernize the formula for which jurisdictions are covered.

Some will point to the 2006 reauthorization of the act by extreme majorities, including a unanimous Senate, as evidence that the Supreme Court has countermanded the democratic process. Originally authorized for only five years, the act has been continually reauthorized and updated — in 1982 for 25 years, and in 2006 for 25 more.

Yet one of the Court's jobs is to enforce the Constitution where the democratic process is unable. Because the act significantly alters voting patterns, it is unsurprising that members of Congress would fear their chances at re-election if the act were not reauthorized.

Our country has made incredible progress in race relations since 1965. While we are still far from fully mended, we should take a moment to reflect on our accomplishments. With this ruling, the Supreme Court gave us that moment.

Trevor Burrus is a research fellow in the Cato Institute's Center for Constitutional Studies.