Preclearance as an Umbrella: The Constitutionality of Voting Rights

Abstract: This paper seeks to examine the political history of the Voting Rights Act of 1965, focusing specifically on the constitutional debate that has persisted from its incipience to the present day. As the Voting Rights Act was a monumental policy decision that served to enfranchise minorities across the nation, the continuation of the act has present-day implications. Consequently, the Supreme Court decision that struck down Section 4(b) is one of great weight. By contextualizing the Supreme Court decision with cases concerning voting rights that preceded it, and examining the political landscape as it pertains to voting rights in the present, this paper analyzes the majority decision from a constitutional perspective. Ultimately, this paper argues that given the political and legal history of the Voting Rights Act, the Supreme Court incorrectly leveraged prior cases in their majority decision and ought not to have struck down Section 4(b).

In *Shelby County, Alabama v. Eric H. Holder, Jr.*, Justice Ruth Bader Ginsburg expressed in her dissent, “Throwing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet.” Justice Ginsburg’s scathing remark was in response to a decision along partisan lines to eliminate Section 4(b) of the Voting Rights Act, a prolific piece of legislation that completely transformed the voting landscape in the United States. While a variety of constitutional issues have haunted the act since its incipience, it persisted until *Shelby* in 2013. Ultimately, upon considering both historical and present-day factors as they pertain to the
minority voting landscape in the United States, the Supreme Court decision which invalidated Section 4(b) of the Voting Rights Act will serve as a significant detriment to voting rights across the nation. This paper seeks to examine the Voting Rights Act from its enactment to 1965 to present-day, focusing on Sections 4 and 5 and the subsequent constitutional issues. In doing so, I intend to isolate from where the act derives its power, and similar constitutional interpretations.

The historical context for the incipience of the Voting Rights Act of 1965 underscores the racial discrimination that the act sought to address. Implemented in the year following the passage of the 24th Amendment, the Voting Rights Act intended to strictly enforce the numerous anti-discrimination measures in voting that had been passed since the end of the Civil War. Specifically, while the Fifteenth Amendment mandated that the right to vote ought not be abridged on the basis of race, color, or previous condition of servitude\(^1\), numerous states had engaged in actions which sought to circumvent the amendment to indirectly inhibit African-Americans’ right to vote. In particular, Southern states participated in a wide range of disenfranchisement methods, such as poll taxes, literacy tests, ballot-box stuffing, and physical intimidation\(^2\). While the most potent of obstacles, such as the grandfather clause, poll tax, and the “white primary” were gradually outlawed and replaced by one another throughout the first half of the 20th century, minority voter registration and participation still remained stagnant, with only 25% of the nearly 25 million African-American voting age population being registered\(^3\).

Not only was this discrimination severe and discordant with the principles of the constitution, it also led to the eruption of violence across the south. By 1965, it was clear that existing legislation was insufficient to prevent the disenfranchisement of African-Americans by state

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\(^1\) United States Constitution, Amendment XV, § 1.


governments, and that such discrimination was the cause of widespread racial violence. While previous civil rights acts and two constitutional amendments had set out to ensure equal access to the ballot, President Lyndon Johnson sought to enact a piece of legislation that would successfully accomplish this. Johnson recognized the need for more stringent legislation with effective enforcement mechanisms, and following an attack on marchers from Selma to Montgomery by state troopers in March of 1965, President Johnson called for updated legislation.

The conditions under which the Voting Rights Act emerged set the framework for the bill as a controversial piece of legislation. Though the bill was perceived as a watershed policy which guaranteed widespread empowerment, which in many ways it was, the Kennedy Administration’s initial support of such legislation carries more insidious connotations. Specifically, in a time period characterized by racial tensions and calls for black empowerment, the Kennedy Administration deliberately focused on voter registration efforts, identifying this as an avenue to placate activists and avoid the escalation of action. Indeed, part of the impetus behind President Johnson’s fight for the Voting Rights Act was his intention of mitigating the activism of civil rights leaders like Martin Luther King, Jr. Hoping that the Voting Rights Act would have an ameliorative effect on the protests of the 1960s, the Johnson Administration pushed for the legislation, facing pushback from Southern congressmen on ideological grounds. Ultimately, the Senate passed the bill in 1965 by a seventy-seven to nineteen margin. Despite

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4 Ibid., 10.
8 Ibid., 353.
9 Ibid., 354.
this legislative success, the pacifying rather than acquiescing approach of the executive paired with the strong pushback in the Congress characterizes the bill as a product of a divided Congress, sharply underscoring the regional ideological divide as it pertained to voting rights.

The stipulations of the Voting Rights Act itself acted as an extension of the Fifteenth Amendment, instilling in the federal government extensive enforcement powers. While the act engaged with numerous aspects of voting rights, such as outlawing literacy tests\textsuperscript{10}, the most salient and controversial mandates involve the intrusion of the federal government into states’ ability to conduct oversight of their elections. Therefore, Sections 2, 4, and 5 will be of utmost importance in understanding the broader constitutional implications of the Voting Rights Act. Seeking to redress the harms caused by indirect measures of voter discrimination, Section 2 was enacted to provide an avenue through which individuals can pursue relief through litigation. Echoing the language of the Fifteenth Amendment, Section 2 bars states from enacting a voting rule that would “deny or abridge the right of any citizen to vote on account of their race or color.”\textsuperscript{11} Similarly, under Section 2, vote dilution efforts – those which attempt to functionally preclude minority votes from holding any weight, through “submerging” them in a white district – were likewise prohibited\textsuperscript{12}. While plaintiffs bringing a Section 2 case originally had the burden of proving intentional discrimination, Congress amended Section 2 to be outcome-oriented; plaintiffs consequently had to satisfy the condition that voters “have less opportunity than other [voters] to participate in the political process and to elect representatives of their choice.”\textsuperscript{13} The Supreme Court clarified in \textit{Thornburg v. Gingles} that an electoral law exploiting social and historical conditions, resulting in an inequality, captures the “essence” of a Section 2 claim,
thereby setting the framework under which these claims could be evaluated\textsuperscript{14}. Therefore, Section 2 of the Voting Rights Act enabled voting practices with discriminatory effects to be challenged in federal court.

While Section 2 allowed plaintiffs to bring a voting rights suit after the fact, the more controversial sections of the act empowered the federal government to strike down legislation before it even took effect. Capitalizing on the powers granted to the federal government through the Supremacy Clause, Section 5 stipulates that states or districts covered by Section 4 of the Voting Rights Act must obtain advance approval from either the Attorney General or a federal court in Washington, D.C. before enacting a change to voting practices\textsuperscript{15}. Only after a federal judge or the Attorney General issues a declaratory judgment that the proposed change will not have either the purpose or effect of “denying or abridging the right to vote on account of race or color” shall the state or district be permitted to enact such a change\textsuperscript{16}. Section 4 of the act works in tandem with Section 5, delineating which states will be subject to such preclearance. Specifically, states or political divisions which, as of November 1, 1964, had a test or device that the Attorney General determines led to less than 50% of people of voting age being registered to vote on November 1, 1964, or voting in the presidential election of that year, were subject to Section 5 preclearance\textsuperscript{17}. Under the 1965 version of the Voting Rights Act, the complete states covered were Mississippi, Alabama, Georgia, Louisiana, Virginia, South Carolina, and North Carolina, with Texas and Florida ushered in after the 1975 amendments\textsuperscript{18}. Thus the Voting

\textsuperscript{14}Ibid., NAACP.
\textsuperscript{16}Ibid.
\textsuperscript{17}Ibid., Bullock v.
\textsuperscript{18}Ibid., NAACP.
Rights Act established the main impetus behind its protecting of voting rights as a method characterized by unequal treatment of the states.

The immediate effects in the years following the Voting Rights Act reveal the efficacy of the act itself in preventing potentially discriminatory pieces of legislation from taking effect. The force of the act can be revealed in the implicit ways through which minorities received representation. In the 20 years following the institution of the Voting Rights Act, the number of black legislators elected by southern states jumped significantly. Mississippi exemplifies this drastic change, as black voter registration swelled from 7% to 67% in just five years\(^\text{19}\). Across the region of covered states, new voters were registered in numbers exceeding 20 million\(^\text{20}\).

Further, in these covered states, the quantity of black elected officials expanded from 72 to 1000 within a decade\(^\text{21}\). Specifics of the Voting Rights Act contributed to this monumental change. Although the ability of blacks to win majority-white districts was functionally unchanged, the act led to redistricting that empowered minorities to select their choice candidate\(^\text{22}\), as the replacement of multimember districts with single-member seats holistically benefited black candidates\(^\text{23}\). Specifically, black representation in state houses of states with primarily single-member districts exceeded those without by over a threefold margin in 1975\(^\text{24}\). This occurs because mandating single-member districts as opposed to at-large voting shifts the median voter\(^\text{25}\), allowing for a candidate that best reflects the population. When considering how rational voters tend to vote their interests, and that race has high saliency in politics, it is a fair

\(^{19}\) Ibid., Cobb.

\(^{23}\) Ibid.
\(^{24}\) Ibid., 122.
assumption that oftentimes, constituents will vote for a candidate that will best support their race\textsuperscript{26}. However, because black voters and other minority candidates do not comprise a majority of the electorate, single-member districts are essential to allow minority voters to comprise a plurality\textsuperscript{27}. Through forcing multimember districts to replace with single-member seats, and rejecting through preclearance propositions that intended to fracture minority populations, the Justice Department effectively contributed to the rise of black representation in the 1970s and 1980s, underscoring the contribution of the Voting Right Act\textsuperscript{28}. However, the premise of the act has not been without criticism. While many applaud the act’s dedication to “meaningful enfranchisement”, critics have pointed out that the act fails to address actual electoral participation, and policy responsiveness to the needs of minority communities\textsuperscript{29}. While the effectiveness of single-member districts in minority representation may present a veneer of progressiveness, they also create “token” districts for minorities, with the unintentional consequence of concurrently creating safe districts for whites\textsuperscript{30}. Further, due to the Kennedy administrations focus on less-threatening avenues of reform, the act could be perceived as a piece of pacifying legislation. The insidious undertone of placation, compounded with the unintended consequences of a skyrocketing increase in white voter registration efforts\textsuperscript{31}, reflect how the Voting Rights Act cannot be perceived in a vacuum. While the benefits of the act were tangible and expansive, there have been numerous criticisms from both sides of the political spectrum, emphasizing how an act appropriate for 1965 may not survive the test of time.

\textsuperscript{26} Ibid., 760.
\textsuperscript{27} Ibid., 761.
\textsuperscript{28} Ibid., Grofman, 112.
\textsuperscript{29} Ibid. Guinier, 1093.
The sheer quantity of suits and measures that the Voting Rights Act addressed in practice underscore its necessity in combating voter discrimination. Since its enactment, the Voting Rights Act has seen 322 documented Section 2 claims\textsuperscript{32}, which have shown to be more successful in covered than non-covered districts. Similarly, there have been over 2400 objections raised under Section 5\textsuperscript{33}. However, the intent of section 5 to be temporary is reflected in issues of enforcement. While the act provides avenues for criminal penalties to be leveraged in cases of voter disenfranchisement, the logistics issues of a small staff compounded with a dearth of federal dollars led to this enforcement mechanism never being used\textsuperscript{34}. Indeed, the nature of the section did not lend itself to long-term enforcement, potentially hinting at its role as temporary, rather than extending across the second half of the 20\textsuperscript{th} century\textsuperscript{35}. Regardless, out of the over 1000 voting procedure changes that the Department of Justice has struck down through the Voting Rights Act, more than 30 have been since 2006, with blocked changes in six more states since 2012\textsuperscript{36}. Thus, in addition to the tangible benefits represented in increased turnout and registration, the Voting Rights Act has acted as an imperative avenue for voting rights reform.

The development of the Voting Rights Act over time, and its continued reauthorizations, reveals the longevity of the conditions which initially justified it. Originally intended to sunset after five years, Section 5 was renewed in 1970, 1975, 1982, and 2006\textsuperscript{37}. Despite proposals from the Nixon administration to eliminate Section 5\textsuperscript{38}, the 1970 renewal expanded the act incrementally, stipulating that the Section 4 trigger should also encompass measures that served

\textsuperscript{33} Ibid., Rosdeitcher.
\textsuperscript{35} Ibid., 127.
\textsuperscript{36} Ibid., Foster, 127.
\textsuperscript{37} Ibid., Bullock, 4.
\textsuperscript{38} Ibid., Foster, 87.
to dilute the voting strength of minorities\textsuperscript{39}. Literacy tests were banned nationwide, and Section 4 expanded to include districts with tests or devices that had less than half of eligible voters registered or turning out in the 1968 presidential election, resulting in the addition of districts in New York, California, New Hampshire, and Arizona\textsuperscript{40}. While the Voting Rights Act originally intended to address voting discrimination against African-American voters, the 1970 renewal subjected areas with large concentrations of Latino voters to preclearance\textsuperscript{41}, and in 1975, Section 203 was enacted, which implemented protections of minority language speakers\textsuperscript{42}. Thus while Section 5 of the Voting Right Act was intended to be a temporary remedy for egregious discrimination in Southern states, it has survived the test of time. The 2006 debates over the Voting Rights Act, however, were characterized by contention. While the provisions of the act subject to sunset were scheduled to expire in 2007, the act’s supporters called for it to be considered earlier, primarily because the chair of the House Judiciary Committee, Congressman James Sensenbrenner, Jr. was a proponent of reauthorization of the act and was scheduled to step down in 2007\textsuperscript{43}. Thus the reauthorization of the act revealed the polarization over the issue, and the political climate that was emerging in the early 21\textsuperscript{st} century. Proposed amendments to the Voting Rights Act similarly hinted at issues that would manifest in the future. Congressman Charles Norwood suggested an amendment to Section 4 that would make coverage contingent on voter registration and turnout levels for the three most recent election cycles, rather than depend on data from the 1960s\textsuperscript{44}. While intuitively logical, Sensenbrenner heavily criticized this proposal, explaining it would in effect eviscerate the powers of the Voting Rights Act\textsuperscript{45}.

\textsuperscript{40} Ibid., Bullock, 13.
\textsuperscript{41} Ibid.
\textsuperscript{42} Ibid., Foster, 87.
\textsuperscript{44} Ibid., 20.
\textsuperscript{45} Ibid.
Specifically, he noted this amendment would exclude districts that had recently engaged in blatant voter discrimination, undermining the intention of the act itself. Sensenbrenner’s criticism reflects the changing landscape that the Voting Rights Act Sought to address, as the early 21st century saw different and more latent forms of discrimination emerge.

Constitutional challenges to the Voting Rights Act between its incipience and Shelby vs. Holder reveal from where the act derives its constitutionality and the extent to which the act protects voting rights. In particular, State of South Carolina v. Katzenbach in 1966 exemplifies the myriad constitutional issues surrounding the Voting Rights Act, and how the act invokes its power. The Voting Rights Act engendered criticism upon its passage from numerous angles; however, incredibly relevant in the constitutional debate is how the act approaches the issue of federalism. The plaintiffs in South Carolina objected to the federal government’s intrusion into a prerogative left previously to the states. Insofar as the Voting Rights Act empowers the federal government to invalidate states’ legislation and shifts the burden of proof of innocence onto the states, the plaintiffs claimed that portions of Sections 4 and 5 of the Voting Rights Act denied states due process, encroach upon an area traditionally reserved to the states, and violated the principle of the equality of the states. However, South Carolina plaintiffs oversimplify the issue of federalism, failing to address the historical and constitutional nuances. While the idealized notion of dual federalism, wherein the federal and state governments coexist in their separate spheres of authority, carries innate appeal, it gradually waned throughout the 20th century due to the inability of the Court to precisely determine where states had absolute authority. Essentially, the inability of the Courts to isolate a specific arena in which states had

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46 Ibid.
absolute dominance complicates the issue of federalism and states’ rights, and suggests our current system parallels a system of cooperative federalism, where spheres of authority are imbued with input from both state and federal governments\(^{50}\). While the Constitution empowers state legislatures to choose “the Times, Places, and Manners” for holding elections\(^{51}\), the Fifteenth Amendment guarantees the federal government enforcement powers to ensure the right to vote is not denied or abridged under fifteenth amendment conditions\(^{52}\). Interestingly, Nicholas Katzenbach, Attorney General during the Voting Rights era, advocated for a constitutional provision to protect voting rights, rather than an act, due to the clearer authority\(^{53}\). Nevertheless, the majority in *South Carolina* specifically references the enforcement clause of the Fifteenth Amendment, emphasizing the federal prerogative to invoke “appropriate” means to ensure the realization of the constitution\(^{54}\). *South Carolina* purposely delineates the power of the Congress, clarifying it is within their authority, per the intent of the framers, to enforce the constitutional prohibition of race-based discrimination in voting\(^{55}\). Therefore, while states object to the Voting Rights Act as they consider it an infringement into their sovereignty, it is clear the federal government is empowered to use appropriate legislation to enforce the constitution. Similarly, the majority facially rejects the due process clause, explaining that this right guaranteed to the people does not apply to states\(^{56}\). Furthermore, *South Carolina* firmly derails the equal sovereignty argument, which has curiously been invoked in subsequent cases to justify dismantling the Voting Rights Act. The *South Carolina* majority clarifies states only enjoy equal sovereignty for the manner in which they enter into the Union.\(^ {57}\) Ultimately, *South Carolina* lays

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\(^{50}\) Ibid., 44.  
\(^{51}\) United States Constitution, Article I, § 4.  
\(^{52}\) United States Constitution, Amendment XV, § 2.  
\(^{54}\) Ibid., *South Carolina*.  
\(^{55}\) Ibid.  
\(^{56}\) Ibid.  
\(^{57}\) Ibid.
out the framework by which to evaluate the Voting Rights Act, calcifying the prerogatives of the federal government in legislating voting discrimination.

Despite the validity of the majority opinion in South Carolina v. Katzenbach, there are numerous criticisms that address the constitutionality of the Voting Rights Act and ultimately laid the groundwork for the pivotal Shelby County v. Holder decision in 2013. Following the 2006 reauthorization of Section 5 of the Voting Rights Act, Northwest Austin Municipal District No. One sought to bail out from Section 5 preclearance under Section 4(a), which permits bailout contingent on meeting certain conditions. Northwest Austin Municipal District No. One was initially denied due to being a district that did not register voters, rather than a “political subdivision” that would be able to bail out. However, when they filed suit, they additionally presented the unconstitutionality of Section 5. The Supreme Court consequently ruled in Northwest Austin Municipal District No. One v. Holder in 2009 that the Voting Rights Act raised “serious constitutional concerns”, thereby setting the stage for Shelby v. Holder. While the Court emphasized how previous cases, such as City of Rome v. U.S. and South Carolina were appropriately decided at the time, the Voting Rights Act “imposes current burdens and must be met by current needs.” This current needs standard informed the outcome of the decision, insofar as Northwest Austin Municipal District contested their Section 4(b) coverage in the present-day. While the majority explained the Warren Court’s decision in South Carolina was appropriate as it judged the voting landscape with respect to “historical conditions” present in 1966, the issues that Section 5 originally sought to address are more than 35 years outdated. In fact, the majority in Northwest Austin express that while Section 4 covers states that had a high racial voting gap in

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59 Ibid.
60 Ibid.
1965, many covered states boast a lower disparity than their uncovered counterparts. The Court therefore articulated that Sections 4 and 5, in their present form, were a disproportionate response to the current state of voting rights. Indeed, the Court exceeded the analysis of whether the district in question was eligible to bail out, additionally delving into the constitutionality of Sections 4 and 5 as a whole. Voicing concern with the “federalism costs” innately engendered by any interloping of the federal government into state matters, the Court brashly articulated that Section 5 exceeds the authority of Congress given by the Fifteenth Amendment, as Section 5 seeks to suspend all changes to election practices, regardless of their nature, until precleared in covered states. The Court acknowledges the monumental impact of the Voting Rights Act itself on effecting the widespread enfranchisement of minority voters; however, because of this very success, conditions in 1965 do not accurately reflect the present day. The Court simply concludes that Northwest Austin Municipal District No. 1, as well as all other political subdivisions, are able to bail out of Section 5 coverage, failing to answer the constitutional question Sections 4 and 5 present. However, this ruling was invaluable in providing the framework under which Shelby v. Holder was evaluated.

Ultimately, in 2013, debate concerning the constitutionality of the Voting Rights Act coalesced into the Shelby County v. Holder decision, which determined Section 4(b) was unconstitutional. Reaffirming Northwest Austin’s articulation of equal state sovereignty, Shelby establishes a framework under which to evaluate sections 4 and 5 of the act: that the statue’s “disparate geographic coverage is sufficiently related to the problem that it targets,” clarifying that racial discrimination in voting must be unique and exceptional in targeted states. The Court

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61 Ibid.
62 Ibid.
63 Ibid., Northwest Austin.
64 Ibid.
65 Shelby County, Alabama v. Holder, 133 S. Ct. 2612, 2620.
addressed the contentious issue of federalism, explaining that while states are not permitted to
flout federal law, the government likewise is not permitted to effectively veto laws before they
even take effect. The majority seems to offer a demarcation for federal and state territory,
explaining that because powers that are not specifically granted to the federal government are left
to the states, and the Voting Rights Act exceeds the federal government’s authority under the
Fifteenth Amendment, it represents a flagrant impingement of states’ rights. Despite almost
200 districts previously covered under Section 4(b) effectively “bailing out” of coverage through
Section 4(a), the majority further emphasizes how despite progress in voting rights, the
restrictions have not changed; essentially, the act is a static relic of the 1960s. Since the act was
extended twice – in 1982 and in 2006 – without altering the coverage formula, the majority
contends coverage is outdated and unfair. Ultimately, the majority articulates that because the
act imposes “current burdens”, including an intrusion into state sovereignty, it must be justified
by “current needs”; however, they explain respondents fail to show a compelling current
justification.

Certain aspects of the Court’s decision mischaracterize the Voting Rights Act, and are
discordant with what the Court has previously articulated. In particular, Shelby premises part of
their decision on the idea of equal sovereignty of the states, deriving this argument from
Northwest Austin. However, Northwest Austin invokes their justification from a
misrepresentation of South Carolina. The majority expresses in South Carolina, “the doctrine of
the equality of the States, invoked by South Carolina, does not bar this approach, bar that
doctrine applies only to the terms upon which states are admitted to the Union, and not to the

\[66\] Ibid.
\[67\] Ibid.
\[68\] Ibid.
\[69\] Ibid.
\[70\] Ibid., Shelby County.
remedies for local evils which have subsequently appeared.\textsuperscript{71} While the Court makes a crucial clarification, expressing that the federal government is empowered to “violate” equal state sovereignty insofar as state sovereignty does not protect against “remedies for local evils\textsuperscript{72}, \textit{Northwest Austin} only focuses on certain aspects of this statement. The majority states, “The doctrine of the equality of States ... does not bar ... remedies for local evils which have subsequently appeared.”\textsuperscript{73} This seemingly innocuous misrepresentation has fatal consequences for Sections 4 and 5. While \textit{South Carolina} clarifies equality of the states is irrelevant to the extent that it only applies to states entering the Union, \textit{Northwest Austin} claims it is paramount, yet 1965 conditions justified disparate treatment. The logical extension of \textit{Northwest Austin}’s argument, which extends to \textit{Shelby}, is that equal sovereignty ought not to be violated unless pressing evils warrant it. However, this is a fundamental mischaracterization of \textit{South Carolina} with intense constitutional implications. Justice Ginsburg highlights this in her dissenting opinion, explaining that numerous pieces of legislation extend differing treatment to states based on their unique conditions\textsuperscript{74}. While the majority also explains the nature of regulating elections is a right served to the state, the \textit{Shelby} dissent clarifies the provisions of the Voting Rights Act are well within the purview of the Fifteenth Amendment. In particular, legislative history empowers the Congress to enforce amendments through “all means appropriate”; because the Fifteenth Amendment was intended to have a revolutionary effect, the federal government could and should take drastic measures to protect voting rights\textsuperscript{75}. Ginsburg further explains that the majority is incorrect in superficially stating that because there is not a racial voting gap in covered districts, the Voting Rights Act is outdated. While the Voting Rights Act has broken

\textsuperscript{71} Ibid., \textit{South Carolina}.
\textsuperscript{72} Ibid., \textit{South Carolina}.
\textsuperscript{73} Ibid., \textit{Northwest Austin}.
\textsuperscript{74} Ibid., \textit{Shelby County}.
\textsuperscript{75} \textit{Shelby County, Alabama v. Holder}. Dissent, 133 S. Ct. 2612, 2633.
substantial ground in addressing first-generation barriers to voting, second-generation barriers, such as at-large voting, and racial gerrymandering – have seeped into legislation, emphasizing the necessity for continued protective measures\textsuperscript{76}. Ginsberg emphasizes that when Congress debated reauthorization in 2006, there was an abundance of evidence crystalizing the extent to which discrimination in covered states was “serious and pervasive”\textsuperscript{77}. Indeed, a study by Ellen Katz on the success of Section 2 lawsuits reveals that Section 4(b) covered jurisdictions account for 56% of successful Section 2 cases since 1982, despite comprising only a quarter of the country’s population, with covered justifications having a higher overall rate of success\textsuperscript{78}. Thus, using Section 2 success as a metric for determining voter discrimination, covered districts prove to boast higher levels of discrimination than their uncovered counterparts. While the majority explains cases such as \textit{City of Rome v. U.S.} and \textit{South Carolina} are outdated due to the changing conditions of voting rules, the analyses both cases use are not. While \textit{Northwest Austin} and \textit{Shelby} criticize the Voting Rights Act on the grounds of a changing racial landscape, \textit{Rome} and \textit{South Carolina} broadly reaffirm the federal government’s powers to enforce the Fifteenth Amendment, underscoring that the Voting Rights Act derives its constitutionality from more than simply “unique and pervasive” conditions. \textit{Rome} echoes \textit{South Carolina}, clarifying that the Congress is imbued with broad power to enforce the civil war amendments, specifically expressing that while states have certain rights, when they encroach upon the rights of citizens, the federal government is empowered to act\textsuperscript{79}. Therefore, \textit{Rome} essentially negates the federalism issue, and instills the federal government with significant enforcement power.

\textsuperscript{76} Ibid.
\textsuperscript{77} Ibid.
\textsuperscript{78} Ibid., Katz, 8.
\textsuperscript{79} \textit{City of Rome v. U.S.} 446 U.S. 156, 175, 100 S. Ct. 1548, 1560.
Despite the myriad of issues raised by *Shelby County v. Holder*, the court struck down Section 4(b) in 2013, leaving an uncertain road ahead. Section 2 litigation has acted as an indicator for where racial discrimination is the most dominant, with two-thirds of Section 2 cases being brought in southern states. In fact, when cases were brought inside Section 4(b) covered districts, they were 10% more likely to be met with success. Unfortunately, while Section 2 has had positive effects, it is insufficient alone to address the large quantity of racial discrimination seen in voting rights. In addition to the sheer quantity of lawsuits that Section 2 would be forced to adjudicate, litigation would only occur following the implementation of problematic legislation. Yet, the rate of success of the plaintiff in Section 2 cases dropped from 40% in 1982 to 18% in 2008, suggesting perhaps the act is in need of a revision. Regardless, the elimination of the force behind the Voting Rights Act will have potent effects, and a replacement ought to be considered.

The Voting Rights Act has lived an impactful and holistically beneficial life, and provisions outside of Section 4(b) still stand, with the intention of further expanding the electorate. While the Roberts court’s analysis of *Shelby* resulted in a monumental breakdown of voting rights and Section 2 is insufficient to reject the multitude of issues that arise, subsequent legislation should seek to address the second-generation voting barriers that Justice Ginsburg expressed concern with. Hopefully, in the coming years legislation will arise to replace Section 4(b) with a revitalized formula; however, how much that formula differs from the current formula is to be determined. The Voting Rights Act should therefore be perceived as an overwhelming success; perhaps, it was because of its efficacy that it could not survive.

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80 Ibid., Cox, 16.
81 Ibid., Cox, 12.
82 Ibid., *Shelby*.
83 Ibid., Cox, 6.
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*Shelby County, Alabama v. Holder*, 133 S. Ct. 2612, 2620.

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United States Constitution, Amendment XV, § 1.

United States Constitution, Amendment XV, § 2.


