

Testimony of

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Mr. Chairman and distinguished Committee members, thank you for the opportunity to testify this morning. My name is Abigail Thernstrom. I am a senior fellow at the Manhattan Institute, a public policy think tank, and the vice chair of the U.S. Commission on Civil Rights. By training I am a political scientist, having received my Ph.D. from the Department of Government, Harvard University, in 1975. I have been writing on race-related issues my entire professional career. My first book, *Whose Votes Count? Affirmative Action and Minority Voting Rights*, published by Harvard University Press in 1987, won four awards, including one of the American Bar Association's two book prizes. After an absence of two decades, I have returned to the topic of voting rights with a book in progress tentatively titled *Voting Rights--and Wrongs: The Elusive Quest for Racially Fair Elections*.

I want to talk today about one of the costs of renewing the preclearance provision of the 1965 Voting Rights Act, which was viewed as constitutional only because of its emergency status and its very limited life. Initially, of course, it was expected to expire in 1970, along with the other temporary, emergency provisions.

There are costs I could discuss having to do with the distortion, by now, of our constitutional structure and of the statute itself. But I will leave those topics aside and focus on one issue: the pernicious impact of race-based districting on the racial fabric of American society. I am not alone, of course, in expressing concern. Indeed, my argument elaborates on a theme that runs through a number of recent Supreme Court voting rights decisions. But before I get to the heart of my argument, a preliminary word.

I sympathize with the desire of both Democrats and Republicans to support a fourth extension of the emergency provisions. It's tough to come out against a bill that appears on the side of our better angels. Race is still the American Dilemma, and racial inequality is the great wound that remains unhealed. Nevertheless, I would like to persuade at least some members of this committee that a vote to support this bill is a vote against racial progress and racial equality.

Unlike the original Voting Rights Act, this bill is not about remedying disfranchisement. At the heart of the disagreement between opposing sides are different views of the level of racism today, and, specifically, the need to protect minority candidates for political office from white competition. For that is precisely the point of majority-black and -Hispanic districts, drawn to ensure minority officeholding roughly in proportion to the minority population.

Inevitably, providing such protection from white competition (creating safe minority districts in which whites are unlikely to run) involves racial sorting--racial classifications, which have had such a long and ugly history.

We've arrived today at an interesting historical moment. By numerous measures blacks and Hispanics are becoming integrated into mainstream American life, and yet, simultaneously, our federal government is segregating them politically. As Justice Clarence Thomas has said (in part, echoing Justice Sandra Day O'Connor): "We have involved the federal courts, and indeed the Nation, in the enterprise of systematically dividing the country into electoral districts along racial lines--an enterprise of segregating the races into political homelands that amounts, in truth, to nothing short of a system of 'political apartheid.'"

In the remarks that follow, I will focus on African Americans, because their history makes them most vulnerable to the damage that any form of ongoing state-imposed or state-encouraged separation incurs.

Consider some evidence that shows increasing integration of blacks into American society. As others will testify, black voter registration and turnout today is very high, and is especially impressive in the South. That alone should raise questions about the need to renew the draconian provisions of the act. But the progress America has made in racial integration is much broader and deeper than that. In 1975 only one-fifth of all blacks said they had good friends who were white; by 2003, the figure had jumped to 88 percent over that time. And the proportion of whites with good friends who were African American soared from 9 to 82 percent. By now, among blacks and whites ages 25-to-29 the proportion who have graduated from high school is roughly the same. The concentration of blacks in heavily black neighborhoods has dropped precipitously in recent decades and less than a third of African Americans now live in census tracts that are over 80 percent black. Since 1970 the rate of black suburbanization has been much higher than that for whites.

And yet blacks who move up the economic ladder and escape overwhelmingly one-race inner city neighborhoods aren't necessarily allowed to join their new friends and neighbors in a legislative district defined by common economic and other nonracial interests. Instead, for political purposes, they're stuck in the putative "community" that they have worked hard to leave. Their old district lines, more likely than not, chase them. That is, those engaged in drawing new maps after every decennial census use sophisticated software to make sure that majority-black districts stay safely black. And with increasing black suburbanization that means grabbing scattered black families to create districts whose shape is a bizarre mess, dictated by racial considerations. This egregiously race-based line-drawing has been forced upon jurisdictions by a Justice Department that has generally viewed what the ACLU used to call "max-black" districts as an entitlement under the Voting Rights Act.

American law contains important messages about our basic values, and race-driven legislative maps (allegedly demanded by the Voting Rights Act) send the wrong message. Race-based districting has become equated with minority electoral opportunity. The message implicit in this racial sorting seems to be:

? Blacks are different than whites.

? And it's okay for the state to label them as such.

? Statements that say, in effect, "blacks are...x," or "blacks believe...y" pose no problem.

It is these messages that Justice Anthony Kennedy so strongly rejected in expressing concern that the state was assigning voters on the basis of race and thus engaging in "the offensive and demeaning assumption that voters of a particular race, because of their race, 'think alike, share the same political interests, and will prefer the same candidates at the polls.'" (In part, quoting O'Connor.)

The point can be put slightly differently. When the state treats blacks as fungible members of a racial group, they become, in Ralph Ellison's famous phrase, "invisible men," whose blackness is their only observed trait. But that view--the view that individual identity is defined by race--is precisely what the civil rights movement fought so hard against. Do we really want to sign on to the notion that group racial traits override individuality--perpetuating old and terrible habits of thought?

Blacks are not a separate people, a nation within our nation, in part because the civil rights movement refused to accept the notion of race as destiny--for political or any other purposes. The idealism of those years would never have countenanced the notion that only blacks could properly represent black interests (with its corollary, whites needing white representatives). When implemented as race-based districting, it's an assumption that amounts to a form of political exclusion--masquerading, of course, as inclusion.

Much social science evidence indicates that, at long last, blacks are moving towards becoming another American ethnic group. No thanks to the federal government. Or, I should say specifically, with no help from Congress, the courts, and the Department of Justice, all of whom have amended a once-perfect statute and turned it into a system that's much too close to political apartheid.

The overwhelming majority of Americans don't like racially safe boroughs. In 2001, a Washington Post/Kaiser poll contained the following question: "In order to elect more minorities to public office, do you think race should be a factor when boundaries for U.S. Congressional voting districts are drawn, or should it not be a factor?" Seventy percent of blacks, 83 percent of Hispanics, and 90 percent of whites said race should not figure into map-drawing.

I urge distinguished members of this Committee to be careful what they wish for. This bill may bring champagne on the day it's passed, but tears down the road. Racial classifications, however prettily they're dressed up, are--and always will be--the same old classifications that have played such a terrible role in this great and good nation. They separate us along lines of race and ethnicity, reinforcing racial and ethnic stereotypes, and turning citizens into strangers. Haven't we, as a nation, had enough of that miserable stuff?

Thank you for the opportunity to present these views.

Additional attachments may be available elsewhere online

Appendix 1: Selected Newspaper and Magazine articles authored by Abigail Thernstrom.

Appendix 2: Abigail Thernstrom WHOSE VOTES COUNT?

Affirmative Action and Minority Voting Rights.

Appendix 3: Voting Rights Enforcement and Reauthorization. U.S. Commission on Civil Rights, May 2006.