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## Judicial Diversity After *Shelby County v. Holder*

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# JUDICIAL DIVERSITY AFTER *SHELBY COUNTY V. HOLDER*

*William Roth\**

## INTRODUCTION

In 2014, voters in ten of the fifteen states previously covered by the Voting Rights Act<sup>1</sup> (“VRA”) preclearance formula—including six of the nine states covered in their entirety—will go to the polls to elect or retain state supreme court justices. Yet despite the endemic underrepresentation of minorities on state benches and the judiciary’s traditional role in fighting discrimination, scholars have seemingly paid little attention to how *Shelby County v. Holder*’s<sup>2</sup> suspension of the coverage formula in section 4(b)<sup>3</sup> has left racial minorities vulnerable to retrogressive changes to judicial-election laws. The first election year following *Shelby County* thus provides a compelling opportunity to assess the VRA’s ongoing role in the fight to diversify state benches.

Judicial elections have long raised unique conceptual hurdles for proponents of expansive VRA protections. For instance, throughout the first three decades of VRA litigation, many lower courts appeared persuaded by the argument that, because judges are not supposed to be responsive to specific constituencies, they must fall outside of the VRA’s reach. It was not until the 1990s that the Supreme Court effectively held that the VRA was applicable to judicial elections,<sup>4</sup> and even then it took multiple lawsuits to establish that the law covered trial as well as appellate elections, and that it

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1. Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 438 (codified as amended at 42 U.S.C. §§ 1971, 1973–1973bb-1 (2012)).

2. 133 S. Ct. 2612 (2013).

3. 42 U.S.C. § 1973b(b).

4. The Court held judicial elections to be within the VRA’s scope in *Haith v. Martin*, 477 U.S. 901 (1986), a summary affirmance that left substantial questions open for the Court to address in cases such as *Chisom v. Roemer*, 501 U.S. 380 (1991) and *Brooks v. State Board of Elections*, 775 F. Supp 1470 (S.D. Ga. 1989), *aff’d*, 498 U.S. 916 (1990).

covered retention as well as ordinary elections.<sup>5</sup> To this day, the Court has not extended the “one-person, one-vote” principle to judicial elections under the equal protection clause, even though it has done so for legislative elections.

More generally, debates on the virtues of judicial elections tend to frame judicial quality in terms of administrative outcomes while ignoring the consequences of racially discriminatory voting laws on the makeup of elected state benches.<sup>6</sup> As this Essay argues, however, the VRA and antidiscrimination law more broadly make clear that effective minority political participation in state judicial elections is an equally relevant subject in this debate. More specifically, the VRA—and section 5<sup>7</sup> preclearance in particular—has played an overlooked role in the parallel struggles to diversify the nation’s state benches and mitigate racially discriminatory election laws. Previously covered states, such as North Carolina, Texas, and Alabama, have already vindicated critics’ concerns about retrogression by promising to enact more stringent voting laws that the Department of Justice (“DOJ”) and the D.C. District Court surely would have objected to under a preclearance regime.<sup>8</sup> Some of these new laws, such as those rearranging or eliminating judicial positions, directly target judicial elections. Meanwhile, other laws that enact voter ID requirements and reduce the number of early voting days will undermine minority voters’ ability to participate in the elections. In sum, this Essay argues, while Congress considers drafting a new coverage formula at a time when courts are construing voting remedies even

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5. See *League of United Latin Am. Citizens Council No. 4434 v. Clements*, 902 F.2d 293, 305 (5th Cir. 1990) (Higginbotham, J.) (arguing that “the county-wide election of district court judges does not violate the Voting Rights Act” because there can be no share of power in single-member offices such as Texas trial courts). See *African-American Voting Rights Legal Defense Fund v. Missouri*, 994 F. Supp. 1105 (E.D. Mo. 1997) and *Bradley v. Work*, 154 F.3d 704 (7th Cir. 1998) for a comprehensive discussion of the VRA and retention elections. Even some scholars do not consider retention elections to be a true form of judicial elections. See Steven P. Croley, *The Majoritarian Difficulty: Elective Judiciaries and the Rule of Law*, 62 U. CHI. L. REV. 689, 791 (1995) (categorizing retention-election systems as nonelective).

6. See Jeffrey M. Chemerinsky & Jonathan L. Williams, *Foreword: Measuring Judges and Justice*, 58 DUKE L.J. 1173 (2009); Stephen J. Choi et al., *Judicial Evaluations and Information Forcing: Ranking State High Courts and Their Judges*, 58 DUKE L.J. 1313 (2009); Stephen J. Choi et al., *Professionals or Politicians: The Uncertain Empirical Case for an Elected Rather than Appointed Judiciary*, 26 J.L. ECON. & ORG. 290 (2010).

7. 42 U.S.C. § 1973c.

8. See NAACP LEGAL DEFENSE FUND, HOW FORMERLY COVERED STATES & LOCALITIES ARE RESPONDING TO THE SUPREME COURT’S VOTING RIGHTS ACT DECISION (2014), [available at](http://www.naacpldf.org/files/case_issue/States%20and%20Localities%27%20Responses%20to%20Shelby%20County%2C%20Alabama%20v.%20Holder%20as%20of%206.19.2014.PDF) [http://www.naacpldf.org/files/case\\_issue/States%20and%20Localities%27%20Responses%20to%20Shelby%20County%2C%20Alabama%20v.%20Holder%20as%20of%206.19.2014.PDF](http://www.naacpldf.org/files/case_issue/States%20and%20Localities%27%20Responses%20to%20Shelby%20County%2C%20Alabama%20v.%20Holder%20as%20of%206.19.2014.PDF).

more narrowly, few statutory remedies exist to diversify state courts and combat discrimination precisely where such tools are needed most.

This Essay proceeds in three parts. Part I outlines the current state of judicial diversity throughout the country, tracing the story of judicial diversity back through the pre-VRA era. Part II then explains how the VRA's legal architecture helped facilitate the election of minority judges. Specifically, Part II addresses the preclearance program's unique effectiveness with respect to racial diversity and discrimination in the context of judicial elections. Finally, Part III argues that the nullification of the VRA preclearance requirement represents an alarming setback for judicial diversification efforts, especially in light of the Court's narrow construction of section 2 vote-dilution claims.

### I. RACIAL DIVERSITY IN STATE COURTS

State courts hear approximately 90% of the judicial system's cases, and just shy of 90% of all state-court judges run for election or retention.<sup>9</sup> Meanwhile, white males are overrepresented on state appellate benches by a ratio of two to one.<sup>10</sup> With respect to black judges, there is actually evidence of a proportional backslide in recent years.<sup>11</sup> It comes as no surprise, then, that bar associations and groups such as the Lawyers' Committee for Civil Rights Under the Law focus a great deal on diversifying state benches. The arguments for a more diverse judiciary extend well beyond the symbolic importance of representation to substantive, performance-related concerns. For instance, empirical analysis suggests that minority judges are more plaintiff friendly, a generalization that holds true even controlling for partisan selection and election processes.<sup>12</sup> Obviously, there are strong connections between the processes of judicial selection and substantive racial justice. Even if all the responsiveness concerns that apply to legislators do not apply to judges, there are many functional arguments for why judicial diversity is desirable.

The period of outright racial disenfranchisement that began with Redemption and ultimately inspired Congress to enact the 1965 VRA is well known and difficult to exaggerate. An onslaught of racist voting laws eviscerated minority political opportunity in the South, and the

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9. AM. CONSTITUTION SOC'Y FOR LAW AND POLICY, JUSTICE AT RISK: AN EMPIRICAL ANALYSIS OF CAMPAIGN CONTRIBUTIONS AND JUDICIAL DECISIONS 1 (June 2013), available at [http://www.acslaw.org/ACS%20Justice%20at%20Risk%20\(FINAL\)%206\\_10\\_13.pdf](http://www.acslaw.org/ACS%20Justice%20at%20Risk%20(FINAL)%206_10_13.pdf).

10. CIARA TORRES-SPELLISCY ET AL., BRENNAN CENTER FOR JUSTICE, IMPROVING JUDICIAL DIVERSITY 1 (2d ed. 2010).

11. *Id.*

12. Seth S. Andersen, *Diversity on the Bench: Is the 'Wise Latina' a Myth?*, 93 JUDICATURE 208 (2010).

repercussions are still evident today. In Georgia, for example, not a single black candidate won statewide office until 1984, when voters elected Robert Benham to the court of appeals, and even then a white governor had first appointed him to the bench.<sup>13</sup> That same year, Mississippi had just 1 black trial judge out of 102.<sup>14</sup> In 1990, Virginia had a minority voting-age population close to 20%, but minorities occupied a mere 5% of elected judicial positions.<sup>15</sup> When plaintiffs in Harris County, the most populous county in Texas, sued to establish VRA coverage of trial-court elections in 1991, the county was 20% black, but its at-large elections yielded only 3 black judges for 59 district-wide seats.<sup>16</sup> Even in 2001, of the 10 states with the worst judicial diversity as measured by disparity between voting-age population and percentage of minority judges, 8 were covered by the VRA's preclearance mandate and 9 were states with judicial elections.<sup>17</sup>

Yet currently, in the aggregate, previously covered states have a slightly higher percentage of minority judges (13.7%) than previously noncovered states (12%).<sup>18</sup> (This is less surprising given that the overwhelming majority of VRA preclearance activity has affected jurisdictions with substantial minority populations.) By contrast, in 1965, when President Johnson signed the VRA, state courts were almost exclusively white. Slow but discernible progress has therefore been achieved—progress that *Shelby County* may yet undo.

## II. VOTING RIGHTS ACT LITIGATION AND JUDICIAL ELECTIONS

Prior to *Shelby County*, sections 2<sup>19</sup> and 5<sup>20</sup> constituted the VRA's tag team of antidiscrimination provisions. Section 2 provides that "[n]o voting

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13. Laughlin McDonald et al., *Georgia*, in *QUIET REVOLUTION IN THE SOUTH: THE IMPACT OF THE VOTING RIGHTS ACT 1965–1990*, at 67 (Chandler Davidson & Bernard Grofman eds., 1994).

14. See Robert B. McDuff, *Judicial Elections and the Voting Rights Act*, 38 *LOY. L. REV.* 931, 933 (1993).

15. Thomas R. Morris & Neil Bradley, *Virginia*, in *QUIET REVOLUTION IN THE SOUTH: THE IMPACT OF THE VOTING RIGHTS ACT 1965–1990*, at 271, 286 (Chandler Davidson & Bernard Grofman eds., 1994).

16. *Hous. Lawyers' Ass'n v. Attorney Gen. of Tex.*, 501 U.S. 419, 423 (1991).

17. Barbara L. Graham, *Toward an Understanding of Judicial Diversity in American Courts*, 10 *MICH. J. RACE & L.* 153, 173–74 (2004).

18. *Diversity of the Bench*, AMERICAN JUDICATURE SOCIETY, [http://www.judicialselection.com/judicial\\_selection/bench\\_diversity/index.cfm?state=](http://www.judicialselection.com/judicial_selection/bench_diversity/index.cfm?state=) (last visited Aug. 16, 2014); *National Database on Judicial Diversity in State Courts*, AMERICAN BAR ASSOCIATION STANDING COMMITTEE ON JUDICIAL INDEPENDENCE (June 2010), <http://apps.americanbar.org/abanet/jd/display/national.cfm>.

19. Voting Rights Act of 1965 § 2, 42 U.S.C. § 1973 (2012).

qualification or prerequisite to voting or standard, practice, or procedure shall be imposed . . . in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color,” such that, “based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a [given race].”<sup>21</sup> Section 2, in short, allows for plaintiffs to challenge discriminatory laws. But it does not preclude the enactment of such laws. That prophylactic function is left to section 5.

Section 5, for its part, mandates that jurisdictions covered either by section 4(b)’s<sup>22</sup> formula—which was held unconstitutional in *Shelby County*—or section 3(c)’s<sup>23</sup> bail-in “pocket-trigger” must preclear “any voting qualification or prerequisite to voting, or standard, practice, or procedure.”<sup>24</sup> If covered jurisdictions do not preclear such changes, plaintiffs can sue for failure to comply and receive a court-ordered injunction. Threats of section 2 litigation and DOJ objections under section 5 have been a major force behind much of the progressive reform in covered jurisdictions.<sup>25</sup>

Even though racial minorities were just as grossly underrepresented in state judiciaries as they were in state legislatures before the civil rights movement, the VRA was not initially deployed to attack racially discriminatory judicial elections.<sup>26</sup> Two historical facts help explain the VRA’s partial dormancy in the early fight to diversify state benches. These facts also underscore why *Shelby County* raises fresh concerns.

First, before Congress amended section 2 in 1982, that section was considered to be coextensive with the Fifteenth Amendment’s purposeful discrimination standard.<sup>27</sup> Without a results-based approach, it was difficult to remedy even egregiously disparate racial impacts. Second, although DOJ used its preclearance authority under section 5 to object to around a dozen

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20. *Id.* § 1973c.

21. *Id.* § 1973.

22. *Id.* § 1973b(b).

23. *Id.* § 1973a(c).

24. *Id.* § 1973c.

25. ANITA S. EARLS ET AL., RENEWTHEVRA.ORG, VOTING RIGHTS IN NORTH CAROLINA: 1982–2006, at 2 (2006), available at <http://www.protectcivilrights.org/pdf/voting/NorthCarolinaVRA.pdf>. See generally Robert A. Kengle, *Report: Voting Rights in Georgia: 1982–2006*, 17 S. CAL. REV. L. & SOC. JUST. 367 (2008).

26. See McDuff, *supra* note 14, at 935.

27. See *City of Mobile v. Bolden*, 446 U.S. 55, 62 (1980) (“action by a State that is racially neutral on its face violates the Fifteenth Amendment only if motivated by a discriminatory purpose”).

proposed changes to judicial elections between 1965 and 1989,<sup>28</sup> the Supreme Court had not definitively held that the VRA was applicable to judicial elections.

The Supreme Court eventually had to resolve these ambiguities. In the late 1980s and early 1990s, lawsuits were filed in a dozen states using at-large voting schemes to elect state judges, which forced the Court to decide whether the VRA applied to judicial elections. In *Brooks v. Georgia State Board of Elections*, the Court unanimously affirmed<sup>29</sup> a decision from the U.S. District Court for the Southern District of Georgia holding that the VRA was applicable to judicial elections.<sup>30</sup> At trial, the district court had emphasized that “[s]ection 5 of the Voting Rights Act does not differentiate among types of elections.”<sup>31</sup> Then, two years after *Brooks*, the Supreme Court in *Chisom v. Roemer* addressed the slightly trickier question of whether section 2 covers judicial elections.<sup>32</sup>

Section 2 presented a more complicated question in two respects. First, unlike section 5, section 2 expressly refers to minority opportunity to elect “representatives of their choice.”<sup>33</sup> Moreover, section 2 claims do not benefit from the antiregression principle that underlies section 5. Still, Justice Stevens argued in *Chisom* that section 2, which was amended in 1982 to bar electoral practices and systems that *result*—intentionally or otherwise—in the denial or abridgement of the right to vote, does indeed cover judicial elections.<sup>34</sup>

Justice Scalia, joined by Chief Justice Rehnquist and Justice Kennedy, dissented from Justice Stevens’s majority opinion. In particular, Justice Scalia argued that “judges are not representatives,”<sup>35</sup> and he added that, although judges may be elected, they do not “act[] on behalf of the people . . . in the ordinary sense.”<sup>36</sup> Justice Scalia also invoked *Wells v. Edwards*,<sup>37</sup> which held that the Fourteenth Amendment’s one-person, one-vote mandate does not

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28. *Section 5 Objection Letters*, U.S. DEP’T OF JUSTICE, [http://www.justice.gov/crt/records/vot/obj\\_letters/index.php](http://www.justice.gov/crt/records/vot/obj_letters/index.php) (last visited Sept. 1, 2014).

29. 498 U.S. 916 (1990).

30. 775 F. Supp. 1470 (S.D. Ga. 1989).

31. *Brooks*, 775 F. Supp. at 1476.

32. 501 U.S. 380 (1991).

33. Voting Rights Act of 1965 § 2, 42 U.S.C. § 1973 (2012).

34. *Chisom*, 501 U.S. at 384.

35. *Id.* at 405 (Scalia, J., dissenting).

36. *Id.* at 410 (Scalia, J., dissenting) (emphasis omitted).

37. 347 F. Supp. 453 (M.D. La. 1972), *aff’d*, 409 U.S. 1095 (1973).

apply to the judiciary,<sup>38</sup> to argue that extending section 2 liability to judicial cases would create a problematic jurisprudential rift.<sup>39</sup> But this argument misses the mark. If anything, Congress chose to use *representatives* not in lieu of *officials* but in place of *legislators*, the term the Court used in *White v. Regester*.<sup>40</sup> Indeed, there is ample evidence that the authors of the VRA contemplated its application to judicial elections,<sup>41</sup> and *Chisom* signaled that the Court would apply the VRA to judicial cases accordingly.

*Brooks* and *Chisom* spurred a period of robust federal oversight of judicial elections, even though section 5 objections have actually declined since 1993.<sup>42</sup> Every time a jurisdiction sought to change the number of its judicial seats, the location of those seats, or the manner in which elections for those seats were conducted, DOJ scrutinized the plan while comparing it to viable alternatives and examining its social context. In one typical objection letter, DOJ wrote to Alabama authorities in 1993 arguing that the state's plan to add a judicial position in the Sixth Judicial Circuit that would be selected by majority vote in an at-large election failed section 5's antiregression test.<sup>43</sup> Even though Alabama claimed a nondiscriminatory interest in reducing each judge's caseload, DOJ contended that the choice of an at-large, numbered-post election needlessly deprived black voters of an equal opportunity to elect a candidate of their choice. Indeed, as the department noted, such an electoral system was likely to deter minority candidates from running in much the same way that they had been deterred in the past. Similarly, when Texas submitted its plan for the governor to fill judicial vacancies by appointment rather than special election, DOJ objected to the plan, arguing that, given the state's history of judicial underrepresentation of minorities and racial bloc voting, there was a high probability that the gubernatorial appointment process would yield a judge

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38. *Edwards*, 347 F. Supp. at 454; see Andrew S. Marovitz, *Casting a Meaningful Ballot: Applying One-Person, One-Vote to Judicial Elections Involving Racial Discrimination*, 98 YALE L.J. 1193, 1194–95 (1989); McDuff, *supra* note 14, at 935.

39. *Chisom*, 501 U.S. at 415–16 (Scalia, J., dissenting); McDuff, *supra* note 14, at 971.

40. 412 U.S. 755 (1973); Brenda Wright, *The Bench and the Ballot: Applying the Protections of the Voting Rights Act to Judicial Elections*, 19 FLA. ST. U. L. REV. 669, 677 (1992).

41. See *Brooks v. State Bd. of Elections*, 775 F. Supp. 1470, 1476 (S.D. Ga. 1989), *aff'd*, 498 U.S. 916 (1990).

42. THE NAT'L COMM'N ON THE VOTING RIGHTS ACT, THE VOTING RIGHTS ACT AT WORK 1982–2005, at 65 (2006) (suggesting that *Reno v. Bossier Parish School Board*, 528 U.S. 320 (2000), led to a decline in section 5 objections between 2000 and 2004), available at [http://www.lawyerscommittee.org/admin/voting\\_rights/documents/files/0023.pdf](http://www.lawyerscommittee.org/admin/voting_rights/documents/files/0023.pdf).

43. Letter from James P. Turner, Acting Assistant Attorney Gen., Civil Rights Div., U.S. Dep't of Justice, to Lynda K. Oswald, Assistant Attorney Gen., Ala. State House (Nov. 16, 1993), available at [http://www.justice.gov/crt/records/vot/obj\\_letters/letters/AL/AL-1960.pdf](http://www.justice.gov/crt/records/vot/obj_letters/letters/AL/AL-1960.pdf).

unacceptable to Hispanic voters.<sup>44</sup> Between 1990 and 2013, DOJ issued dozens of such objections to judicial elections, on top of the hundreds it issued in response to more general voter laws.<sup>45</sup> By disallowing electoral laws that were potentially retrogressive, as opposed to merely overturning laws proven to have a discriminatory impact, the VRA advanced judicial diversity.

Yet as an ongoing case in Galveston County, Texas, perfectly illustrates, *Shelby County* leaves the door open for legislatures to erode the progress made in the past two decades. In August 2011, Galveston officials adopted and submitted for DOJ review a comprehensive judicial reform that, among other things, reduced the number of justices of the peace from nine to five and the number of constable precincts from eight to five.<sup>46</sup> Concurrently, minority plaintiffs mounted a lawsuit against Galveston under sections 2 and 5 of the VRA.<sup>47</sup> The plaintiffs alleged that, prior to the county's plan, black and Hispanic voters were able to elect candidates of their choice in three of those precincts—the same three targeted for consolidation in the 2011 plan. In its careful review of census data, public testimony, and the county's proffered justifications, DOJ reached the same conclusion, and in March 2012 it denied preclearance to the Galveston plan.<sup>48</sup>

On August 19, 2013, less than two months after *Shelby County* was decided, Galveston enacted virtually the same plan that DOJ had determined to be retrogressive, thereby eliminating the opportunity for minority voters to elect justices of the peace in all but one precinct.<sup>49</sup> Minority plaintiffs have brought a new section 2 suit against Galveston, but they will have to make out a vote-dilution claim without reference to retrogression. Moreover, the fact that the Galveston case pertains to justice-of-the-peace courts with limited jurisdiction merely reinforces the importance of a robust protection scheme going forward. Previously covered states such as Texas tend to hold many more elections for courts of limited jurisdiction—for which voting

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44. Letter from Bill Lann Lee, Acting Assistant Attorney Gen., Civil Rights Div., U.S. Dep't of Justice, to the Honorable Alberto R. Gonzales, Elections Div., Tex. Sec'y of State (Sept. 29, 1998), available at [http://www.justice.gov/crt/records/vot/obj\\_letters/letters/TX/l\\_980929.pdf](http://www.justice.gov/crt/records/vot/obj_letters/letters/TX/l_980929.pdf).

45. See *Section 5 Objection Letters*, *supra* note 28.

46. Letter from Thomas E. Perez, Assistant Attorney Gen., Civil Rights Div., U.S. Dep't of Justice, to James E. Trainor III, Attorney, Beirne, Maynard & Parsons LLP (Mar. 5, 2012), available at [http://www.justice.gov/crt/records/vot/obj\\_letters/letters/TX/l\\_120305.pdf](http://www.justice.gov/crt/records/vot/obj_letters/letters/TX/l_120305.pdf).

47. Complaint, *Petteway v. Galveston Cnty.*, No. 3:13-cv-308 (S.D. Tex. Aug. 26, 2013), available at <http://s3.documentcloud.org/documents/1004771/petteway-et-al-v-galveston-county-texas-et-al.pdf>.

48. Letter from Thomas E. Perez, *supra* note 46.

49. Complaint, *supra* note 47.

districts are smaller and minority opportunity to elect therefore better—than for courts of general jurisdiction.

### III. WHY SECTION 2 CANNOT FILL *SHELBY COUNTY'S* PRECLEARANCE GAP

Before *Shelby County*, the VRA statutory regime was truly greater than the sum of its parts. Mandatory preclearance served a vital burden-shifting role that enabled minority plaintiffs strategically to triage electoral discrimination and guaranteed that subsequent policies did not undo the progress made through section 2.<sup>50</sup> Furthermore, while voting rights litigation frequently involves pitched battles between state legislatures and minority plaintiffs, preclearance provided a structured, deliberative process for states and municipalities to negotiate solutions with the federal government. In short, section 5's antiretrogression function worked hand in hand with section 2's antidilution victories. While plaintiffs can therefore still pursue section 2 vote-dilution claims, *Shelby County* greatly reduced their ability to keep up with discriminatory policies.

In addition, the future of section 2 itself remains uncertain. Recent cases such as *Bartlett v. Strickland*<sup>51</sup> signal the Supreme Court's resistance to further expanding section 2's scope to tackle twenty-first-century modes of discrimination. In *Bartlett*, the Court held that, in order to make out a section 2 vote-dilution claim, plaintiffs must show that they would comprise at least 50% of a proposed new district.<sup>52</sup> Consequently, in many cases where states and municipalities decide to eliminate or relocate judgeships—just as Galveston did—section 2 may not provide a remedy. It was simply not engineered to be able to pick up section 5's slack.

After *Shelby County*, then, VRA remedies to correct racial discrimination in judicial elections are available primarily in jurisdictions that still use at-large voting schemes or similar procedures that submerge minority votes. For instance, plaintiffs in Terrebonne Parish, Louisiana, filed a lawsuit in February 2014, alleging that the at-large system used to elect five judges for the Thirty-Second Judicial District (coextensive with Terrebonne Parish) violates section 2.<sup>53</sup> Under the system, judicial candidates do not need to be residents of a given division within the district and are only

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50. THE NAT'L COMM'N ON THE VOTING RIGHTS ACT, *supra* note 42; *see also* EARLS ET AL., *supra* note 25, at 2.

51. 556 U.S. 1 (2009).

52. *Id.* at 25–26.

53. Complaint ¶¶ 32–34, *Terrebonne Parish Branch NAACP v. Jindal*, No. 3:13-cv-69 (M.D. La. Feb. 3, 2014), *available* at [http://www.naacpldf.org/files/case\\_issue/Terrebonne%20Parish%20Branch%20NAACP%2C%20et%20al.%20v.%20Jindal%2C%20et%20al.%20%20001%20Complaint%20%282.3.14%29.pdf](http://www.naacpldf.org/files/case_issue/Terrebonne%20Parish%20Branch%20NAACP%2C%20et%20al.%20v.%20Jindal%2C%20et%20al.%20%20001%20Complaint%20%282.3.14%29.pdf).

required to live there for one year prior to running. The results of Terrebonne's system are astounding. Black residents comprise over 17.3% of the district's total voting-age population, but in Terrebonne's 191-year judicial history, not a single black judge has been elected.<sup>54</sup> Terrebonne voters are simply arguing that the structure of their judicial elections should not discriminatorily silence their voice, especially in a situation where their population size indicates that they are strong enough to wield political power. Despite the *Shelby County* majority's insistence that the preclearance formula's "strong medicine" can no longer be justified by the same "entrenched racial discrimination" that inspired the VRA, there is clearly more work to be done.<sup>55</sup>

#### CONCLUSION

Judicial elections and the VRA raise enormously complex questions and provoke serious debate on the topics of race consciousness and political accountability. This Essay has humbly attempted to advance that debate by pointing out the significance of the Supreme Court's evolving VRA jurisprudence for elected judiciaries. But the Essay has avoided opining on which judicial-selection process is best, in part because the VRA and the suspension of its coverage formula remain highly relevant to the future protection of minority interests regardless of what kind of system is in place. There is no question that it is not the VRA's responsibility to deliver wholly proportional racial representation in the legislative and judicial branches. And yet the statute remains an essential tool in defending each voter's equal opportunity to participate politically and elect candidates of his or her choice. History suggests that, after *Shelby County*, the absence of a robust preclearance mechanism not only threatens to disenfranchise minority communities. It also threatens to undermine the integrity and diversity of state judiciaries.

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54. *Id.* ¶¶ 11, 28.

55. 133 S. Ct. 2612, 2618 (2013).