

CONTROVERSIES IN MINORITY VOTING

**The Voting Rights Act
in Perspective**

**BERNARD GROFMAN
CHANDLER DAVIDSON
Editors**

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Editors' Introduction

BERNARD GROFMAN & CHANDLER DAVIDSON

THE VOTING RIGHTS ACT OF 1965 is widely recognized as one of the most successful pieces of American legislation in the twentieth century. The purpose of the present volume is to provide a twenty-five year perspective on the act: its aims, its accomplishments, and what have been claimed to be its unintended consequences. To that end we have asked a number of leading scholars with differing views to write essays on the act's history, its implementation by the courts and the Department of Justice, and the broader questions involved in defining the idea of voting rights.

The book is intended to provide the reader with the information needed to place the Voting Rights Act in historical perspective, but with a focus on the voting rights issues and controversies that are of greatest concern today. We see these controversies as involving a combination of historical, normative, and legal-technical issues. Perhaps the key dispute is over whether the act and related case law have evolved into a mechanism for enforcing "affirmative action" quotas. In particular, to what extent has the proviso included in the 1982 amendments denying a right to proportional representation been violated in cases such as *Thornburg v. Gingles* (1986)? Are the standards of vote dilution now so loose that they permit almost unlimited expansion to cover practices the framers of the act in 1965 would not have considered as violating its provisions?

A related dispute concerns whether the act has now outlived its usefulness. Some who argue that it has claim that voting along racial lines—at least for the majority of whites—is largely a thing of the past. Other critics believe that the current manner of the act's enforcement harms minority political interests, even as it increases the number of minority officeholders, by unduly concentrating minorities in districts where they become a majority and thus denying them a wider influence. Another concern is whether the act, by forcing race-conscious districting, keeps racial issues unnecessarily prominent in American politics, while driving a wedge between minorities and their traditional liberal white allies.

In addition to debate about normative and policy questions, there has

been considerable dispute over the legal standards that ought to govern voting rights cases, especially with respect to the operationalization of the three prongs of the *Gingles* test for vote dilution under section 2 of the act. Another controversy concerns Justice Department enforcement of the act. Has enforcement been limited and inadequate, as some critics have charged? Has it been guided by a vindictive and distrustful view of state and local officials, as others have claimed? Has enforcement been tilted so as to favor the political interests of the administration in power, as still others have charged? Or, as its supporters claim, has the department done a creditable job of enforcement?

The mere listing of a sample of these issues is sufficient to serve notice that, in spite of the plaudits the act has received in many quarters, it has generated a sharply contested body of law and normative theory around which swirl many controversies that are not easily resolved. Rather than attempt a comprehensive inventory or offer an editorial perspective on major issues, we have chosen to let our authors speak for themselves. In so doing, we believe they can convey to readers a good sense of the range of issues, positions, and intensity of feelings on the important controversies that will be shaping the policy debate on voting rights in the 1990s.

The chapters are organized into four sections. The first contains a historical overview of voting rights in the United States, from the first Reconstruction to the present. It contains a chapter by Chandler Davidson describing the history of the Voting Rights Act of 1965, a chapter by Drew Days focusing on section 5 of the act, a chapter by Laughlin McDonald focusing on section 2 of the act, and a chapter by Timothy O'Rourke with an alternative, more critical view of the act and its recent implementation.

The second section covers the broader ramifications of the Voting Rights Act in American politics and race relations. It contains a chapter by Edward Carmines and Robert Huckfeldt on race and the dilemma of liberal politics, a chapter by Morgan Kousser that seeks to explain the relative success of the second Reconstruction as compared to the first, and a chapter by Hugh Davis Graham that views the Voting Rights Act in the context of recent social regulation.

The third section includes two essays that focus on the role of lawyers, expert witnesses, and minority advocacy groups in implementing voting rights. Bernard Grofman looks at the role of expert witnesses in the evolution of voting rights case law and in deciding particular controversies over the meaning and operationalization of key terms such as "racial

bloc voting." Gregory Caldeira looks at what he calls the voting rights bar, the civil rights advocacy groups, attorneys, and expert witnesses who have been involved in voting rights litigation.

The fourth section discusses the Voting Rights Act and the quest for a color-blind society. It opens with an essay by Bruce Cain that examines whether implementation of the act violates either color-blind or majoritarian norms of American democracy. The section also contains brief comments on some of the issues raised in Cain's essay from scholars representing different perspectives: Luis Fraga, Lani Guinier, Carol Swain, and James Turner.

The last essay in the volume is a postscript by the editors that discusses the special nature of voting rights controversies and presents our thoughts about some of the issues that must be resolved if the goal of a color-blind society is to be achieved.

We hope this volume will both frame and help clarify the debate over the issues of minority voting rights and the concept of effective representation.