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The dignity of the states v. the dignity of the people: Guest opinion

By Guest Columnist

By Ofer Raban

Last week the Supreme Court invalidated an important section of the Voting Rights Act, which required that certain states or counties with a history of racial discrimination in voting obtain advance clearance from a federal court or the U.S. attorney general before they change their election procedures. As expected, this was a 5-4 decision divided along the familiar conservative-liberal line.

The technical reason for the invalidation was the formula determining which jurisdictions are covered by these preclearance requirements. That formula was based on voter registration and voter turnout figures from the 1964, 1968 and 1972 presidential elections. When Congress extended the Voting Rights Act in 2006, some senators asked legal experts whether they thought the formula should be updated to use more recent election data. Almost all responded that updating the formula was a bad idea, because the more recent numbers reflected decades of anti-discrimination enforcement against the covered jurisdictions. If the formula was updated, they said, the states most susceptible to engaging in voting-related racial discrimination might be exempt. Congress left the formula unchanged.

On Tuesday the court threw out the entire preclearance procedure by claiming that the statutory formula was outdated and therefore irrational. The decision did not dispute the federal government's power to forbid racial discrimination in voting, and it also explicitly conceded that such discrimination is an ongoing problem. But the Court nevertheless found that the provision violated constitutional principles of federalism: By subjecting some states to preclearance requirements based on an outdated formula, said the court, the Voting Rights Act violated the "dignity and residual sovereignty of the States" and was therefore inconsistent with the "letter and spirit of the Constitution."

The four liberal justices joined a forceful dissent by Justice Ruth Bader Ginsburg: Data shows that voting discrimination is a real and current problem, wrote Ginsburg, particularly in the covered jurisdictions (which included Georgia, Mississippi and Alabama, the plaintiff in the case). Thus far from offending the "letter and spirit of the Constitution," the Voting Rights Act showed a "continued commitment to a united America where every person is valued and treated with dignity and respect."

Two aspects of the decision are particularly troubling. First, as the dissent pointed out, the opinion (written by Chief Justice John Roberts) exhibited poor craftsmanship -- including a

failure to grapple with relevant precedents and with data showing rampant recent discrimination by the covered jurisdictions.

Second, the decision comes at a time when voting procedures aimed at suppressing votes are a growing national concern. The recent elections involved various legal challenges to restrictive voter ID laws, to last-minute changes in locations of polling station and to unduly long lines at the polls (including lines that lasted 10 hours in the battleground states of Florida and Ohio).

The general assumption, of course, is that such regulations generally hurt Democrats and benefit Republicans. This combination of a highly politicized area of the law and a poorly written opinion is likely to increase allegations of a partisan Supreme Court.

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