U.S. Supreme Court guts Voting Rights Act

by Edward Spannaus

In a widely anticipated decision, a 5-4 majority of the U.S. Supreme Court has gutted a crucial part of the 1965 Voting Rights Act. The case, involving the Bossier Parish, Louisiana School Board, has been watched for years as a probable bellwether, indicating where the Supreme Court is headed with respect to the determination of a majority of its justices to throw out the entire Voting Rights Act.

In the Bossier case, the high court ruled that the Justice Department must approve redistricting plans, even if the scheme has the intent to discriminate against minority votes, but is not "retrogressive," i.e., as long as it just leaves the present discrimination in place without backsliding, or making it even worse.

'Preclearance'

Section 5 of the 1965 Voting Rights Act requires "covered juridictions" (that is, districts or states with a flagrant history of discrimination against minority voters) to "preclear" any changes in voting procedures or districting with the Department of Justice. The reason why this provision was put into the 1965 law, was that it puts the burden of proof on the locality or state making the change, to prove it is not discriminatory. Before the Voting Rights Act, it was necessary for aggrieved voters to take the initiative, get a lawyer, and to go into court, where the burden of proof was on the victims of the discriminatory scheme, rather than the perpetrators.

In this case, *Reno v. Bossier Parish School Board,* a jurisdiction with a long history of discrimination, redistricted following the 1990 census, in a manner which the National Association for the Advancement of Colored People (NAACP) and others said left a discriminatory pattern in place. The Board's 12 districts were drawn in such a manner so that none of them had a majority of black voters, even though an alternative plan presented by the NAACP would have created two majority-black districts, and thus likely ensured at least two black members for the 12-member School Board.

In 1993, the Justice Department refused to approve the plan, and the School Board went to court. The Federal District court upheld the School Board in 1995, and the Supreme Court heard the case in 1997, and sent it back to the District Court for further proceedings; the case again ended up before the Supreme Court in the current term.

Discrimination is allowed

In the majority opinion, Associate Justice Antonin Scalia said that it is acceptable if a redistricting plan is discriminatory, as long as it is not "retrogressive," i.e., a step backwards. Scalia concluded his opinion by holding "that Sec. 5 does not prohibit preclearance of a redistricting plan enacted with a discriminatory but nonretrogressive purpose."

In other words, maintaining a racially discriminatory status quo is acceptable to Scalia, Chief Justice William Rehnquist, and Associate Justices Clarence Thomas, Sandra Day O'Connor, and Anthony Kennedy.

In his dissenting opinion, Associate Justice David Souter wrote: "The evidence in these very cases shows that the Bossier Parish School Board acted with intent to dilute the black vote, just as it acted with that same intent through decades of resistance to a judicial desegregation order. The record illustrates exactly the sort of relentless bad faith on the part of majority-white voters in covered jurisdictions that led to the enactment of Sec. 5." Souter points to the irony: Why else would Congress have ever intended to allow preclearance of such a plan?

When Congress passed the preclearance provisions of the Voting Rights Act, Souter shows, the evil which Congress was addressing "was discrimination, abridgement of the right to vote, not merely discrimination that happens to cause retrogression."

But now, with the Scalia-Rehnquist decision in this case, Souter declared that "executive and judicial officers of the United States will be forced to preclear illegal and unconstitutional voting schemes patently intended to perpetuate discrimination." And, taking a swipe at the states' rights philosophy of the court majority, Souter added: "The appeal to federalism is no excuse. I dissent."

The ruling in the Bossier Parish case illustrates the dangers inherent in the actions of a section of the Democratic National Committee in respect to another case now headed for the U.S. Supreme Court, involving the disenfranchising of delegates for Democratic Presidential candidate Lyndon LaRouche during the 1996 elections.

The LaRouche case also involves the preclearance provisions of the Voting Rights Act, since LaRouche's delegates were excluded on the orders of then-DNC Chairman Donald Fowler in a number of "covered" jurisdictions, including Louisiana, Texas, Virginia, and Arizona.

The five Supreme Court justices who just took a big chunk out of the Voting Rights Act, are the majority to whom DNC attorney John Keeney, Jr. appealed in his Aug. 6, 1999 court argument in the LaRouche case, to declare the entire Voting Rights Act unconstitutional—an outcome preferred by Keeney and a racist faction of the DNC, so that they can continue to run the DNC and local Democratic Party organizations as a "private club," reminiscent of the "white primary," "Jaybird" system which was one of the key elements motivating the original passage of the Voting Rights Act in 1965.