The Voting Rights Act of 1965

Summary by Zach Stirparo
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"Good evening City Council President and Committee City Council Members, my name is Zach Stirparo and I work in the City's Law Department. I have been asked to briefly summarize the Voting Rights Act of 1965 for this Committee. The City Solicitor has reviewed this summary, and would like me to reiterate that this is merely a summation of current precedent and is not legal advice."

(1) The 15th Amendment to the U.S. Constitution enshrines in law that the right of a United States citizen to vote shall not be denied or curtailed because of that citizen's race or skin color.

(2) As powerfully phrased by the U.S. Supreme Court in 1964, *"The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government….The concept of 'we the people' under the Constitution visualizes no preferred class of voters but equality…."*

Reynolds v. Sims, 377 U.S. 533, 555, 558 (1964).

(3) Accordingly, the U.S. Supreme Court has stated that the *"Fourteenth Amendment's Equal Protection Clause requires States to "make an honest and good faith effort to construct [legislative] districts ... as nearly of equal population as is practicable."*

Harris v. Arizona Indep. Redistricting Comm'n, 136 S. Ct. 1301, 1306 (2016) (quoting Reynolds, 377 U.S. at 577).

(4) Motivated to Act by the Civil Rights Movement to address decades of disenfranchisement of minority voters and enforce the 15th Amendment, Congress enacted the Voting Rights Act of 1965 (the "Act"). The Act prohibits federal, state, or local governments from discriminating against citizens on the basis of their race or skin color by requiring the citizen to meet overly burdensome and vague qualifications in order to vote.

52 U.S.C. § 10302.

(5) In 1966, the U.S. Supreme Court described Congress's efforts to pass the Act:

> The House and Senate Committees on the Judiciary each held hearings for nine days and received testimony from a total of 67 witnesses. More than three full days were consumed discussing the bill on the floor of the House, while the debate in the Senate covered 26 days in all. At the close of these deliberations, the verdict of both chambers was overwhelming. The House approved the bill by a vote of 328—74, and the measure passed the Senate by a margin of 79—18.

South Carolina v. Katzenbach, 383 U.S. 301, 308–09 (1966).

(6) One (1) year after the Act was passed provisions were challenged by South Carolina, and in *South Carolina v. Katzenbach*, the U.S. Supreme Court upheld the Act as constitutional, consistent with the 15th Amendment.

Katzenbach, 383 U.S. at 336.

(7) An important piece of the Act is §2 (*aka* 52 U.S.C. § 10301). Section 2 is similar to the language of the 15th Amendment, stating that "No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or [skin] color. . . ."

52 U.S.C. § 10301(a) (*fka* 42 U.S.C. § 1973)

(8) In 1980, the U.S. Supreme Court curtailed the Act by finding that §2 did not impose an easier burden on the plaintiff than the 15th Amendment and required claims of minority dilution to also prove the voting restriction was passed for a racially discriminatory purpose. *See, generally, Mobile v. Bolden*, 446 U.S. 55, 60-61 (1980).

(9) In response to the Supreme Court, Congress amended §2 in 1982 and expressly clarified that the plaintiff did not need to prove the voting restriction was enacted with discriminatory purpose.

See Thornburg v. Gingles, 478 U.S. 30, 80 (1986). *See also* Eric Dreiband, Esq., Assist. AG, U.S. DOJ: Civil Rights Div., *History of Federal Voting Rights Laws*, https://archive.ph/20210106161217/https://www.justice.gov/crt/history-federal-voting-rights-laws (last visited 8/24/21).

(10) Thankfully, in 1991, the Supreme Court acknowledged Congress's change to §2 when the Court held that §2 differs from the 15th Amendment and does not require the plaintiff prove both discriminatory purpose and discriminatory results; the plaintiff only needs to show that the voting restriction creates discriminatory results.

Chisom v. Roemer, 501 U.S. 380, 394-95 (1991).

(11) As noted by this precedent, §2 is extremely important because it prevents the dilution of minority votes. That is, the Act prevents governments from redistricting in such a way as to spread out minority communities into a large number of districts, or concentrate the community in a small, restricted district, so that the votes are not as impactful.

(12) Further, on the reverse side of the coin, §2 serves the important purpose of ensuring that race is reasonably considered in redistricting. To this end, the Supreme Court has established criteria for determining whether there was voting dilution and the drawing of a majority-minority district was justified.

Cooper v. Harris, 137 S. Ct. 1455, 1470 (2017) (quoting *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986)) (internal quotation marks omitted). *See also* Kristen Clarke, Esq., Assist. A.G., U.S. DOJ: Civil Rights Div., *Section 2 of the Voting Rights Act*, https://www.justice.gov/crt/section-2-voting-rights-act (last visited 8/24/21).

"I hope this brief background on the Act has been helpful and illuminating. Thank you for your time!"