In this paper I contend that recent voting decisions of the Roberts court are grounded in the view that racially motivated voting does not occur or that if it does it is not necessarily invidious and in any event is the price we pay for a majoritarian democratic system. This view counters four principles that have been historically central to the legitimacy of congressional and judicial intervention when voting majorities disadvantage racial minorities. In Bartlett v Strickland, the Supreme Court precluded vote dilution claims under Section 2 of Voting Rights Act by racial minorities who totaled less than 50% in their districts on the theory that they could show no distinct disadvantage not experienced by non-minority voting blocs composing less than 50% of a district. In Schuette v. BAMN, the Court upheld a state constitutional amendment that precluded race conscious affirmative action in education on grounds that democracy and federalism interests must permit majorities to to repudiate measures that benefit majorities. Finally in Shelby v. Holder, The Court declared that federalism and equal sovereignty principles dictated stringent judicial review of the selected political subdivisions required to preclear voting changes as well as the solution that the coverage formula was unconstitutional. These decisions demonstrate that the Roberts Court may be posed to repudiate four key theoretical assumptions of equality and rights theory from past decisions. One is the assumption that aggressive-strict judicial review is warranted when racial majorities disadvantage racial minorities. A second is the assumption that federalism arguments—arguments about the independence of the states-- are insufficient
objections to judicial strict scrutiny of state action that disadvantages minorities. And the third is principle that federalism objections do not trump Congressional power to enact legislation that protects racial minorities groups from disadvantageous state action. The fourth is that state action burdening the right to vote is presumptively unconstitutional. As the courts consider the numerous states consider numerous and more burdensome voter qualification requirements, the viability of these principles will be tested anew.