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Emergency Exit

BY ABIGAIL THERNSTROM

In a few weeks, the nation will mark the 40th anniversary of the passage of the Voting Rights Act. It will rightly be a day of celebration; the statute accomplished what it was beautifully designed to do: ending black disfranchisement in the Jim Crow South.

It's hard to remember the era of redneck registrars, fraudulent literacy tests, violence, and intimidation at the polls that came to an end in 1965. Today, African-American votes count in electing both blacks and whites to public office, not only in New York, where blacks have long been political participants, but in rural Southern counties where black exclusion had once been the rule.

The Deep South, with its appalling history of 15th Amendment violations, was the target of the Voting Rights Act 40 years ago. Those who wrote the legislation knew which states they wanted to cover, and designed a statistical formula - a literacy test coupled with turnout under 50% in the 1964 presidential election - to single them out. But in 1970, the act was amended and the formula changed to include turnout in 1968. Faced with a choice between Richard Nixon and Hubert Humphrey, a few more New Yorkers than before stayed home. The result: Three boroughs in the city (Manhattan, Brooklyn, and the Bronx) were suddenly subject to stringent remedies for disfranchisement that had been designed to remedy the wrongs of Southern disfranchisement. Three New York City boroughs became equated with Neshoba County, Miss., where, in the summer of 1964, three civil rights workers were murdered for their participation in a black voter-registration drive.

Those stringent remedies were originally envisioned as extraordinary and thus temporary. They were emergency provisions meant to last only five years. Most of the Voting Rights Act is rightly a permanent part of the legislative landscape. But the emergency provisions that were supposed to expire in 1970 were repeatedly extended, and are now due to expire, once again, in 2007. Today, it's time to ask whether they're still needed - even in the South. In New York, of course, it's hard to argue convincingly that they were ever needed.

The most important of these temporary, emergency provisions due to expire is Section 5, which requires that either the federal Justice Department or the D.C. District Court "preclear" - that is, approve - every change involving elections in what are called the "covered" states and counties. Since these three New York boroughs are "covered," even a change in the location of a polling place or the redrawing of City Council districts must be sanctioned by federal attorneys in Washington who have only the most cursory understanding of the complexity of race, ethnicity, and politics in the nation's most diverse city.

Thus, after the last census in 2000, New York City redrew all 51 City Council districts in order to adjust for population changes. The new districting lines should have been the product of local politics; in large part, however, they were determined by uncertain and often arbitrary Justice Department standards as to what constitutes "fair" districting.

This extraordinary power over state and local electoral affairs was justified in 1965. Southern officials could not be trusted to ensure the most basic of all rights - that of every eligible citizen to participate in America's great democracy. But political apartheid in the South was distinctive, and yet, in time, not only parts of New York, but places such as Monterrey County, Calif., and Saginaw County, Mich., came under coverage - losing their constitutionally sanctioned right to determine their own electoral arrangements.

The "preclearance" provision is due to expire in 2007, but already, two years before the deadline, the congressional leadership is promising to extend it another quarter century. Are Senators Clinton and Schumer really ready to argue that the New York districting process would disfranchise the city's mosaic of minorities without close federal oversight?

If federal intrusion were benign, it would be of little concern. It's not. Arguably, it's actually creating more harm than good by now. Under its "preclearance" powers, the Justice Department has long been demanding that jurisdictions create wildly racially gerrymandered districts that protect minority candidates from white political competition. The state of New York was sued in 1996 by a multiracial group of voters over the creation of one of these New York City bug-splat districts - Rep. Nydia Velasquez's 12th Congressional District.

The court ruled that the district - which had been nicknamed "Bullwinkle Moose" because it resembled a moose's head - was an unconstitutional gerrymander and violated the Equal Protection Clause of the Constitution. In 1998, under court orders, the state redrew the district to make it more compact and reunite communities that had been split apart by race. It cost the state hundreds of thousands of dollars to defend what the Justice Department was improperly demanding it do.

Such racially gerrymandered districts result in a segregated - and uncompetitive - political map with safe minority and safe white districts, and no incentives to build biracial coalitions that bring Americans together across the lines of race and ethnicity. Everyone knows there is almost no turnover in Congress; incumbents keep winning. American politics is much less fluid than it should be. Almost no one points to the Voting Rights Act as one important reason why this should be so.

Congress should let these emergency provisions expire; they're not needed. They were never needed in New York, and have lost their logic even in the South. They create mischief. They're bad for the racial and ethnic fabric of American politics, and it's time to let New York and the rest of the nation move on.

Ms. Thernstrom is the vice chairman of the U.S. Commission on Civil Rights. She is the coauthor, with Edward Blum, of a forthcoming book on the Voting Rights Act to be published by the American Enterprise Institute Press. Her previous work on the subject, "Whose Votes Count? Affirmative Action and Minority Voting Rights," was published in 1987.

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