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School District Election Issues

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The right to vote is the bedrock of a representative democracy. As President Lyndon B. Johnson succinctly stated, “a man without a vote is a man without protection.” Ensuring the integrity of elections and protecting individuals’ voting rights is essential to upholding our system of government. This paper will explore various ways such protections are achieved both before an election occurs and after votes have been cast.

I. The Voting Rights Act

A Brief History of the Voting Rights Act

Widely regarded as one of the most effective and far-reaching civil rights laws in United States history, the Voting Rights Act of 1965, signed into law by President Johnson, was intended to overcome legal barriers at the state and local levels that prevented African Americans from exercising the right to vote guaranteed by the 15th Amendment to the United States Constitution. The 15th Amendment, ratified in 1870, prohibited states from denying a male citizen the right to vote based on “race, color or previous condition of servitude.” Unfortunately, however, for the next century, discriminatory practices were used to prevent African Americans from exercising their right to vote, particularly in the South.

Voting rights activists in the South suffered mistreatment and violence during the civil rights movement of the 1960s. During the “Freedom of Summer” of 1964, three men were murdered in Philadelphia, Mississippi, while working in the area to register African American voters.¹ On “Blood Sunday,” March 7, 1965, in Selma, Alabama, state troopers beat and used tear gas against hundreds of peaceful protesters marching in support of African American enfranchisement.² The brutality endured by the voting rights protesters in Alabama was broadcast on national television and caused considerable outrage. In the aftermath of these horrific events, President Johnson called for comprehensive voting rights legislation. On March 15, 1965, in a speech to a joint session of Congress, Johnson detailed some of the ways election officials had been denying African Americans the right to vote, including literacy tests, falsely claiming black voters were in the wrong polling places, and even requiring black voters to recite the entire Constitution before being permitted to vote.³

Signed into law on August 6, 1965, the Voting Rights Act contains three significant sections: Section 2 which forbids any “standard, practice or procedure” that “results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color;”

¹ See *United States v. Price*, 383 U.S. 787, 790 (1996).

² See *Northwest Austin Municipal Util. Dist. No. One v. Holder*, 557 U.S. 193, 220, n. 3 (2009).

³ <https://www.history.com/topics/black-history/voting-rights-act>

Section 4 which bans the use of literacy tests and other suppressive tactics in certain states and jurisdictions with a history of racially discriminatory voting; and Section 5 which provides that no change in voting procedures may take effect unless first approved by federal authorities in Washington, D.C.

The positive impacts of the Voting Rights Act were felt relatively shortly after its passage. When the Act passed in 1965, there were six African American members of the U.S. House of Representatives and no black members in the U.S. Senate. Six years later, in 1971, there were 13 black members of the House and one black member of the Senate.⁴ African American voter turnout also skyrocketed after the passage of the Voting Rights Act. In Mississippi, for example, voter turnout among African Americans increased from 6 percent in 1964 to 59 percent in 1969.⁵

1. Sections 4 and 5 of the Voting Rights Act

Section 4 of the Voting Rights Act identified, through the use of a specific formula, specially covered jurisdictions to which new election procedures applied, as set forth in Section 5 of the Act.⁶ Essentially, changes in election practices or procedures were prohibited in covered jurisdictions until those new practices or procedures were first determined, by administrative review from the Attorney General or through a lawsuit before the United States District Court for the District of Columbia, to be non-discriminatory in both purpose and effect. Section 5 prevented the implementation of voting changes until a favorable determination had first been obtained, a process referred to as preclearance.⁷ This temporary requirement enacted in 1965 was set to expire in five years and applied to seven states in their entirety as well as to certain specific political subdivisions in four other states.⁸ Although the Voting Rights Act was challenged almost immediately after enactment, the Supreme Court upheld the “uncommon exercise of congressional power” represented by the preclearance obligation of Section 5 because of the “exceptional conditions” and “unique circumstances” presented in the covered jurisdictions.⁹

Recognizing the continuing need for these special provisions of the Voting Rights Act, in 1970 Congress renewed the special provisions for another five years and adopted an additional coverage formula which resulted in the partial coverage of ten states.¹⁰ In 1975, the temporary provisions of the Voting Rights Act were extended for another seven years, broadened to address voting discrimination against members of “language minority groups,” and the coverage formula was expanded in a manner which had the effect of covering three states in their entirety (including

⁴ *Id.*

⁵ *Id.*

⁶ Voting Rights Act of 1965, §4, 79 Stat. 438.

⁷ *Id.* at 439.

⁸ <https://www.justice.gov/crt/about-section-5-voting-rights-act>

⁹ *South Carolina v. Katzenbach*, 383 U.S. 301, 334-335 (1966).

¹⁰ Voting Rights Act Amendments of 1970, §§3-4, 84 Stat. 315.

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