Shelby County. v. Holder, 570 U.S.__ (2013)
Paper # 1
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Shelby County v. Holder is a Supreme Court decision that dealt with a specific portion of The Voting Rights Act of 1965. Congress enacted The Voting Rights Act of 1965 to address extreme levels of racial discrimination in voting that was occurring in the Southern states. Shortly after the Civil War, Congress added the fourteenth and fifteenth amendments to protect the voting rights of African-Americans. The fourteenth amendment grants citizenship to all person born or naturalized in the United States and gave them equal protection under the laws. This was an important act for the former slaves of this nation. The fifteenth amendment protect the right of citizens to vote and says no one should be denied the right to vote by the United States or any state based upon race, color, or being a former slave. Many southern states and municipalities blatantly and wantonly ignored these two amendments from the moment they were enacted during the Reconstruction period and all the way up to the passing of the Voting Rights Act in 1965. The entities that were perpetual violators of these laws recognized that in order to challenge the laws and restrictive tactics that they passed victims would have to file suit. These cases would have to move slowly and individually through the federal courts. By the time a decision was rendered on a particular law or tactic, the violating entities would switch to a new method. These methods included "laws designed to dilute black voting strength, created poll tests, gerrymandered election districts, instituted at-large elections, annexed or deannexed land and required huge bonds of officeholders."[1]

[1] Shelby Cnty., Alabama v. Holder 679 F.3d 848, 852 (D.C. Cir. 2012)

In the Voting Rights Act of 1965, the court said in Section 4 of the law that Congress was authorized, “to limit its attention to the geographic areas where immediate action seemed necessary.”[2] Congress chose any state or political subdivision of a state that “maintained a voting test or device as of November 1, 1964, and had less than 50% voter registration or turnout in the 1964 presidential election.” The law in Section 5 requires those municipalities and states identified through Section 4 to get preclearance before making any change affecting voting without receiving preapproval from the U.S. Attorney General or a panel of judges in the U.S. District Court for D.C. This was to ensure that the change does not discriminate against protected minorities.

In *Shelby*, Shelby County filed a suit in district court seeking judgment that sections 4 and 5 of the Voting Rights Act were unconstitutional, as well as a permanent injunction against their enforcement. Shelby County felt it was unconstitutional to continue with Section 5’s requirement to obtain preclearance since it was costly to the states and municipalities who were subject to it. Shelby County argued that this was an outdated law in its entirety because they had achieved the fifty percent registration requirement of African-American voters in the area that the law called for in its initial enactment.

The court found that Section 4 of the Voting Rights Act is unconstitutional in the opinion written by Chief Justice John Roberts saying, “Its formula can no longer be used as a basis for subjecting jurisdictions to preclearance.” Roberts says that both sections 4 & 5 were meant to be temporary and expire yet Congress kept reauthorizing them

[2] Voting Rights Act of 1965, Pub. L. 89-110, 79 Stat. 437.

without changing the formula. The Court left Section 5 intact, known as the bailout provision, but rendered it useless and unnecessary with the decision on Section 4.

The Court's two primary arguments in finding Section 4 unconstitutional was the tradition of equal sovereignty and that the exceptional conditions that existed in 1965 were no longer the case today. The first argument according to Chief Justice Roberts was, "not only do States retain sovereignty under the Constitution, there is also a "fundamental principle of equal sovereignty" among the States." This meant that one state can enact a law immediately but states subject to this provision were forced to wait months or years to enact laws as they were subject to federal approval.

The court's argument that the exceptional conditions existed in 1965 that were no longer the case today said, "Blatantly discriminatory evasions of federal decrees are rare and minority candidates hold office at unprecedented levels." The Court went on further to say that "The Act has proved immensely successful at redressing racial discrimination and integrating the voting process."[3]

I believe the court did not come to the right decision in *Shelby.* The decision gutted federal oversight of voting rights in the Deep South. We live in a nation still struggling under the immense weight of racism being a driving factor during the formation of our nation. Many states across the nation had and still employ a tradition of racism in their treatment of voters in the minority status groups. Voter suppression of Blacks, Latinos, and other groups has effected elections and politics across the nation and specifically in the nine states that the VPA of 1965 was meant to protect. Equality,

[3] Shelby Cnty., Alabama v. Holder 679 F.3d 848, 852 (D.C. Cir. 2012)

especially the right to vote, is still at the mercy of local beliefs and practices. The court said that poll taxes, test, and gerrymandering were outdated and thereby The Voitng Protection Act of 1965 was not necessary any more. Yet many states since *Shelby* have passed an onslaught of restrictive and suppressive tactics like requiring driver's licenses to vote in Alabama in 2014. "Alabama is one of several states that have rapidly created more restrictive voting laws post–Shelby County, and also where gerrymandering, voter purges, and zealous campaigns against the specter of noncitizen voting by a wave of pro-Trump state attorneys general and secretaries of state have dominated the political process."[4] Another example of states creating conditions that disproportionately affect African-Americans with voter suppression is in Georgia. Recently elected Governor Brian Kemp in his role as then Secretary of State put in place a multitude of tactics that prevented the voting rights of primarily African-American voters. "Kemp began by shrinking the electorate. Under his leadership, Georgia purged 1.5 million voters from 2012 to 2016, twice as many as in the previous four years, and removed an additional 735,000 voters from the rolls over the past two years."[5] In Mississippi when running as a candidate, Senator Cindy Hyde-Smith made the statement captured on video that it might be a "great idea" to make it harder for some people to vote. This video came just

[4] Newkirk, Vann. "The Democrats' New Voting-Rights Moment" The Atlantic., March 2019, https://www.theatlantic.com/politics/archive/2019/03/democrats-hope-restore-key-section-voting-rights-act/583969/

[5] Berman, Ari., "Brian Kemp's Win In Georgia Is Tainted by Voter Suppression." Mother Jones, November 16, 2018. https://www.motherjones.com/politics/2018/11/brian-kemps-win-in-georgia-tainted-by-voter-suppression-stacey-abrams/

days after another video where Senator Hyde-Smith made a comment about a “public hanging.” These were obviously textbook examples of the use of dog whistle politics to signal to white voters her real beliefs. These examples are just a few, but many examples of race being a factor in voter suppression but even more instances of states and municipalities using voter suppression tactics arouse throughout the country since the ruling of *Shelby*. America ignoring voter suppression and democracy is hard to believe based upon the beliefs stated in the fourteen and fifteenth amendments, but these actions prove the courts assertion that voter discrimination is a relic of the past is unequivocally false. The Voting Rights Act provided a preventive barrier to these actions from taking place. Now there is now fair process available to individuals and entities to have their concerns addressed. The argument proposed by one of their major premises of the Court’s decision in *Shelby* has enough evidence that should forces the legislatures around the country and in Washington D.C. to pass legislation to address this harm.

The other major premises offered by the Court decision was the fundamental principle of equal sovereignty. This argument is flawed as well, because the states are not treated equally in many instances. Justice Ruth Bader Ginsburg in her dissenting opinion said, “A federal law that singles out some states for different treatment is “hardly novel.[6] Another huge problem referenced in Ginsburg’s dissention opinion is the Professional and Amateur Sports Protection Act, which “allows as a ban on state-sponsored sports gambling nationwide, but it exempts Nevada and at least eight

[6] Shelby Cnty., Alabama v. Holder 679 F.3d 848, 852 (D.C. Cir. 2012

other states from its scope via a perpetual grandfathering clause."[7] This in effect treats states differently. States have a will be treated differently based upon the needs of the union at the time. The first need though should be to protect the rights of the democracy of our citizenry.

The Supreme Court decision in *Shelby* is regressive and ultimately harms our nation by quieting the voices of voters. James Baldwin reminded us why we need laws on equality and protection in this country when he said, "It is easy to proclaim all souls equal in the sight of God; it is hard to make men equal on earth in the sight of men."[8]

[7] Rodenberg, Ryan M. and Holden, John T., "Sports Betting Has an Equal Sovereignty Problem" Duke Law Journal, June 2017, Volume 67.

[8] Baldwin, James. Now. New York University Press. 1956

REFERENCES