Prepared Testimony of Professor Michael T. Morley
Before the U.S. House of Representatives Judiciary Committee
Hearing on "Enforcement of the Voting Rights Act in the State of Texas"
May 3, 2019

Disparate Impact, Preclearance, and Reauthorization of the Voting Rights Act

Introduction

Chairman Nadler, Ranking Member Collins, and Members of the Committee, thank you very much for inviting me here to testify today concerning the Voting Rights Act ("VRA"). The VRA is one of this nation's most important laws. Widely regarded as a "super-statute,"[1] the Act has played a critical role in reducing racial discrimination in voting and eliminating barriers to voting for African-Americans and members of other minority groups.[2] "Within two years of the VRA's enactment, a majority of voting-age African-Americans were registered to vote in every southern state, primarily as a result of the Act's suspension of literacy tests throughout the region and deployment of federal examiners to register new voters."[3] Over the following decades, voter registration rates and voter participation rates for African-Americans have come to generally equal those of whites.[4]

---

[1] WILLIAM N. ESKRIDGE, JR. & JOHN FEREJOHN, A REPUBLIC OF STATUTES: THE NEW AMERICAN CONSTITUTION 117-18 (2010) (identifying the VRA as a "classic example of a superstatute"); Tomiko Brown-Nagin, *Rethinking Proxies for Disadvantage in Higher Education: A First Generation Students' Project*, 2014 U. CHI. LEGAL F. 433, 437 (explaining that the VRA is "rightly . . . understood as [a] 'superstatute[]'"). Professors William N. Eskridge, Jr. and John Ferejohn define a "superstatute" as a law that imposes "a new normative or institutional framework for state policy," becomes integrated into the culture, and has a "broad effect" on the law beyond its "four corners." William N. Eskridge, Jr. & John Ferejohn, *Super-Statutes*, 50 DUKE L.J. 1215, 1216 (2001).

[2] ALEXANDER KEYSSAR, THE RIGHT TO VOTE: THE CONTESTED HISTORY OF DEMOCRACY IN THE UNITED STATES 264 (2000).

[3] Michael T. Morley, *Republicans and the Voting Rights Act*, 54 TULSA L. REV. 281, 282 (2019) (citing U.S. COMM'N ON CIVIL RIGHTS, POLITICAL PARTICIPATION: A REPORT OF THE UNITED STATES COMMISSION ON CIVIL RIGHTS 12-13 (1968); Daniel Tokaji, *The New Vote Denial: Where Election Reform Meets the Voting Rights Act*, 57 S.C. L. REV. 689, 702 (2006)).

[4] U.S. COMM'N ON CIVIL RIGHTS, AN ASSESSMENT OF MINORITY VOTING RIGHTS ACCESS IN THE UNITED STATES: 2018 STATUTORY REPORT, at 200, 211.

In an era where partisanship frequently dominates debates over election reforms, it is useful to reflect on the VRA as it was originally enacted, with strong bipartisan support. In the Senate, Democrats voted in favor of the Act by a vote of 47-16 (75%); Republicans supported it even more overwhelmingly, voting 30-2 (94%) in favor of it.[5] Similarly, House Democrats voted 221-62 (78%) for the Act, while House Republicans voted 111-23 (83%) for it.[6] The bill provides a model for modern-day reforms because it sought to fully protect all aspects of the right to vote for African-Americans and other voters.

The U.S. Supreme Court has recognized that the right to vote is comprised of two complementary and equally important components: the *affirmative right to vote* and the *defensive right to vote*.[7] The affirmative right to vote is the right to be recognized as an eligible voter and permitted to cast a ballot. The Voting Rights Act sought to guarantee this right to African-Americans and other voters by prohibiting racial discrimination with regard to voting[8] and imposing preclearance requirements on states with a history of racial discrimination to prevent them from devising new ways to discriminate.[9]

The defensive right to vote is the right to have one's ballot be counted and "given full value and effect, without being diluted or distorted by the casting of fraudulent" or otherwise invalid ballots.[10] The U.S. Supreme Court has recognized that a person's right to vote is "denied by a

---

[5] Anthony J. Gaughan, *Has the South Changed?* Shelby County *and the Expansion of the Voter ID Battlefield*, 19 TEX. J. ON C.L. & C.R. 109, 116 (2013).

[6] *Id*.

[7] *See* Michael T. Morley, *Rethinking the Right to Vote Under State Constitutions*¸ 67 VAND. L. REV. EN BANC 189, 192-93 (2014).

[8] Voting Rights Act of 1965 ("VRA"), Pub. L. No. 89-110, §§ 2, 11(a)-(b), 12(a), (c)-(e), 79 Stat. 437, 443-45; *see also id*. § 3(b), 79 Stat. at 437.

[9] *Id*. § 5, 79 Stat. at 439; *see also id*. § 3(c), 79 Stat. at 437-38.

[10] Anderson v. United States, 417 U.S. 211, 226 (1974).

debasement or dilution of the weight of [his or her] vote just as effectively as by wholly prohibiting the free exercise of the franchise."[11] The VRA protected the defensive right to vote by prohibiting various types of election fraud. Section 11(c) made it a federal offense to "knowingly or willfully gives false information" about one's "name, address, or period of residence in the voting district for the purpose of establishing [one's] eligibility to register or vote" in a federal election, or to conspire to do so.[12] Likewise, § 11(d) made it illegal to "knowingly and willfully falsif[y] or conceal[] a material fact, or make[] any false, fictitious statements or representations, or make[] or use[] any false writing or document" in any matter within the jurisdiction of a federally appointed election examiner or hearing officer.[13]

Thus, our most fundamental voting law embodies a balance between expanding access to the vote and protecting the integrity of those votes by fighting election fraud. Later statutes such as the National Voter Registration Act[14] and Help America Vote Act[15] continue to reflect that balance, containing measures to facilitate both voter registration and voting while seeking to minimize errors, fraud, and inaccurate information that can undermine the integrity of the electoral process.

---

[11] Reynolds v. Sims, 377 U.S. 533, 555 (1964); *see also* Baker v. Carr, 369 U.S. 186, 208 (1962) (holding that the right to vote is violated by "dilution" of a person's vote through means such as "stuffing of the ballot box").

[12] VRA, § 11(c), 79 Stat. at 443.

[13] *Id*. § 11(d).

[14] National Voter Registration Act, Pub. L. No. 103-31, §§ 8(a)(4), 12, 107 Stat. 77, 83, 88-89 (May 20, 1993).

[15] Help America Vote Act, Pub. L. No. 107-252, § 303(a)(2), (4)-(5), (b), 116 Stat. 1666, 1709-12 (Oct. 29, 2002).

Developing a Constitutional Coverage Formula for § 5's Preclearance Requirements

Congress' Power to Prevent Racial Discrimination in Voting—Because the VRA regulates elections for offices at all levels of government, rather than just federal elections (over which Congress may exercise plenary authority[16]), it must be enacted pursuant to Congress' authority under § 5 of the Fourteenth Amendment and § 2 of the Fifteenth Amendment. Section 5 permits Congress to enact "appropriate legislation" to enforce the Fourteenth Amendment's substantive provisions,[17] such as the Due Process Clause and Equal Protection Clause[18] (which prohibits racial discrimination and protects the fundamental right to vote), while § 2 empowers Congress to enact "appropriate legislation" to combat racial discrimination in voting.[19]

Historically, the Supreme Court has interpreted these clauses extremely broadly, holding they grant Congress the same sweeping discretion as the Necessary and Proper Clause.[20] Under this approach, the Court deferred to Congress' judgment as to the appropriate steps to take to prevent racial discrimination and protect voting rights.[21] It may use "any rational means" to

[16] U.S. CONST., art. I, § 4, cl. 1; Smiley v. Holm, 285 U.S. 355, 366 (1932); Burroughs v. United States, 290 U.S. 534, 545 (1934); *see generally* Michael T. Morley, *Dismantling the Unitary Electoral System? Uncooperative Federalism in State and Local Elections*, 111 NW. U. L. REV ONLINE 103, 105-09 (2017).

[17] U.S. CONST. amend. XIV, § 5.

[18] *See id*. amend. XIV, § 1.

[19] *Id*. amend. XV, § 2.

[20] U.S. CONST. art. I, § 8, cl. 18; *see* Katzenbach v. Morgan, 384 U.S. 641, 650 (1966) ("By including § 5 the draftsmen sought to grant to Congress . . . the same broad powers expressed in the Necessary and Proper Clause . . . ."); South Carolina v. Katzenbach, 383 U.S. 301, 324-27 (1966).

[21] *Morgan*, 384 U.S. at 651 (holding Congress may "exercise its discretion in determining whether and what legislation is needed to secure the guarantees of the Fourteenth Amendment"); *South Carolina*, 383 U.S. at 326 ("Congress was to be chiefly responsible for implementing the rights created in § 1 [of the Fifteenth Amendment].").

achieve those goals.[22] Applying this reasoning, the Court easily rejected constitutional challenges to the VRA in the years following its enactment.[23]

In *City of Boerne v. Flores*, however, the Supreme Court rejected this understanding of § 5 of the Fourteenth Amendment, instead adopting a much narrower interpretation.[24] It held that the judiciary is responsible for defining the scope of rights protected by § 1 of the Fourteenth Amendment, and Congress has discretion to decide how to protect those rights—as defined by the judiciary—under § 5. The Court explained that Congress "has been given the power 'to enforce' [the Fourteenth Amendment], not the power to determine what constitutes a constitutional violation."[25] To preserve this boundary, "[t]here must be a congruence and proportionality" between actual constitutional violations as determined by the judiciary and a law Congress enacts under § 5 to prevent or remedy them.[26]

Boerne recognized that § 5 allows Congress to go beyond prohibiting unconstitutional conduct, and may enact reasonably tailored prophylactic legislation to prevent or deter constitutional violations. "Preventive measures prohibiting certain types of laws may be appropriate when there is reason to believe that many of the laws affected by the congressional enactment have a significant likelihood of being unconstitutional."[27] The *Boerne* Court pointed to the VRA's preclearance requirement as a permissible type of prophylactic legislation, in large part

---

[22] *South Carolina*, 383 U.S. at 324.

[23] *Morgan*, 384 U.S. at 658 (upholding the constitutionality of § 4(e) as a valid exercise of Congress' authority to enforce the Fourteenth Amendment); *South Carolina*, 383 U.S. at 324-27 (upholding the constitutionality of the § 4 coverage formula and § 5 preclearance requirements under Congress' authority to enforce the Fifteenth Amendment).

[24] City of Boerne v. Flores, 521 U.S. 507, 519 (1997).

[25] *Id*. at 519.

[26] *Id*. at 520.

[27] *Id*. at 532.

because it was "placed only on jurisdictions with a history of intentional racial discrimination in voting."[28] Such limits "tend to ensure" that a statute is a "proportionate" means of combatting constitutional violations.[29]

Preclearance and the Statutory Coverage Formula—In *Shelby County v. Holder*, the U.S. Supreme Court invalidated § 4(b) of the VRA, which set forth the formulas for determining which jurisdictions are subject to § 5's preclearance requirements.[30] Section 5 provides that a covered jurisdiction must obtain either permission ("preclearance") from the U.S. Department of Justice or a declaratory judgment from the U.S. District Court for the District of Columbia before making any change to any of its voting-related "standard[s], practice[s], or procedure[s]."[31] To obtain preclearance or a declaratory judgment, the jurisdiction must show that the change neither had the purpose, nor would have the effect, of "diminishing the ability of any citizen of the United States . . . to elect their preferred candidates of choice" on account of race, color, or membership in a language minority group.[32]

Section 4(b) identified covered states, counties, and municipalities "by reference to literacy tests and low voter registration and turnouts in the 1960s and early 1970s."[33] The Court pointed out that, in the 40 years since the VRA was originally enacted, "voting tests were abolished, disparities in voter registration and turnout due to race were erased, and African-Americans

[28] *Id*. at 533 (citing City of Rome v. United States, 446 U.S. 156, 177 (1980)).

[29] *Id*.

[30] Shelby County v. Holder, 570 U.S. 529 (2013).

[31] 52 U.S.C. § 10304(a).

[32] *Id*. § 10304(b).

[33] *Shelby County*, 570 U.S. at 551.

attained political office in record numbers."[34] Section 4(b) "ignore[d] these developments, keeping the focus on decades-old data . . . rather than current data reflecting current needs."[35] The Court held that, if Congress is to subject certain jurisdictions to preclearance requirements, it must do so based on current facts and data and "cannot simply rely on the past."[36] Consequently, it held § 4(b)'s coverage formula unconstitutional,[37] thereby precluding any jurisdictions from being deemed "covered" unless Congress amends the formula or they are brought within the aegis of the VRA pursuant to individualized determinations under § 3(c).[38]

Developing a New Coverage Formula—If Congress attempts to develop a new coverage formula to replace § 4(b) and revitalize § 5, it should identify covered jurisdictions based on:

(i) current or otherwise contemporaneous disparities in voter registration or participation rates for racial and language minority groups between covered and non-covered jurisdictions, and

(ii) a pattern of violations of the Fourteenth Amendment right to vote or Fifteenth Amendment's prohibition on racial discrimination in voting.

It should avoid adopting a coverage formula based on violations of § 2 of the VRA based on a law's disparate impact on members of certain groups, in the absence of intentional racial discrimination.

The Voting Rights Act is a broad remedial statute that allows Congress to prevent and combat racial discrimination in voting to assure that all Americans have an equal chance to

[34] *Id*. at 553.

[35] *Id*.

[36] *Id*.

[37] *Id*. at 557.

[38] 52 U.S.C. § 10302(c).

participate in the democratic process and elect candidates of their choice. At its core, the VRA prohibits unconstitutional laws that facially discriminate based on race or that were enacted with invidiously discriminatory motives. As amended in 1982, § 2 of the VRA also establishes broad prophylactic protection against laws with racially disparate impacts.[39] The U.S. Supreme Court has held that laws with racially disparate impacts do not violate the Fourteenth or Fifteenth Amendments.[40] Thus, many of the state and local election-related laws that § 2 prohibits as a preventive measure may very well be constitutional. *Boerne* recognizes that laws enacted to enforce constitutional rights may be somewhat overbroad, sweeping in some constitutionally valid state and local enactments to provide extra protection to those underlying rights.

Section 5 of the VRA is another prophylactic measure that requires covered jurisdictions to receive permission from the federal government before changing their election-related laws and procedures. The Supreme Court has recognized that preclearance imposes a heavy burden on state sovereignty, disrupting the typical balance of authority between the federal government and the states in our federal system and upending the presumption of validity typically accorded governmental enactments.[41] Again, the Court has upheld § 5 as a valid prophylactic measure, at least when applied to jurisdictions with a relatively recent history of engaging in intentional racial discrimination and violating the constitutional right to vote.

To subject jurisdictions to § 5's preclearance requirements based on violations of § 2 resulting from a disparate impact theory, however, raises strong constitutional concerns under

[39] *See* Voting Rights Amendments Act of 1982, Pub. L. No. 97-205, § 2, 96 Stat. 131, 134 (June 29, 1982), *codified at* 52 U.S.C. § 10301.

[40] City of Mobile v. Bolden, 446 U.S. 52, 62, 66 (1980) (plurality op.) (citing Washington v. Davis, 426 U.S. 229 (1976)); *see also* Reno v. Bossier Parish Sch. Bd., 520 U.S. 471, 481 (1997).

[41] *Shelby County*, 570 U.S. at 535 (characterizing § 5 as a "drastic departure from the basic principles of federalism").

Boerne. Such a measure would subject a jurisdiction to § 5's preclearance requirements based on its enactment of laws or adoption of other voting-related procedures that were never held unconstitutional. Under *Boerne*'s "congruence and proportionality" test, a jurisdiction likely cannot be subject to § 5's prophylactic requirements based solely on its violations of § 2's prophylactic requirements. The Supreme Court has rejected such a "prophylaxis-upon-prophylaxis" approach in the context of campaign finance law,[42] and is likely to do so here, as well. It has likewise invalidated broad remedial measures Congress tried to enact under § 5 that were not sufficiently predicated upon actual constitutional violations.[43] Thus, if Congress adopts a new coverage formula that allows jurisdictions to be subject to § 5's preclearance requirements based on violations of § 2 of the VRA arising solely from a disparate impact theory, a strong likelihood exists the Supreme Court would invalidate it under *Boerne*.[44] If Congress wishes to re-activate § 5, it should do so based on evidence of actual constitutional violations (*i.e.*, intentional racial discrimination).

Texas and the Voting Rights Act

The State of Texas has been embroiled in numerous VRA cases over the past two decades. This Section will discuss Texas' VRA litigation concerning three main issues: congressional

[42] McCutcheon v. FEC, 572 U.S. 185, 221 (2014).

[43] Coleman v. Court of Appeals of Md., 566 U.S. 30, 33, 37 (2012) (plurality op.) (invalidating provision of the Family Medical Leave Act, 29 U.S.C. § 2612(a)(1)(D)); Bd. of Trs. v. Garrett, 531 U.S. 356, 364, 374 (2001) (invalidating provision in Title I of the Americans with Disabilities Act, 42 U.S.C. §§ 12201-02); Kimel v. Fla. Bd. of Regents, 528 U.S. 62, 82-83 (2000) (invalidating provision in the Age Discrimination in Employment Act, 29 U.S.C. § 216(b)); United States v. Morrison, 529 U.S. 598, 625-27 (2000) (invalidating provision in the Violence Against Women Act, 42 U.S.C. § 13981); Fla. Prepaid Postsecondary Educ. Expense Bd. v. College Sav. Bank, 527 U.S. 627, 631, 640, 645-47 (1999) (invalidating provision in the Plant Remedy Act, 35 U.S.C. §§ 271(h), 296(a)).

[44] For a more detailed analysis of *Boerne* and the VRA, see Michael T. Morley, *Prophylactic Redistricting? Congress's Section 5 Power and the New Equal Protection Right to Vote*, 59 WM. & MARY L. REV. 2053 (2018).

redistricting following the 2000 census, congressional redistricting following the 2010 census, and Texas' voter identification law.

Congressional Redistricting Following the 2000 Census—Following the 2000 census, the state legislature was unable to agree to a plan for redrawing its congressional districts. Due to the substantial population growth confirmed by the new census, its existing congressional map was invalidated and replaced with districts drawn by a three-judge panel of the U.S. District Court for the Eastern District of Texas.[45] The court's map largely left in place a strong political gerrymander in favor of the Democratic party that had been established during redistricting following the 1990 census.[46] That 1990 plan "was cited in the political science literature as an extreme example of what one party can do in drawing a redistricting map to the detriment of the other."[47] The U.S. Supreme Court recognized that the plan "entrenched" the Democratic party within Texas' congressional delegation, despite the fact that it was "on the verge of minority status" within the state.[48]

In 2003, the Texas legislature adopted a mid-decade replacement plan that made "party balance" in the state's congressional delegation "more congruent to statewide party power."[49] When the challenge to that mid-decade redistricting reached the U.S. Supreme Court, Justice Anthony Kennedy opined that the legislature was entitled to replace the court-drawn plan with its

---

[45] Balderas v. Texas, No. 6:01-CV-158, 2001 U.S. Dist. LEXIS 25740 (E.D. Tex. Nov. 16, 2001).

[46] Henderson v. Perry, 399 F. Supp. 2d 756, 768 (E.D. Tex. 2005) ("The map drawn by this court in 2001 perpetuated much of this gerrymander."), *aff'd in part and rev'd in part sub nom.* League of United Latin Am. Citizens ("LULAC") v. Perry, 548 U.S. 399 (2006).

[47] *Id*. (citing MICHAEL BARONE, THE ALMANAC OF AMERICAN POLITICS 2004, at 1510 (2003)).

[48] *LULAC*, 548 U.S. at 419 (Kennedy, J.).

[49] *Id*.

own, and "no presumption of impropriety should attach" to it.[50] A majority of the Court joined Justice Kennedy in concluding that one of the districts in the map, District 23, covering a "large land area in West Texas," violated § 2 of the VRA because it impermissibly diluted Hispanic voting strength.[51] A plurality went on to reject a VRA challenge to District 24, holding it did not impermissibly dilute African-American voting strength.[52] On remand, the district court redrew the boundaries of five congressional districts to correct the defect in District 23.[53]

Congressional Redistricting Following the 2010 Census—Following the 2010 census, the Texas legislature adopted a new congressional district map adding four new districts.[54] Because Texas was a covered jurisdiction under the VRA, the map had to receive preclearance under § 5 of the VRA before it could take effect. By the time of the 2012 congressional election, the U.S. District Court for the District of Columbia still had not reached a decision as to whether the new maps violated § 5. Accordingly, a three-judge panel of the U.S. District Court for the Western District of Texas adopted its own new map, declining to "give any deference to the Legislature's enacted plan."[55] In a per curiam opinion, with Justice Thomas concurring separately, the U.S. Supreme Court reversed. It explained the three-judge panel should have "tak[en] guidance" from the state's proposed map, except for the parts the plaintiffs could show likely violated the

[50] *Id*. at 416.

[51] *Id*. at 423, 442 (majority op.).

[52] *Id*. at 446 (plurality op.).

[53] LULAC v. Perry, 457 F. Supp. 716, 721 (E.D. Tex. 2006).

[54] *See* Abbott v. Perez, 138 S. Ct. 2305, 2314 (2018).

[55] Perez v. Perry, 835 F. Supp. 2d 209, 213 (W.D. Tex. 2011), *rev'd*, 565 U.S. 388 (2012) (per curiam).

Constitution or § 2 of the VRA, or that stood "a reasonable probability of failing to gain § 5 preclearance."[56]

On remand, the Western District crafted and preliminarily imposed a new congressional map that "departed significantly" from the state's proposed plan.[57] Shortly thereafter, the U.S. District Court for the District of Columbia denied the state's plan preclearance under § 5.[58] In 2013, the state legislature repealed its proposed redistricting plan and adopted the Western District's new map as its own.[59] Four years later, in a challenge to the legislature's enactment of the Western District's plan, that very court held that District 27 violated § 2 of the VRA because it impermissibly diluted the Latino vote, and District 35 was an unconstitutional racial gerrymander—even though the court itself had included those districts in the map it ordered.[60]

The U.S. Supreme Court reversed in a 5-4 decision. The majority declared, "[W]hen all the relevant evidence in the record is taken into account, it is plainly insufficient to prove that the 2013 Legislature acted in bad faith and engaged in intentional discrimination."[61] It explained, "Not only does the direct evidence suggest that the 2013 Legislature lacked discriminatory intent, but the circumstantial evidence points overwhelmingly to the same conclusion."[62] The Court went on to reject the § 2 claim on the grounds "the geography and demographics of south and west

---

[56] Perez v. Perry, 565 U.S. 388, 394-95 (2012) (per curiam).

[57] *Abbott*, 138 S. Ct. at 2316.

[58] Texas v. United States, 887 F. Supp. 2d 133 (D.D.C. 2012), *vacated*, 570 U.S. 928 (2013).

[59] *Abbott*, 138 S. Ct. at 2317.

[60] Perez v. Abbott, 274 F. Supp. 3d 624, 686 (W.D. Tex. 2017), *rev'd sub nom.* Abbott v. Perez, 138 S. Ct. 2305 (2018).

[61] *Abbott*, 138 S. Ct. at 2327.

[62] *Id*. at 2328.

Texas do not permit the creation of any more than the seven Latino opportunity districts that exist under the current plan."[63]

Texas' Voter Identification Law—In 2011, the Texas legislature enacted Senate Bill 14 ("SB 14"), which required voters to show identification to vote at a polling place. The U.S. District Court for the Southern District of Texas held that the law was passed at least partly due to intentional racial discrimination against minority voters, and that it violated § 2 of the VRA due to its disparate impact against such voters.[64] The U.S. Court of Appeals for the Fifth Circuit, sitting *en banc*, held that the district court's evidence of intentional racial discrimination was "infirm," and remanded for reconsideration of that issue.[65] It affirmed the district court's ruling, however, that the law's disparate impact violated § 2.[66] Due to the "interlocutory" posture of the case, the U.S. Supreme Court denied immediate review.[67]

On remand, the district court reinstated its finding that the legislature had acted, "at least in part," with a discriminatory purpose.[68] A few months later, the state legislature amended its voter ID law to attempt to address the defects in its previous enactment, but the district court enjoined the amended version of the law.[69] Based on its finding of intentional discrimination, the

---

[63] *Id*. at 2331. The Court did conclude that one district for the Texas House of Representatives was an invalid racial gerrymander because the State tried to increase Latino voting power by redrawing an African-American district so that its population would be over 50% Latino. *Id*. at 2334.

[64] Veasey v. Perry, 71 F. Supp. 3d 627, 694 (S.D. Tex. 2014), *aff'd in part and rev'd in part*, 796 F.3d 487 (5th Cir. 2015), *aff'd in part and rev'd in part sub nom*. Veasey v. Abbott, 830 F.3d 216 (5th Cir. 2016) (en banc). The district court entered a preliminary injunction against the voter ID law, *Veasey*, 71 F. Supp. 3d at 707 & n.583, but a panel of the Fifth Circuit stayed the ruling, Veasey v. Perry, 769 F.3d 890, 895 (5th Cir. 2014), and the Supreme Court declined to disturb that ruling, Veasey v. Perry, 135 S. Ct. 9 (2014).

[65] Veasey v. Abbott, 830 F.3d 216, 234 (5th Cir. 2016) (en banc).

[66] *Id*. at 243.

[67] *See* Abbott v. Veasey, 137 S. Ct. 612 (2017) (Roberts, C.J., statement respecting denial of certiorari).

[68] Veasey v. Abbott, 249 F. Supp. 3d 868 (S.D. Tex. 2017).

[69] Veasey v. Abbott, 265 F. Supp. 3d 684 (S.D. Tex. 2017), *rev'd*, 888 F.3d 792 (5th Cir. 2018).

district court also "ordered the commencement of a VRA § 3(c) preclearance bail-in hearing."[70] The U.S. Court of Appeals for the Fifth Circuit, however, reversed.[71] It held the district court "had no legal or factual basis" for enjoining the amended version of the voter ID law.[72] The Fifth Circuit noted that the statute "affords a generous, tailored remedy for the actual violations found."[73] It added, "[T]he State has acted promptly following this court's mandate, and there is no equitable basis for subjecting Texas to ongoing federal election scrutiny under Section 3(c)."[74]

Conclusion

The Voting Rights Act is a critical statute that ensures the election process remains open to all. In reauthorizing the law, considering a new coverage formula for § 5's preclearance requirements, and studying the scope and application of § 2, Congress should ensure the statute continues to fall within the scope of its powers as construed by the U.S. Supreme Court.

[70] Veasey v. Abbott, 888 F.3d 792, 798 (5th Cir. 2018).

[71] *Id*.

[72] *Id*. at 801.

[73] *Id*.

[74] *Id*. at 804.