by Doug Muzzio
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The Voting Rights Act of 1965 has in the past altered elections in New York City, and it will continue to do so. Most immediately, the act will ultimately determine whether New York City has nonpartisan elections for all city officials as called for by Mayor Michael Bloomberg and as almost certainly to be recommended by his charter commission and placed before the voters.

The law was a culmination of the black civil rights movement and a cornerstone of Lyndon Johnson s great society. With it, the federal government would finally fulfill the promise of the Fifteenth Amendment, enabling blacks to exercise the franchise unhindered by exclusionary devices such as literacy tests, white primaries, poll taxes and grandfather clauses. The law prevented states from enforcing discriminatory tactics aimed at preventing blacks fair opportunities to participate in the voting process.

The Voting Rights Act has been amended several times. Legislation established the rights of language minorities, mandating bilingual ballot and oral assistance to those speaking Spanish, Chinese, Japanese, Korean, Native American languages and Eskimo languages. Later amendments established that the existence of a discriminatory result was sufficient to challenge an electoral arrangement. Proof of discriminatory purpose or intent was not required.

Currently, the law covers all of Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas and Virginia, as well as parts of California, Florida, Michigan, New Hampshire, North Carolina, South Dakota and Brooklyn, Queens, and the Bronx.

APPLICATION TO NEW YORK

Why the three New York City counties?

As a result of a suit brought under the Voting Rights Act in 1967, a longstanding concentration of blacks, previously divided among several, mostly white districts, was consolidated into one district. It sent Shirley Chisholm to Congress in 1968.

In 1970, the act was amended to include jurisdictions that had literacy tests as of November 1, 1968 and where less than 50 percent of the voting age population was registered on that date or voted in the 1968 presidential election. In July 1970, the Attorney General filed a determination that New York State maintained a test or a device a literacy test enacted in 1922 that adversely affected minority voting participation. In March 1971, U.S. Bureau of the Census found that fewer than 50 percent of voting age residents were registered in Bronx, Kings, and New York counties. Together these determinations required the Bronx, Brooklyn, and Manhattan to become covered jurisdictions subject to pre-clearance.

The three boroughs have been required to provide all registration and voting material in Spanish as well as English since the 1975 amendments. In 1992, coverage for Spanish was extended to Queens and coverage of Chinese was applied for the first time in all three boroughs

In 1991, the redistricting plan was thrown out of court, the judge charging that Latino voters were consistently disfavored in the proposed Williamsburg-Bushwick and Harlem-East Bronx districts in the law.

In the 1996 presidential election, federal election observers monitored polling places in the Chinatown area to make sure the city was making Chinese-language materials and oral assistance available. The Sept. 25, 2001 Democratic mayoral primary was monitored by the Justice Department for violations of the Voting Rights Act.

On May 29 of this year, the U.S. Justice Department ruled that the City Council district lines drawn by the Districting Commission did not violate the Voting Rights Act

HOW IT WORKS

Section 5 of the law requires state and local governments covered by formulas specified in the act to obtain approval from the Attorney General or a judicial panel before implementing any change in a standard, practice or procedure with respect to voting. This pre-clearance covers everything from polling place locations and methods of election (e.g.

at-large or district) to boundaries for legislative districts. A proposed change will be denied if it would make members of minority groups worse off with respect to their opportunity to exercise the electoral franchise effectively.

The Supreme Court in Thornburg vs. Gingles held that a challenge to a reapportionment plan could be based on vote dilution effect... The Court held that the essence of a claim under the Voting Rights Act was that a certain electoral law, practice, or structure interacts with social and societal conditions to cause an inequality in the opportunities enjoyed by black and white voters to elect their preferred representatives.

The Court established the criteria on which a claim of vote dilution in an apportionment scheme could be made: 1) structural obstacles to the election of minority candidates, such as at-large elections, 2) behavioral patterns that interact with the structural obstacles to exaggerate the political power of the majority such as racially polarized voting, and 3) a resulting under-representation of the minority community relative to its proportion of the population. There is no constitutionally guaranteed right of proportionality in representation. Section 2b of the Voting Rights Act states that nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population. The Supreme Court has refused to accept the proposition that members of a minority group have federal right to be represented in legislative bodies in proportion to their members in the general population

The voting power of a protected class can be said to be diluted in a simple sense when its share of the total vote cast declines vis-à-vis others (i.e. white voters) even if the total votes cast may have increased (or decreased) overall and for minority and white voters.

Voting Rights Act and Nonpartisan Elections

The 1998, 1999, and 2002 New York City charter revision commissions retained the services of voting rights expert Prof. Allan Lichtman to determine the voting rights implications of a change to nonpartisan elections in New York City. (The 2001 commission relied on his previous work). Prof. Allan Lichtman concluded, in testimony before the 2002 commission, that nonpartisan elections would not violate the Voting Rights Act. He had reached similar conclusions for the earlier commissions.

Critics have argued that the analysis was incomplete and, in some measures, flawed. They also point to studies which have found that voter turnout overall tends to be lower in nonpartisan elections and voter participation is skewed against residents of lower socioeconomic status (while candidates tend to have higher socioeconomic status)

If in New York City turnout declines (and even if it doesn t) and minority voters share declines disproportionately as the evidence indicates it may, then minority votes will be diluted -- and perhaps violate the Voting Rights Act.

For More Information:

Berger, J. (1994). Pre-clearance and the Voting Rights Act New York Law Journal, Dec. 15. Pierre-Louis, S. (1995). The Politics of Influence: Recognizing Influence Dilution Claims Under Section 2 of the Voting Rights Act University of Chicago Law Review 62, 1215.

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