The New York Times

Live Analysis of Supreme Court Decision on Voting Rights

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The Supreme Court on Tuesday struck down a central part of the Voting Rights Act. Times reporters and editors are analyzing the Supreme Court decision and its implications, as well as the public's reaction.

A Split in the South Over Impact of Decision

Across the South, reaction to the Supreme Court's voting rights decision on Tuesday appeared to be split, largely along racial and partisan lines. Luther Strange, the Republican attorney general of Alabama, called it "a victory for Alabama" and added that he did not believe Alabama should be included in any formula Congress may adopt.

Tate Reeves, the Republican lieutenant governor of Mississippi, said he was pleased by the decision but said that pre-clearance "unfairly applied to certain states should be eliminated in recognition of the progress Mississippi has made over the past 48 years."

On one point, most people agreed: that Congress was not likely to come up with a remedy to Section 4 of the Voting Rights Act any time soon, leaving the South without the oversight provided by Section 5.READ MORE

Four Questions for John Neiman

John Neiman has been the state solicitor general in the office of the Alabama attorney general, Luther Strange, for the last two and a half years. He grew up in Birmingham, went to college at the University of North Carolina and attended law school at Harvard. He was a law clerk for Justice Anthony M. Kennedy on the Supreme Court and Judge Paul V. Niemeyer on the Court of Appeals for the Fourth Circuit, in Baltimore. He has worked at private law firms and for the law schools at the University of Georgia and the University of Alabama. His client, the Alabama state government, is separate from Shelby County, the plaintiff in the Supreme Court case. Alabama submitted an amicus brief supporting Shelby County in the Supreme Court.

Q. How would you summarize the decision in a single sentence?
A. The court decided that Congress cannot impose the extreme remedy created by Section 5 on some states, but not others, unless Congress uses a rational formula for determining which states should be covered and which states should not be.

Q. Did anything in it — or in the justices' votes — surprise you?
A. I was surprised that the justices did not develop more of a consensus around the majority opinion. All nine justices agreed in a 2009 case that the coverage formula had serious constitutional issues. The coverage formula is exceedingly difficult to justify as a matter of logic. I had hoped that more justices would agree to strike down the coverage

formula, and to leave it to Congress to fix the problem if it so desired. That was, after all, the narrower of the two arguments Shelby County was making. The county had also asked the court to hold, more broadly, that Section 5 itself was unconstitutional. The court did not go that far.

Q. How will the ruling affect elections and voting? How will it affect minority turnout and representation?
A. I certainly hope that the ruling will have absolutely no effect on minority turnout and voting. It should not have any effect, especially since other aspects of the Voting Rights Act, such as Section 2, remain firmly in place. The beneficial aspect of the court's decision is that it will help states to enact good-faith reforms to their election laws that are obviously nondiscriminatory. Previously, the covered states had to get preclearance from federal employees before enforcing even the most innocuous of changes to their voting laws. That process often took a very long time and was extremely costly to cash-strapped state governments.

Q. What's next for the Voting Rights Act?
A. We will have to see whether Congress comes up with a rational coverage formula and thus revives Section 5. Meanwhile, Section 2 of the Voting Rights Act, the most important part of the statute, will remain in place. It applies in every state and allows people to bring an action when they believe that their voting rights have been violated. It will continue to protect all Americans.

Four Questions for Ellen D. Katz

Ellen D. Katz is the Ralph W. Aigler professor of law at the University of Michigan Law School. She participated as amicus curiae in support of respondents in Shelby County v. Holder. She is also the principal author of the "Katz study," a study of Section 2 litigation nationwide, which was made part of the Congressional record and discussed in Justice Ginsburg's dissent.

Q. How would you summarize the decision in a single sentence?
A. Today's decision effectively terminates a key provision of the Voting Rights Act, the most successful and salient piece of civil rights legislation in American history, while leaving Congress with far less power to address racial discrimination in voting in the future.

Q. Did anything in in it — or in the justices' votes — surprise you?
A. Chief Justice Roberts's opinion devotes very little attention to the "thousands of pages of evidence" Congress assembled before reauthorizing the V.R.A.'s regional provisions. He reasons that "regardless of how to look at that record," it does not show the sort of "flagrant" discrimination that originally propelled Congress to enact the statute, and it was assembled to support the existing regime rather than to craft a new coverage formula "from scratch." The chief justice is not necessarily wrong on either point. What is surprising, however, is that until today, these points would not have been thought sufficient to deprive Congress of the power to judge the facts and reauthorize this statute to address the contemporary ways racial discrimination finds expression in the electoral process.

Q. How will the ruling affect elections and voting? How will it affect minority turnout and representation?

A. Shelby County strikes down Section 4(b) of the V.R.A., the so-called coverage formula. This provision subjected places with very low voter participation rates on designated dates to Section 5 of the statute. Section 5, in turn, required "covered" jurisdictions to show that proposed electoral changes were nondiscriminatory before implementing them. Shelby County does not facially invalidate the "preclearance" requirement of Section 5. But make no mistake: by scrapping the coverage formula, the decision eviscerates the obligation to seek preclearance. Congress could theoretically pass a new coverage formula, but it is difficult to imagine that politics would allow this to happen in Congress, or any set of facts could be assembled that this court would find constitutionally sufficient.

What this means is that places like Texas may now put into effect electoral districts of the sort the state attempted to implement last year. A federal court blocked implementation of these districts under Section 5 based on its finding that Texas had consciously crafted them to minimize minority influence. Shelby County also means that places that had been subject to Section 5 can now immediately implement voter ID measures of the sort that both Texas and South Carolina attempted to impose last year. Because preclearance was operational, Texas was unable to implement its measure and South Carolina's requirement went into effect only after federal review helped mitigate the burdens the original measure would have imposed on minority voters.

Q. What's next for the Voting Rights Act?
A. There will be a push for a legislative response, but what politics will allow is anyone's guess.

In terms of litigation, Chief Justice Roberts's opinion is explicit that today's decision "in no way" affects the validity of Section 2 of the V.R.A., a provision that applies nationwide and bars electoral practices that "result" in a denial or abridgment of the right to vote based on race. Curiously, though, much of the court's analysis seems to invite a challenge to that provision. True, Section 2 lacks the "extraordinary" burden shifting that was the essence of the regime nullified today. And yet, the argument for Section 2's invalidity is found in the court's refusal to accord any meaningful deference to Congress's judgment that the existing regime remained necessary and its sense that the type of discrimination documented in the congressional record was insufficient to support that regime.

Obama and Holder 'Deeply Disappointed' in Decision

President Obama said he was "deeply disappointed" with the Supreme Court's 5-to-4 decision ruling a central piece of the 1965 Voting Rights Act unconstitutional, and he called on Congress to pass legislation protecting access to voting.

The president registered his critique in a written statement issued by the White House that noted the law's bipartisan legacy and the high court's acknowledgment, in the ruling, that discrimination persists.

He wrote: "For nearly 50 years, the Voting Rights Act – enacted and repeatedly renewed by wide bipartisan majorities in Congress – has helped secure the right to vote for millions of Americans. Today's decision invalidating one of its core provisions upsets decades of well-established practices that help make sure voting is fair, especially in places where voting discrimination has been historically prevalent.

"As a nation, we've made a great deal of progress towards guaranteeing every American the right to vote. But, as the Supreme Court recognized, voting discrimination still exists.

And while today's decision is a setback, it doesn't represent the end of our efforts to end voting discrimination."

Mr. Obama, on the night of his re-election and in his State of the Union address this year, objected to waits lasting hours that some voters had at the polls for the 2012 election and vowed to do something about it. READ MORE

Civil Rights Groups Condemn Ruling and Map Next Steps

Stephen Crowley/The New York TimesWade Henderson, president of the Leadership Conference on Civil and Human Rights, spoke against the Supreme Court's decision on the Voting Rights Act in front of the court on Tuesday.

Angered by the Supreme Court's decision Tuesday to strike down a central part of the Voting Rights Act, members of the N.A.A.C.P. and civil rights lawyers said they would ask Congress to draw up a new coverage formula.

"We are confident that members of both houses of Congress that helped lead the effort in 2006, many of whom are still there, will help to restore the power of Section 4," Wade Henderson, president of the Leadership Conference on Civil and Human Rights, said outside the Supreme Court on Tuesday.

"Today's decision severely undermines the legal protections that have been vital for more than almost five decades of protecting voters of all nationalities," Barbara Arnwine, the executive director of the Lawyers' Committee for Civil Rights Under the Law, said. "The second problem is that this decision is a betrayal of the American people that there is nothing more critical than making sure that the highest court of our land gets it right when it comes to what is the appropriate coverage for protecting American people."

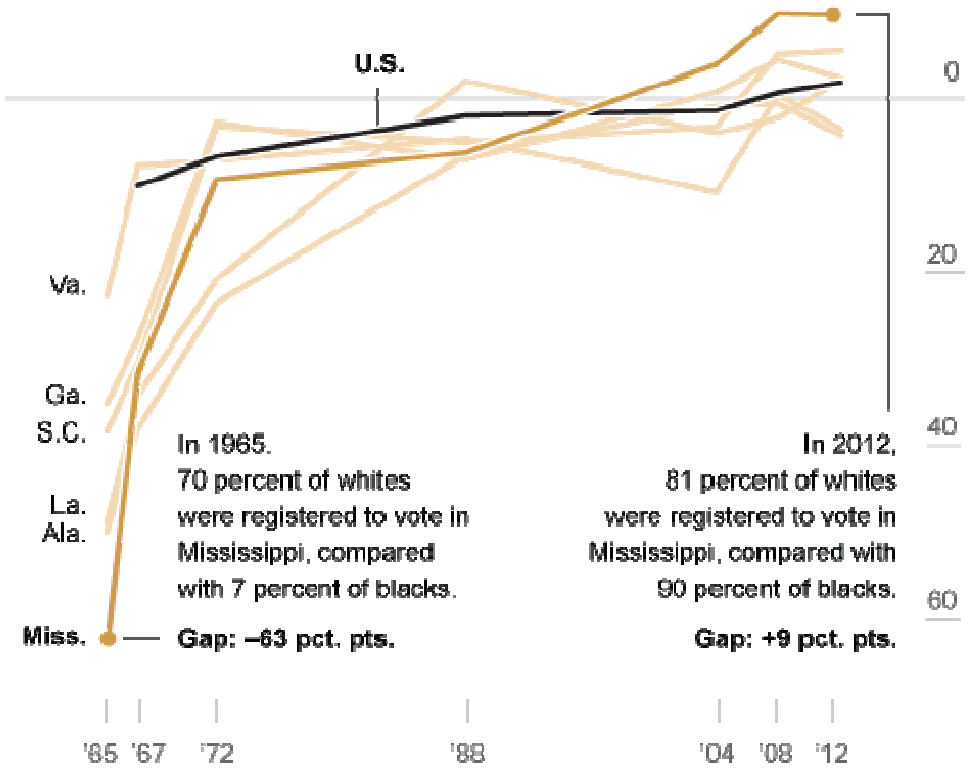
Ray Haygood of the NAACP Legal Defense and Educational Fund said his organization would set up a hot line for people to call and report "jurisdictions that will try to take advantage of this interim period."

A Current Look at the Black Electorate

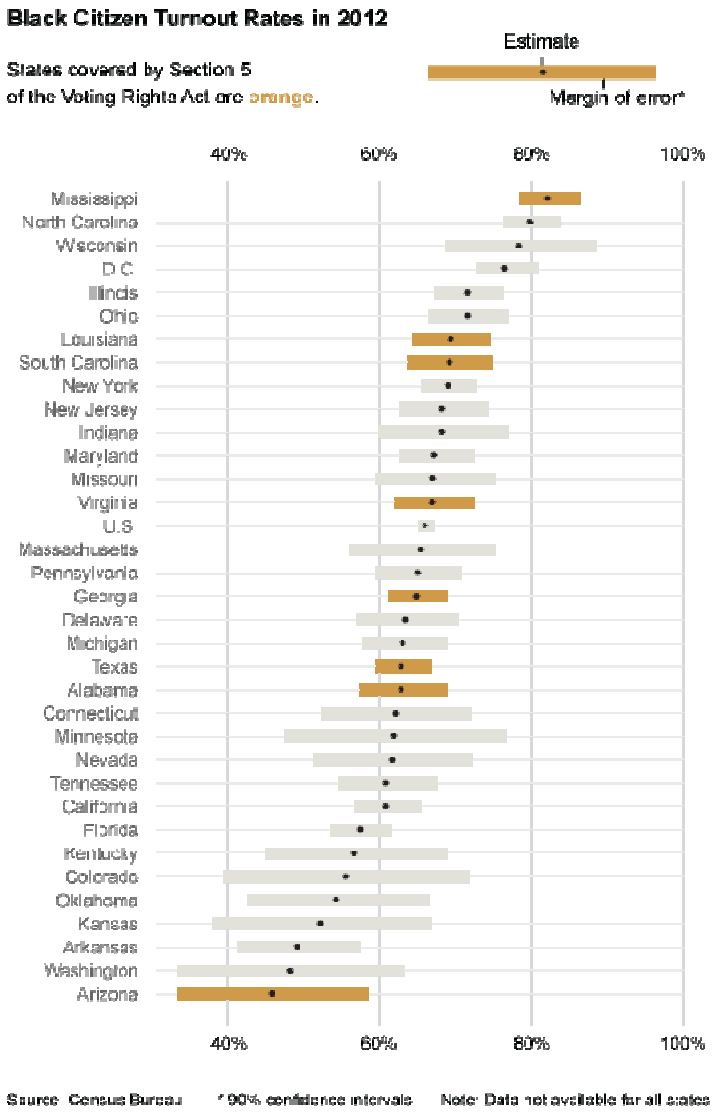
The majority ruled that Section 4 of the Voting Rights Act was unconstitutional in large part because its formula relies on outdated data. Below are charts that show how black voter registration compares to whites' currently in the Section 5 states and black citizen turnout in the 2012 election, according to the United States Census Bureau.

Registration Gap Between Blacks and Whites

In the states first covered by Section 5 of the Voting Rights Act



Sources: U.S. Commission on Civil Rights; Census Bureau



Texas to Move Quickly on Voter Laws and Maps

Within two hours of the Supreme Court's decision on the Voting Rights Act, Greg Abbott, the attorney general for the state of Texas, announced that a voter identification law that was blocked last year by the Justice Department would go into effect.

"With today's decision, the state's voter ID law will take effect immediately," he said in a statement. "Redistricting maps passed by the legislature may also take effect without approval from the federal government."

In March 2012, the Justice Department objected to Texas' voter identification law, finding that under certain data sets "Hispanic registered voters are more than twice as likely as non-Hispanic registered voters to lack such identification," and that the locations and hours of license offices made it difficult for many Hispanics to attain that identification.

Texas also sought clearance through the an appeals court in Washington, which offers a separate track for jurisdictions under the Voting Rights Act. In a unanimous opinion, the

three-judge panel ruled that the voter ID law would hinder minority turnout and impose "strict, unforgiving burdens on the poor."

Several days earlier, another panel on the same federal court blocked a Texas redistricting map passed in 2011, ruling that it had been enacted with "a discriminatory purpose." Because this map was blocked, Texas had been using temporary maps drawn up by a federal court in San Antonio. The legislature passed that temporary map, with minor revisions, into law, and it is awaiting the governor's signature. But after the Supreme Court decision, said Michael Li, an elections lawyer in Dallas, the original 2011 maps that had been blocked are now operative, and the governor could simply veto the new maps.

Four Questions for Ilya Shapiro

Ilya Shapiro is a senior fellow in constitutional studies at the Cato Institute and editor in chief of the Cato Supreme Court Review. He filed an amicus brief supporting Shelby County's challenge to Section 5 of the Voting Rights Act.

Q. How would you summarize the decision in a single sentence?

A. The Supreme Court restored a measure of constitutional order by recognizing that the exceptional conditions that justified the extra-constitutional federal oversight of state election laws no longer exist, thankfully.

Q. Did anything in in it — or in the justices' votes — surprise you?

A. It was a mild surprise that the court decided to rule on Section 4 rather than Section 5, but this was certainly one of the plausible scenarios court-watchers were contemplating. The vote breakdown wasn't surprising, although it's disappointing that not a single one of the so-called liberal justices see any constitutional defects in such an outmoded and anachronistic law.

Q. How will the ruling affect elections and voting? How will it affect minority turnout and representation?

A. It won't affect elections much other than that the time and money previously spent by local, state and federal officials on Section 5 compliance will now be freed up for constructive purposes. Redistricting will also be much easier. The end result will likely be the same because Section 2 still exists to prevent racial discrimination in voting – further proving that Sections 4/5 are unnecessary and therefore unconstitutional.

Q. What's next for the Voting Rights Act?

A. Resources will be shifted to enforcing Section 2, which covers individual instances of racial discrimination in voting.