

Renewal of the Voting Rights Act: Time to Pop the Champagne?

By Alaina Beverly

The Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006 was signed into law by President Bush on July 27, 2006, after celebration-worthy passage in the House by a 390-33 vote, in the Senate 98-0.

The victory toasts were hard earned after the long and difficult fight for renewal of the Act's expiring enforcement provisions. These provisions, Section 5, Section 203, and Sections 6-9 were at the center of controversial debate in halls of Congress: Section 5 is the federal pre-clearance provision that requires states with a history of discrimination to submit any voting change to the Department of Justice (DOJ) for approval; Section 203 requires certain jurisdictions to provide language assistance to Limited English Proficient (LEP) citizens; and Sections 6-9 are perhaps the least controversial provisions of the Act, which authorize the Department of Justice to send federal examiners and observers to monitor elections.

The Voting Rights Act renewal bill aimed to restore Section 5 to the strength it had at the time of the last renewal of the Act in 1982, by clarifying two Supreme Court cases—*Reno v. Bossier Parish* (*Bossier Parish II*) and *Georgia v. Ashcroft*. The bill was drafted to require the Department of Justice to deny pre-clearance to any voting change passed with discriminatory purpose as well as with the effect of harming minority voting strength, and in the redistricting context, the bill was drafted to protect minority voters' ability to elect candidates of their own choosing.

At the last minute, splinter groups threatened to derail passage in the Senate, claiming that the expiring provisions generally—and Section 5 in particular—are outdated and unfair, despite the overwhelming evidence that these provisions increased both minority participation and representation in the states formerly known as the Confederate South. Ultimately, the Senate saw the light and approved the bill unanimously without debate.

What Does Renewal of the Voting Rights Act Mean?

Upon signing the bill, President Bush proclaimed, “[T]oday, we renew a bill that helped bring a community on the margins into the life of American democracy. My administration will vigorously enforce the provisions of this law, and we will defend it in court.” This was an important proclamation to civil rights groups, such as Advancement Project, NAACP Legal Defense Fund, ACLU, and others who have filed comment letter after comment letter seeking Department objections to harmful voting changes, and which have fallen on deaf ears. For example, DOJ turned a blind eye to Proposition 200, an Arizona law passed in 2004 that imposes onerous restrictions on voter registration and voting requirements. Prop 200 requires the rejection of any registration application that is not accompanied by “satisfactory” proof of citizenship.

Moreover, civil rights organizations are left with no other alternatives but filing expensive and time-consuming litigation in order to prevent laws approved by DOJ from going into effect. A prime example is the Georgia voter photo identification provision that would have reduced from 17 to six the types of identification that voters could show at the polls, which was the kind of law that the Voting Rights Act was designed to prevent given the harm that it would cause to minority voters. A coalition of public interest organizations filed litigation to stop the law from going into effect after DOJ found that it would not worsen the position of minorities. After a trial, an appeal, a newfangled bill passed by the legislature, and a ruling by a Superior Court judge, the photo identification act was ruled unconstitutional and blocked from being enforced. But we will all wonder if DOJ will discover a restored sense of clarity with the renewal of the Voting Rights Act, making drawn out legal battles unnecessary.

The renewed Section 5 suggests that the federal government should stand in the way of malicious election reform rules and efforts to depress minority voting strength through the manipulation of district lines. Using the Gulf Coast states—which are covered by Section 5—as an example, decisions affecting voting such as the establishment of mega-precincts, or changes in the method of electing members of the levy boards, or strategies to reach out to displaced voters, may not be passed with a discriminatory purposes. This means that DOJ may be able to stop laws from going into effect by looking at things like the discriminatory effect on minority voters, the background of the decision, the events leading up to the decision, the failure to follow normal legislative procedures, and other factors to arrive at the position that the voting changes were passed with the intent to harm minority voters. When redistricting occurs after the next census, we could see lots of changes to voting districts in the Gulf Coast states. However, Section 5 will require state legislatures to draw districts that keep intact the ability of minority voters to elect candidates of their choice.

Is it Time to Celebrate?

We certainly have much to be proud of in the renewal of the Voting Rights Act—signed into law in the names of three freedom fighting heroines—because it signifies a renewed national commitment to a just democracy. There are signs, however, that it is not yet time to celebrate, and that the fight is not over. Reportedly, Edward Blum and the American Enterprise Institute (AEI) are planning to file legal challenges around the country to strike down the enforcement provisions of the Voting Rights Act. Supreme Court precedent upholding the constitutionality of the Voting Rights Act, however, suggests that these challenges, while unsettling, are unlikely to prevail. Meanwhile, the civil rights community will keep our defenses up . . . and the ice bucket full. For more information on the passage of or future challenges to the Voting Rights Act, visit: www.civilrights.org.