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MARCH OF DREAMS

Crossing over to freedom

Civil Rights Act worth celebrating, but it was never justified in Texas situation

By ABIGAIL THERNSTROM and EDWARD BLUM

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

Or rather, it accomplished what it was initially designed to do in 1965. A decade later, the act was amended to cover Texas and other states and counties where no redneck registrars, fraudulent literacy tests or violence and intimidation trying to vote - all rampant in the Deep South prior to 1965 - had ever kept eligible voters from the polls.

The original statute was almost perfect legislation - a rare event in Congress. It contained a statistical trigger designed to target precisely the states in egregious violations of basic Fifteenth Amendment rights. Ten years later, however, the clear lines and logic of the act had been destroyed. Texas was not Mississippi and never should have been treated as analogous.

Texas came under coverage of the Voting Rights Act when its the act's temporary, emergency provisions were extended by Congress for the second time. Most parts of the statute are permanent; contrary to urban legend, Fifteenth Amendment rights can never be denied again.

These emergency provisions, their life having now been extended three times, are up for reauthorization once again in August 2007, but already House Majority Leader Tom DeLay, R-Sugar Land, and other congressional leaders are signing on to another 25-year extension. The issue is one for which politicians have little appetite, but it is time to ask whether the temporary sections of the act are still needed - and whether perhaps they do more harm than good.

The most important of the temporary provisions 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 Texas is one of the states covered under section 5, the changes that must be approved by

Washington range all the way from the location of a polling place anywhere in the state to annexations that change the racial composition of the electorate in a city.

Thus, a few years ago the city of Webster in Harris County wanted to annex a small neighborhood. Such annexations are common ways for cities to grow and add new sources of tax revenue.

The Justice Department approved Webster annexing the commercial parts of the neighborhood, but nixed the addition of the residential ones. Why? Because adding the new residential neighborhood would have reduced the number of African-American residents in the city from 5 percent of the population to 4.2 percent, and the Hispanic voting-age residents from 17 percent to 15 percent. Annex a different neighborhood, federal bureaucrats suggested - substituting their judgment for that of the city government.

Austin, Waller and Brazoria counties have all had voting changes turned down by Washington in the last few years, while whole states such as Arkansas and Oklahoma are free of such draconian federal intrusion into local electoral and election-related matters.

Such extraordinary power over state and local electoral affairs in the Deep South was justified in 1965, when Southern officials could not be trusted to ensure the most basic of all rights. But it is not justified today in an America in which black and Hispanic votes play a crucial role in electing both minorities and whites to public office. And it was never justified in a state like Texas.

Indeed, Congress didn't have an easy time finding a way to cover the Lone Star State. It had to pretend that English-only ballots were the equivalent of a Mississippi literacy test that blacks with Ph.D.s were not allowed to pass - tests that asked questions like how many bubbles a soup bar contained. The Hispanic advocacy organization MALDEF tried hard to find dreadful stories of disfranchisement and could not. In fact, in South Texas, Mexican-Americans had been an important source of Democratic Party power since the late 19th century.

If federal intrusion was benign, it would be of little concern. It's not. Under its preclearance powers, the Justice Department has long been demanding jurisdictions create wildly racially gerrymandered districts that protect minority candidates from white political competition. The state of Texas was sued in 1994 by a multiracial group of voters over the creation of three of these bug-splat districts. The Supreme Court ruled that the districts were unconstitutional gerrymanders. In 1998, the court redrew the congressional map to make it more compact and reunite communities that had been split apart by race. It cost the state millions of dollars to defend what the Justice Department had improperly demanded 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 multiracial coalitions and 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've lost their logic even in the Deep South, and they create mischief. It is time to let Texas and all of America move on.

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