We affirm; resolved: The Supreme Court rightly decided that Section Four of the Voting Rights Act violated the Constitution.

Observation One: The central question in today's debate is that of constitutionality. As such, evaluating external harms which don't link to constitutionality (i.e. using an ends-based approach) is outside the realm of this debate.

Observation Two: Because the action is question is the Supreme Court's decision to strike down Section 4(b) – the coverage formula – the Con must defend the unequal treatment of those states and that the federal government has a rational basis grounded in current conditions to justify the implementation of the formula.

Observation Three: If the Pro proves any violation of Constitutionality, then the resolution is proven true and thus is affirmed.

Contention One: Section Four undermines state sovereignty.

The first reason is federalism. **The Supreme Court notes**

State legislation may not contravene federal law. States retain broad autonomy, however, in structuring their governments and pursuing legislative objectives. Indeed, **the Tenth Amendment reserves to the States all powers not specifically granted to the Federal Government, including "the power to regulate elections."** Gregory v. Ashcroft, 501 U. S. 452, 461–462. There is also a "fundamental principle of equal sovereignty" among the States, which is highly pertinent in assessing disparate treatment of States. Northwest Austin, supra, at 203 The Voting Rights Act [VRA] sharply departs from these basic principles. It requires States to beseech the Federal Government for permission to implement laws that they would otherwise have the right to enact and execute on their own. And despite the tradition of equal sovereignty, the Act applies to only nine States (and additional counties).That is why, in 1966, this Court described the Act as "stringent" and "potent," Katzenbach, 383 U. S., at 308, 315, 337. The Court nonetheless upheld the Act, concluding that such an "uncommon exercise of congressional power" could be justified by "exceptional conditions." Id., at 334. Pp. 9–12

Without federalism, the impact is a discouragement of good laws. **The Center for Equal Opportunity elaborates**

But there is bad news, too. First, there is no longer any rhyme or reason to the jurisdictions that are covered by Section 5. And given the intrusiveness of the statute, this problem is not simply an aesthetic one: It raises serious federalism concerns. Second, both Sections 2 and 5—by incorporating ''results'' and ''effects'' tests, respectively— have banned much that is not illegal under the Fifteenth Amendment. Further, not only have they required something that is not required by the Fifteenth Amendment, but **the requirement itself undermines the [Fifteenth] Amendment's guarantees and voting integrity generally. This in turn is objectionable not just as a matter of federalism and federal overreach, but because state laws that might be objectively good are discouraged or struck down** (e.g., anti-voter fraud measures that might have a disparate impact, or long-standing laws preventing criminals from voting), **and because state practices that are bad are now required** (in particular, racial segregation of voting districts through racial gerrymandering).

The second issue is equal state sovereignty, a Supreme Court precedent. **Again, the Court warrants**

Not only do States retain sovereignty under the Constitution, there is also a "fundamental principle of equal sovereignty" among the States. Northwest Austin, supra, at 203 (citing United States v. Louisiana, 363 U. S. 1, 16 (1960); Lessee of Pollard v. Hagan, 3 How. 212, 223 (1845); and Texas v. White, 7 Wall. 700, 725–726 (1869); emphasis added).Over a hundred years ago, this Court explained that our Nation "was and is a union of States, equal in power, dignity and authority." Coyle v. Smith, 221 U. S. 559, 567 (1911). Indeed, **"the constitutional equality of the States is essential to the harmonious operation of the scheme upon which the Republic was organized."** Id., at 580. Coyle concerned the admission of new States, and Katzenbach rejected the notion that the principle operated as a bar on differential treatment outside that context. 383 U. S., at 328–329. At the same time, as we made clear in Northwest Austin, the fundamental principle of equal sovereignty **[and] remains highly pertinent in assessing subsequent disparate treatment of States.** 557 U. S., at 203.

And despite the tradition of equal sovereignty, **the Act applies to only nine States** (and several additional counties). **While one State waits months or years and expends funds to implement a validly enacted law, its neighbor can typically put the same law into effect immediately**, through the normal legislative process. Even if a non-covered jurisdiction is sued, there are important differences between those proceedings and preclearance proceedings; the preclearance proceeding "not only switches the burden of proof to the supplicant jurisdiction, but also applies substantive standards quite different from those governing the rest of the nation."
In the first decade after enactment of §5, the Attorney General objected to 14.2 percent of proposed voting changes. H. R Rep. No.109–478, at 22. **In the last decade before reenactment, the Attorney General objected to a mere 0.16 percent.**

This creates an unduly burden on covered states. **The Duke Journal of Constitutional Law furthers**
Furthermore, **Shelby County argues** Section 5 preclearance is unduly burdensome for covered jurisdictions.141 Preclearance greatly supersedes a State's sovereign authority because a covered state is unable to create its own voting laws without first getting approval from the federal government.142 Additionally, the County proffers **that "preclearance compliance has over the past decade required the commitment of state and local resources easily valued at over a billion dollars."** 143

Contention Two: Section Four was outdated.

Constitutionality is flexible. **Gerard Fitzpatrick warrants**
Admittedly, constitutional interpretation should take seriously the aspirations of the founders, for their wisdom is essential to the maintenance of free government. Yet, **the wisdom of two centuries ago must respond to the exigencies of today. Rejecting the idea of a "living Constitution"** (pp. 143-44) **and calling the founders' aspirations "permanent"** (p. 94) **not only deprives the people of ultimate responsibility for their political destiny but also denies the spirit of the founders' enterprise, which recognized the inevitability of growth and change in a free society.** Still, "a new empirical reality cannot be the occasion for judicial reassessment of fundamental principle" (p. 144). Herein lies the dilemma of constitutional democracy: the tension between popular sovereignty and fundamental law. Although Jacobsohn does not resolve this tension, he intelligently explores the "symbiotic relationship between the Court and the community" (p. 117). His book deserves close attention.

Because of this, the Voting Rights Act, in order to be constitutional, must have responded to issues in the status quo.

The New York Times furthers as to why Section Four was outdated
The majority held that **the coverage formula in Section 4** of the Voting Rights Act, originally passed in 1965 and **[was] most recently updated by Congress in 1975**, was unconstitutional. The section determined which states must receive clearance from the Justice Department or a federal court in Washington before they made minor changes to voting procedures, like moving a polling place, or major ones, like redrawing electoral districts. The current coverage system, **Chief Justice Roberts wrote,** is "based on 40-year-old facts having no logical relationship to the present day." **"Congress — if it is to divide the states — must identify those jurisdictions to be singled out on a basis that makes sense in light of current conditions,"** he wrote. "It cannot simply rely on the past."

The Brookings Institution furthers
In an opinion joined by four other Justices, Chief Justice Roberts agreed with Shelby County that Section 4, as reauthorized, was unconstitutional and exceeded Congress' powers to enforce civil rights under the Fourteenth and Fifteenth Amendments. (Justice Clarence Thomas also concurred separately to emphasize that he considered the federal preclearance regime under Section 5 to be unconstitutional, in addition to the Section 4 coverage formula.) For the majority, **the critical vacuum in the record justifying the law was its disconnect to the coverage formula itself.** In other words, **regardless of whether Congress may have found in 2006 that the covered jurisdictions happened to pose greater threats to minority voting rights** (something the majority and plaintiffs doubted), nevertheless, **there was no connection between such findings and the trigger for coverage** (e.g., literacy tests and low voter turnout in 1964, 1968 or 1972). As one of Shelby County's lawyers colorfully put it at the conference, **if Congress had picked jurisdictions out of a hat, the fact that they may have gotten the "right" jurisdictions by luck would not immunize the process by**

which those states were chosen. For the Court's majority, maintenance of the age-old coverage formula posed the same constitutional problems.

Moreover, because the formula was essential reverse-engineered to cover selected states, the formula itself cannot be constitutional.

Contention Three: The Voting Rights Act promotes affirmative gerrymandering.

The Abraham Lincoln Foundation reasons

In short, these **2006 amendments [to the VRA] are designed not just to provide a [preventative]** prophylactic **approach to racial discrimination** that denies or abridges the right to cast a ballot or to have one's vote counted, **but rather are designed to ensure that racial minority groups' votes are sufficiently effective to elect persons responsive to the minority groups' interests. This Congressional object is outside the enumerated power of Congress under either Section 5 of the Fourteenth Amendment or Section 2 of the Fifteen Amendment.**

Thus, there is now an incentive to gerrymander to create a 'proportionate representation'. **The CATO Institute explains**

We see the same phenomenon **with respect to the Voting Rights Act**. Some legitimate voting practices—for example, making sure that voters can identify themselves as registered-to-vote, U.S. citizens— will be challenged if they have a racially disparate impact; this problem is beyond the scope of this article. The other problem is central to it: **Jurisdictions will be pressed to use** racial gerrymandering— **racially segregated districting—to ensure racially proportionate election results and thus, perversely, to engage in the very discrimination that is at odds with the underlying law's ideals.** Let me emphasize and elaborate on that last point, because otherwise the Bartlett decision, to which I turn next, is incomprehensible— and so are the high stakes regarding the constitutionality vel non of Section 5, which I discuss thereafter: **The principal use of Sections 2 and 5 in 2009 is to coerce state and local jurisdictions into drawing districts with an eye on race**, to ensure that there are African American (and, in some instances, Latino) majorities who will elect representatives of the right color.

The racial gerrymandering Sections 2 and 5 foster is pernicious. **The Supreme Court has warned about the unconstitutionality of racial gerrymandering in a number of decisions, because the practice encourages racial balkanization and identity politics.** In addition, the segregated districts that gerrymandering creates have contributed to lack of competitiveness in elections, districts that are more polarized (both racially and ideologically), the insulation of Republican candidates and incumbents from minority voters and issues of particular interest to them—to the detriment of both Republicans and minority communities—and, conversely, the insulation of minority candidates and incumbents from white voters (making it harder for those politicians to run for statewide or other larger jurisdiction positions). As Chief Justice John Roberts wrote, it is, indeed, ''a sordid business, this divvying us up by race.''