LDF
DEFEND EDUCATE EMPOWER

Case Overview: *Shelby County, Alabama v. Holder, et al.*

On February 27, 2013, the United States Supreme Court held oral argument in *Shelby County, Alabama v. Holder, et al.* Shelby County is challenging the constitutionality of the Voting Rights Act (VRA), one of our nation's most effective civil rights laws. The NAACP Legal Defense and Educational Fund, Inc. ("LDF") argued before the court in defense of the Voting Rights Act and represents Defendant-Intervenors, including five Black ministers and a councilman from Shelby County whose district was eliminated, but later restored because of the VRA.

Shelby County seeks to strike down the heart of the Voting Rights Act, Section 5, which requires jurisdictions with the worst histories of persistent racial discrimination in voting to obtain federal approval, or "preclearance" before any voting changes become legally enforceable. The process of preclearance ensures that proposed voting changes in these places do not harm the voting rights of voters of color. Shelby County seeks to invalidate Section 5 not only in Alabama, but in all of the 15 states that are covered either in whole or in part.

In 2008, Calera, a city in Shelby County, conducted a legally unenforceable election after it redrew its political boundaries without receiving the required preclearance. As a result, the city's only Black councilman, Ernest Montgomery, lost his seat. Councilman Montgomery's district consisted of 70% registered Black voters before Calera redrew its political boundaries. After the district was redrawn, registered Black voters were just 29.5% of the population. Because it did not comply with the Voting Rights Act, Calera was required to draw a nondiscriminatory redistricting plan and to conduct another election with the legally-approved plan. In this lawful election, Calera's voters re-elected Mr. Montgomery.

The Supreme Court, in an unbroken line of cases, has upheld the constitutionality of Section 5 on four separate occasions since its passage in 1965. It would be extraordinary for the Court to depart from this precedent by striking down this core provision of the Voting Rights Act.

Section 5 remains the best existing defense against continuing attacks on voting rights.

Our country has made significant progress in fighting against racial discrimination in voting, in large part because of the protections afforded by Section 5. Even so, the Shelby County case, and numerous examples of persistent voting discrimination, demonstrate that "Section 5 remains essential to safeguard our democracy from racial discrimination." (LDF brief at p. 1.)

In 2006, Congress developed a "virtually unprecedented legislative record" consisting of 15,000 pages of evidence showing the VRA's continuing necessity. Among other things, the record shows that between 1982 and 2006, Section 5 prevented more than 1,000 proposed discriminatory voting changes from taking effect. Each single Section 5 objection protected the rights of hundreds, or even thousands, of voters of color.

In addition, many other proposed discriminatory voting measures were withdrawn or amended after the Department of Justice sent "requests for more information" through its authority under

Section 5. These actions illustrate Section 5's deterrent effect.

Based on compelling evidence, Congress voted overwhelmingly to reauthorize the VRA (98-0 in the Senate and 390-33 in the House).

Section 5 properly focuses on the places with the worst track records.

The Court has previously rejected Shelby County's argument that Section 5 is unconstitutional because it applies to some parts of the country and not others. It is constitutionally permissible for Congress to focus attention on areas where discrimination in voting is persistent and adaptive; a law does not become unconstitutional simply because it does not solve every instance of discrimination—particularly when that law's demonstrated track record shows that it does solve *many* such instances, and in the places with the most stubbornly persistent voting discrimination.

As LDF pointed out on page 2 of its merits brief to the Court, "this Court's precedent makes clear that Congress need not act with surgical precision … racial discrimination in voting remains concentrated in the jurisdictions that have historically been covered by Section 5. The evidence of ongoing voting discrimination in Alabama specifically, and the covered jurisdictions generally, exceeds, by many orders of magnitude, that in the non-covered jurisdictions."

Comprehensive studies of case-by-case litigation under Section 2 of the VRA (a section covering all states), which compare jurisdictions that are covered by Section 5 with those that are not, strongly support Congress's conclusion that certain areas have worse records of voting discrimination than others. While the covered jurisdictions account for less than 25 percent of the country's population, they account for more than 80 percent of successful Section 2 voting rights litigation. Therefore, on per capita basis, there are 12 times as many successful Section 2 cases occurring in the covered jurisdictions compared to non-covered jurisdictions.

Indeed, the U.S District Court for the District of Columbia recognized that "the 21st century problem of voting discrimination remains more prevalent in those jurisdictions that have historically been subject to the preclearance requirement."

Those jurisdictions that have not engaged in voting discrimination for the previous 10 years are allowed to remove themselves from Section 5 preclearance requirements.

Courts have reaffirmed Section 5's constitutionality each time they have considered the question.

All lower courts have upheld Section 5 against constitutional challenges. In rejecting Shelby County's challenge, the United States Court of Appeals for the District of Columbia Circuit held that Congress, relying on the 15,000 page record, properly extended the preclearance requirement in 2006 for 25 more years. The appeals court explained: "After thoroughly scrutinizing the record and given that overt racial discrimination persists in covered jurisdictions notwithstanding decades of section 5 preclearance, we, like the district court, are satisfied that Congress's judgment deserves judicial deference."

baiancient history. Much remains to be done to ensure that citizens of all races have equal opportunity to share and participate in our democratic processes." In light of recent and intense

efforts to restrict minority voters' franchise (including unfair redistricting plans, cutbacks in early voting, and discriminatory government-issued photo I.D. laws), we need to do more, not less, to protect the right to vote.

About the NAACP Legal Defense Fund (LDF)

Since its founding in 1940 by Thurgood Marshall, the NAACP Legal Defense Fund (LDF) has been a pioneer in the struggle to secure and to protect the equal rights of Black people. LDF has been involved in nearly all of the precedent-setting litigation relating to minority voting rights. The NAACP Legal Defense Fund successfully defended Section 5 before the U.S. Supreme Court in 2009, the last time the Court considered the constitutionality of the Voting Rights Act. The organization has represented Black voters in many cases brought under Section 5 that have successfully blocked discriminatory voting changes. LDF litigated to protect against disruptions of Dr. Martin Luther King Jr.'s voting rights march from Selma to Montgomery, Alabama shortly after the notorious "Bloody Sunday" on March 7, 1965. LDF has been a separate entity from the NAACP since 1957.