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Voting Rights Act

Overview

The Voting Rights Act (VRA), codified at 42 U.S.C. §§ 1973 to 1973aa-6, is an important federal civil rights law that protects minorities from discriminatory voting practices. Initially, the VRA only protected racial minorities, but in 1975, Congress extended its protections to members of “language minorities,” including voters who speak Spanish, Native American languages, Alaskan Native languages, and Asian languages. The VRA prevents voting discrimination in several ways. It prohibits literacy tests or similar “tests or devices” as a prerequisite to voter registration, and requires jurisdictions with significant language minority populations to provide non-English ballots and oral voting instructions. The act also allows protects minorities from vote dilution. In areas with particularly bad discrimination problems, the act authorized federal examiners to directly register voters and observe polling places. Finally, it requires areas with a history of voting discrimination to “preclear” changes to their voting laws.

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Vote Dilution

Section 2 of the VRA, codified at 42 U.S.C. § 1973, prohibits drawing election districts in ways that improperly dilute minorities’ voting power. This prohibition applies to states, counties, cities, school districts, and any other governmental unit that holds elections. Two typical forms of vote dilution involve “cracking” a minority community between several election districts, and “submerging” minority communities in multi-member districts. Cracking occurs when election officials split a single minority community into enough different election districts that even if the community voted as a bloc, it could not influence any single districts’ elections. Alternately, election officials might dilute a minority community’s voting power by submerging it in a multi-member district with enough non-minority voters to routinely defeat the minority community’s chosen candidates. See Gerrymandering.

Either private citizens or the United States Department of Justice may sue election authorities under § 2 for diluting a minority group’s voting power. In *Thornburg v. Gingles*, 478 U.S. 30, the Supreme Court explained that plaintiffs in § 2 vote dilution suits must meet three threshold conditions. First, it must be possible to draw a geographically-compact single-member election district where members of the minority group make up a majority of the voting-age population. Second, the minority group must be “politically cohesive.” Third, the White majority must regularly vote as a bloc to defeat minority-supported candidates. Plaintiffs who meet these threshold conditions must also show that, based on the “totality of the circumstances,” the minority group’s voting power was improperly. § 2(b), codified at 42 U.S.C. § 1973(b). Plaintiffs in these suits do not have to show that the election authorities intended to discriminate.

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Preclearance and Bail-out

Section 5 of the VRA, codified at 42 U.S.C. § 1973c, prohibits “covered” jurisdictions from changing their voting laws without first getting preclearance from either the United States Attorney General or a three-judge panel of the District Court of the District of Columbia. The section covers states and counties that have a history of discriminatory voting practices or poor minority voting registration rates. To obtain preclearance for a change in voting rules, a jurisdiction must show that the new rules will not violate the VRA. Currently, VRA preclearance requirements apply to eight states in their entirety, large parts of two more, and other scattered counties across the country. See the Department of Justice's Coverage Map. Covered jurisdictions may violate state statutory or constitutional laws about elections if that is the only way to comply with the VRA. See Preemption. See also *Bartlett v. Strickland*, (07-689).

Covered jurisdictions may apply to “bail-out” of the VRA’s § 5 preclearance requirements. Only the United States Attorney General or a three-judge panel of the District of Columbia District Court may approve bail-out requests. To qualify for bail-out, a jurisdiction must show that for the past ten years, it has not violated the VRA. Exceptions may be made for trivial violations that were corrected immediately. If the jurisdiction applying for bail-out contains smaller political subdivisions within it, those political subdivisions must also meet the bail-out requirements. Furthermore, the bail-out applicant must show that it has worked to eliminate discriminatory voting practices not covered by the VRA, including voter intimidation, and that it has successfully improved minority access to the electoral process.

In 2009, the Supreme Court heard a challenge to § 5 in *Northwest Austin Mun. Util. v. Mukasey*, (08-322). See the LII oral argument preview for the case. As of writing, the Court had not yet decided the case.

See the website of the United States Department of Justice for more information and details about the Voting Rights Act.

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