In *Shelby County*, the Court characterized § 5 preclearance as an "extraordinary departure from the traditional course of relations between the States and the Federal Government" and as "extraordinary legislation otherwise unfamiliar to our federal system." This led the Court to find the formula in § 4 violative of the "fundamental principle of equal sovereignty" among states.[74] While the significance of a principle of equal sovereignty had been considered and rejected by the Court in a previous challenge to the act,[75] the Court in *Shelby County* held that the principle "remains highly pertinent in assessing subsequent disparate treatment of States."[76] The Court went on to find that there was insufficient justification for the disparate treatment, as "[v]oter turnout and registration rates [in those jurisdictions] now approach parity. Blatantly discriminatory evasions of federal decrees are rare. And minority candidates hold office at unprecedented levels."[77]

The dissent, referencing the lenient standard for congressional enforcement legislation established under *Katzenbach*, closely examined the legislative record developed by Congress in the 2006 reauthorization of the act. The dissent noted the high number of changes to voting practices which had been submitted by covered jurisdictions under the Voting Rights Act and which had not received preclearance and the high number of successful voting rights challenges in those jurisdictions under § 2 of the act.[78] The dissent also suggested that, regardless of improved minority voting participation, "second-generation barriers" which diluted minority voting power were still prevalent in the covered jurisdictions. These barriers included redrawing legislative districts to segregate the races, adopting at-large voting to limit the effect of minority's votes, and discriminatory annexation, such as incorporating majority white areas into city limits to decrease the effect of black voting.[79]

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[74] 570 U.S. ___, No. 12–96, slip op. at 10 (quoting *Northwest Austin*, 557 U.S. at 203).

[75] *See* South Carolina v. Katzenbach, 383 U.S. at 328–329. Considering the disparate treatment of states under the § 5 preclearance requirement, the *Katzenbach* Court had referenced the case of Coyle v. Smith, 221 U.S. 559 (1911), which upheld the authority of Oklahoma to move its state capitol despite language to the contrary in the enabling act providng for its admission as a state. This case, while based on the theory that the United States "was and is a union of States, equal in power, dignity and authority," 221 U.S. at 580, was distinguished by the *Katzenbach* Court as concerning only the admission of new states, and not remedies for actions occuring subsequent to that event.

[76] 570 U.S. ___, No. 12–96, slip op. at 10 (quoting *Northwest Austin*, 557 U.S. at 203).

[77] 570 U.S. ___, No. 12–96, slip op. at 13–14 (quoting *Northwest Austin*, 557 U.S. at 202).

[78] 570 U.S. ___, No. 12–96, slip op. at 13–17,19–20.

[79] 570 U.S. ___, No. 12–96, slip op. at 5–6.