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Do the Right Thing

By Abigail Thernstrom and Edward Blum

When it comes to issues involving race, apparently the first instinct of congressional Republicans is to grovel. They don't believe in appeasement abroad -- only at home. The immediate issue is the reauthorization of the "emergency" provisions of the 1965 Voting Rights Act -- provisions such as preclearance that constitute such a radical, unprecedented intrusion into state electoral prerogatives that they were originally designed to expire in 1970. Repeatedly extended, they are now due to die on Aug. 6, 2007.

But, terrified by the reauthorization campaign that the NAACP, the Lawyers Committee on Civil Rights, and other advocacy groups have begun to mount, Republicans in the House and Senate are pledging their support for reauthorization. Dennis Hastert, Tom DeLay and House Judiciary Committee Chairman James Sensenbrenner have announced that they will introduce legislation extending the "temporary" provisions another 25 years. This comes on the heels of Bill Frist, who said: "We must continue our nation's work to protect voting rights. And that is why we need to extend the Voting Rights Act."

Sen. Frist's statement is a non sequitur. Protecting voting rights is vital, but extending the temporary provisions of the Voting Rights Act is quite a different matter. Most of the legislation is permanent; basic 15th Amendment rights will never be denied again. And those who point their fingers at Florida should note that arguments over hanging chads had nothing to do with the Voting Rights Act. Florida was not a state covered by the emergency provisions in 1965, and today only five scattered counties (none involved in the battle of 2000) would be affected by another extension.

Section five is the most important of the provisions due to expire in 2007. It forces "covered" states and counties to "preclear" every voting-related change they make with the U.S. attorney general or the D.C. district court. Thus, before a covered jurisdiction moves a polling place two blocks or redraws congressional districting lines, it must obtain federal approval. Most of the states and counties on the federal watch list are in the South. But today, for instance, Manhattan, the Bronx, and Brooklyn are covered, but Queens and Staten Island are not. Arizona is covered, but not New Mexico. In 1965 every part of the Act made perfect sense. No longer.

Times have changed, most strikingly in the Deep South, the region in which blacks were massively disfranchised in 1965. The preclearance provision was designed to make sure that the Act's ban on literacy tests stuck, since the fraudulent use of such tests in the South was the main barrier to black ballots. Framers of the Act feared redneck public officials would find new ways to keep blacks from the polls; hence the extraordinary (and punitive) federal oversight. But Southern resistance to basic enfranchisement quickly collapsed and today the case for Southern distinctiveness is tough -- if not impossible --

to make. The emergency that justified the temporary provisions is long over. The Bloody Sunday police violence against voting-rights activists at the Edmund Pettis Bridge was 40 years ago. And yet the radical penalty for the wrongs of that terrible era remains.

The 1965 Act was amazingly effective, but members of Congress who voted repeatedly to reauthorize the temporary provisions became persuaded that blacks were equally disfranchised when the power of their vote was "diluted." Encouraged by courts, the Justice Department began to insist that all covered jurisdictions create as many "max-black" districts as possible. The point, of course, was to protect black (and after 1975, Hispanic) candidates from white competition, to promote minority officeholding in proportion to the minority population -- which was viewed as racially "fair." The result: racial gerrymandering so egregious as to create bug-splat districts that, in the words of the Supreme Court, reinforced "the perception that members of the same racial group -- regardless of their age, education, economic status, or the community in which they live -- think alike. . . ."

Nice rhetoric, but, in fact, the Supreme Court put a stop only to looks-ridiculous districting that is accompanied by a blatant public record of race-driven line-drawing overriding all other considerations. If the preclearance provision is extended once again, the unelected Justice Department attorneys will retain their extraordinary and, by now, constitutionally questionable power to insist on race-conscious districting in Virginia but not Tennessee, although black ballots are equally important in both states. And those racially homogeneous and uncompetitive districts, which make biracial and bipartisan coalitions unnecessary, will continue to elect mostly far-left minority candidates.

Preclearance is no longer defensible. Another provision, known as section two, takes a more reasonable approach to the same problems preclearance was designed to address. This provision allows plaintiffs to initiate suits in any jurisdiction across the nation if they believe minority voters have "less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." But the burden of proof is on the plaintiffs and jurisdictions have an opportunity to defend themselves in a local court. DOJ career attorneys partial to plaintiffs will not be resolving disputes behind closed doors.

Will the GOP truly benefit politically from its craven surrender to Jesse Jackson and other activists eager to wave the racism flag? Not a chance. In fact, the opportunities for mischief using the Voting Rights Act are only growing. A 2003 Supreme Court decision encourages the Justice Department to think of both white and minority Democrats as "responsive" to black and Hispanic interests. In coming years, the statute is thus likely to become a handy tool to push partisan as well as racial redistricting.

Opposing the civil-rights lobby requires political courage -- a commodity rarely seen in Washington. Many Republicans in Congress understand the principles involved here, but aren't willing to fight for them. Draconian federal intrusion into local elections was justified when it was the only way to enfranchise Southern blacks -- but 40 years on, it's an unconstitutional travesty.

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