

Introduction

"Hopefully, millions of non-white Americans will now be able to participate for the first time on an equal basis in the government under which they live."

Chief Justice Earl Warren, South Carolina v. Katzenbach.

Although simply entitled the Voting Rights Act, the legislation which Congress passed in late 1965 primarily to end electoral barriers against Blacks in the South has a purpose which reaches to the central requirement for accountability in government: to have laws, regulations, and customs which maintain a fair, open, and representative structure in which all citizens may participate equally.

By banning literacy tests and other similar devices used historically to exclude eligible Black voters and with the use of other potent provisions, the Voting Right Act established unprecedented procedures to enable dramatic gains in the registration of Blacks on the voting rolls.¹ In turn, the number of Black elected officials in the South has increased from practically no one 13 years ago to more than 2,000 in 1977.²

Despite these impressive figures, progress has been relatively limited. As the U. S. Senate Judiciary Committee stated: "It has been modest and spotty."³ In South Carolina, for instance, the 7% Blacks in the state

¹U. S. Commission on Civil Rights, The Voting Rights Act: Ten Years Later (Washington, January 1975), pp. 40-68.

²Voter Education Project, Statement of June 12, 1977.

³U. S. Code Congressional & Administrative News, 94th Congress, Senate Report No. 94-295, 1975, pp. 774-823.

legislature is nowhere close to the 31% Black population residing in the state. Similarly, the more than 2,000 Black elected officials in the South represent no more than 2½% of all public elected officials in a region where 20% of the total population is Black.

While the Deep South states have the highest percentages of Black elected officials in the country, the difference between the percentage of the Black population and the percentage of Black elected officials in all these states is also greatest. In Alabama, for example, there remain more than 90 cities and counties with 25% or more Black population and without a Black elected official. There are, in the six states of the Deep South, almost 40 predominantly Black counties which have not had a Black elected official since Reconstruction.

The cause of these disappointing results often lies in the subtle, legal and practical barriers which prevent effective political participation. Especially damaging are those practices which appear racially neutral but, in fact, have an adverse racial impact. These include multi-member districts with at-large voting, gerrymandered reapportionment, anti-singleshot voting laws, pre-registration requirements, discriminatory registration purges, unnecessarily complex voting mechanisms, lack of aid for illiterates, and limited access to voter registration.⁴

Along with these more recent barriers, Blacks face very real economic intimidation and harrassment, especially in rural areas. As a result, there is a growing "sense of hopelessness" for Southern rural Black people who believe

⁴See U. S. Commission on Civil Rights, Voting Rights Act: Ten Years Later, (Washington, January 1975); The Shameful Blight: Survival of Racial Discrimination in Voting in the South, (Washington, 1972); U. S. Code Congressional and Administrative News, 94th Congress, Senate Report 94-295, 1975, p. 781; and Hamilton, The Bench and the Ballot: Southern Federal Judges and Black Voters, (New York, 1973).

they "have nowhere to turn for justice."⁵

So long as the barriers to effective Black participation in government exist in the South, there can be little accountability or fair, open decision-making in government. In a recent survey of conditions in Southern counties with majority Black populations, the Southern Regional Council found that where Blacks have no direct representation in government, they have no voice at all. For instance, approximately 85% of the Black community leaders who were interviewed in these counties had never been consulted about how government funds should be spent and have never been invited to a public meeting at which citizens' views on the subject were solicited.

Until the primary obstacles to Black participation are removed, public confidence in the processes of government, citizen access to government, and public accountability of government officials will be unreachd goals for both Black and White citizens.

Lest it be forgotten, the goal of fair, representative government for Blacks is also as important to Whites. Increasingly, the participation of Blacks has removed race as the prevailing issue in many Southern governments. "White folks of goodwill can now run for office," as Tom Gilmore, Black Sheriff of Greene County, Alabama says, "without having to be an outright racist to get elected."⁶ Also, the decline of race as a decisive factor offers more opportunity for local and state governments to address lingering social issues that are important to all.

⁵ Lewis & Allen, Black Voter Registration Efforts in the South, Notre Dame Lawyer, 48: 1, p. 128.

⁶ "Black Political Revolution in the South," New York Times, April 3, 1978.

Rationale of the Project

Perhaps the most powerful provision of the Voting Rights Act has been Section 5. Three years ago, when the Senate Judiciary Committee helped extend the voting law until 1985, the findings were that "largely Section 5...has contributed to the gains thus far achieved."

This provision requires seven Southern states and a few other jurisdictions in the country to file all changes in laws or practices that affect voting or elections to the Department of Justice or the federal district court in the District of Columbia for prior approval. The provision covers the widest range of possible revisions including changes in redistricting, voting units, voter requirements, candidacy requirements, polling places, and even annexations. When submitting information, local governments carry the burden to prove that the change does not, in fact, restrict the ability of Blacks to participate in government.

Despite this unprecedented power vested in the Department of Justice, only in recent years has Section 5 been seriously implemented. Indeed, it was not until 1971 - six years after the passage of the Act - that the Department of Justice adopted regulations for reviewing changes which were submitted. Only in 1976, did the Voting Rights Section of the Department hire enough personnel in order to simply handle the paperwork.

Problems with the effective use of the administrative procedures of Section 5 persist. The Department has not adopted any comprehensive process to monitor local governments' changes. If, for instance, a Mississippi county fails to make a submission, as required by law, it is usually only when a complaint is filed by a community group that such failures come to the attention of the Department. In fact, the Justice Department and all others involved with

Section 5 readily admit that their ability to insure compliance depends upon "regular input from minority interest groups and individuals."⁷

For most rural community groups, there are few local resources with which to have meaningful, continuing input into the administrative process. Keeping up-to-date on submissions filed by local governments often presents large problems. Without money and legal or technical assistance, these organizations, who've had little direct experience with any formal legal proceeding, are able to voice no more than general opinions and little facts, hard data, or follow-up.

At the same time, personnel in the Justice Department frequently don't know the local community groups and deal only with cold, distant data about unfamiliar people and events.⁸ Equally difficult, the Justice Department has attempted in past years to fashion broad reapportionment of local government without direct input from the local groups representing the people to be affected.

In those instances where contact between the local groups and Justice Department officials has been made, several factors, including largely distance, unfamiliarity, and even suspicion have caused communications and results to be limited or ineffective.

If these problems can be worked out, there probably is no more opportune time for this administrative procedure to succeed. The Voting Rights Section of the Department has increased personnel (including lawyers) to implement the procedures. The enforcement of Section 5 has also become a top priority with the Department's civil rights division and will be supervised by former civil

⁷See, General Accounting Office, Voting Rights Act-Enforcement Needs Strengthening, (Washington, February 6, 1978).

⁸For this reason, extensive delays continue. An SRC analysis of the submissions filed with the Justice Department by governments in Black majority counties from 1965 until April 1978 shows that 23% of the submissions have received no action at all -- permitting the local governments to continue possibly objectionable, illegal procedures.

rights lawyers who have been appointed to positions of responsibility in these areas.⁹

Also, there are realistic opportunities to forego the necessity of formal administrative objections against local governments. If all local officials are informed of the adverse effect of apparently racially neutral legislation, there may be possibilities that the laws can be halted at the local or state level. Especially if the Justice Department increases its effective enforcement of Section 5, the deterrent effect should begin to make local resolutions more possible.

While the opportunities exist, it is critical that the administrative procedures and working relationships become well established soon. The sense of hopelessness relentlessly mounts.¹⁰ Moreover, if an effective network between community groups and the Justice Department is not established now, many changes which will be made in local government structures and procedures as a result of new population statistics after the 1980 Census will be done without ongoing, trusted input from community groups and, thereby, without an effective system of enforcement.

Purposes of the Project

Through a system of coordination, exchange of information, and legal and technical assistance, the Project will address the problems of fair, open

⁹The officials include Drew S. Days, former general counsel of the NAACP Legal Defense Fund and presently Assistant Attorney General for Civil Rights and David H. Hunter, presently in the Voting Section and formerly author of several reports criticizing past performance by the Justice Department on Section 5.

¹⁰The most recent patterns in the South show that while most non-metropolitan counties have reversed the historic trend of out-migration, the largely Black-populated, rural counties continue to lose substantial percentages of the population. See, Beale, "The Revival of Population Growth in Non-Metropolitan America," U.S.D.A. Report, June 1975.

government in the Deep South and attempt to accomplish the following goals:

1. To make local and state governments more representative by the effective use of administrative procedures under Section 5 of the Voting Rights Act;
2. To establish and help maintain a working relationship between the Voting Rights Section of the Department of Justice and a network of community groups in largely Black-populated, rural areas in Southern states;
3. To assist local community groups to become involved in the actual fact-finding and submissions of the compliance procedures of Section 5;
4. To monitor changes affecting fair, open government and voting representation in the states and to notify the Justice Department and litigation groups of unreported changes;
5. To develop through the use of local information and social research new approaches for determining the racial impact of changes in voting and representative government;
6. To cooperate with litigation groups in developing priorities, strategies, and information on activities relating to this field;
7. To build a network of volunteer lawyers to assist rural groups with future legal problems relating to fair, open government and Section 5;
8. To involve community groups in the actual development of the specific remedies when required by the Justice Department or federal courts;
9. To involve law students in an important field of practical, legal experience which receives little study in formal legal education.

Proposed Operation

The Project will operate primarily in five Southern states now under the Voting Rights Act: South Carolina, Georgia, Alabama, Mississippi, and Louisiana. It will have a staff of four people: a full-time director, part-time secretary, and two part-time research assistants. Also, five law student interns will work in different states full-time during the summer.

The director of the Project will be located in Atlanta and will be responsible for the overall coordination and supervision of the Project and will perform actual research; draft letters of objection and complaints; build a core of volunteer lawyers; supervise the interns; and handle all administrative duties.

The research assistants will work mainly on specific cases which are raised under Section 5 and will attempt to assist community groups by providing relevant statistical and analytical data.

The Washington-based research assistant will be responsible for day-to-day contact with research personnel of the Justice Department; investigation and examination of submissions filed at the Justice Department; and preparatory research for letters of objection. An attorney in Washington will be retained to supervise the research assistant's work.

During the summers, the law student interns will provide legal research into state and local laws; assist in drafting letters of objection and complaints; research the background of laws that might have an adverse racial impact;¹¹ and monitor state and local legislation which might raise questions or issues under Section 5.

While interns will be located with a local law firm or litigation group in each state, a law professor who has some expertise in related fields will also provide a limited amount of counseling, on-site guidance, and supervision for the intern in each state.

The entire work of the Project will be aimed to support the local

¹¹ Much of this kind of work for the Justice Department is done by para-professionals whose numbers have been increased recently. Thus, there is no doubt that law students should be able to handle the work well.

activities of community groups; however, these groups will not be able to become involved and active in the administrative procedures, unless there are provisions to pay for small operating expenses. These expenses might include copying charges for official documents from city hall, the courthouse, newspaper office files, or from the local public library. Also, there will be expenses for local travel to secure notarized statements and affidavits. Hence, there will be a small fund used to cover actual expenses in gathering information for the administrative procedure. Usually, the expenses will not exceed \$100 in any proceeding.

The Project will receive a weekly notice of changes which have been submitted to the Justice Department and act upon those submissions which may endanger Black voting or obstruct open, fair government. All efforts will attempt to reinforce the involvement of the local groups so that they will become a regular, established part of the process of review and decision-making.

Special attention will also be given to work on developing new standards by which adverse racial impact is found under Section 5 and on proposed regulations which could permit the reimbursement of expenses for private groups who participate successfully in the Section 5 procedures.¹²

At the same time, the Project will attempt to monitor ongoing changes and practices in predominantly Black, rural counties and affirmatively raise written objections when necessary. If possible, the Project will attempt to aid community groups to resolve issues on the local level without resort to the Section 5 procedures.

Administration of the Project

The fiscal and administrative aspects of the Project will be handled by

¹²While the proposal will be resisted, it will be argued that resolution of issues through this means are more desirable and less expensive than litigation, where reimbursement and attorneys fees are provided for by law.

the Southern Regional Council; however, both the executive director of the Council and the executive director of the Voter Education Project will meet regularly with the Project director in order to insure coordination of activities and to discuss the direction of the Project's operations.

Evaluation and Reporting

The Project will prepare evaluations and reports of its activities which will be submitted to the Foundation at each quarter of the year. The Southern Regional Council is a tax-exempt organization created in 1944 to address the issues of the South and promote equal opportunity among all peoples and will be responsible for the submissions.

Budget

Salaries

Project Director	\$17,000.00	
½-Time Secretary	4,400.00	
¼-Time Research Assistant	3,250.00	
½-Time Research Assistant (Washington)	<u>6,500.00</u>	
		\$31,150.00
Benefits		5,000.00
Retainer for Lawyer Supervision (1/8-Time-Washington)		2,500.00
Office Rent		700.00
Copying		400.00
Auditing & Accounting		1,000.00
Telephone		2,500.00
Travel		1,400.00
Supplies & Equipment		700.00
Printing & Postage		800.00
Intern Program		5,000.00
Community Group Grants		<u>4,000.00</u>
	TOTAL	\$55,150.00