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A truly bad decision

Michael Sean Winters | Jun. 26, 2013 Distinctly Catholic

The United States Supreme Court's decision to strike down a key provision of the Voting Rights Act of 1965 reversed the posture the court took just the day before in its ruling on the Affirmative Action case involving admissions to the University of Texas. Yesterday, I quoted Eugene Robinson, who observed regarding the Affirmative Action decision that "the [justices] chose reality over ideology." Yesterday, in ruling on the Voting Rights Act, the justices chose ideology over reality.

To be sure, the court did not entirely gut the Voting Rights Act; instead, they insisted that Congress needed a new "formula" for applying "pre-clearance" by the Justice Department for changes in voting rules because the current formula was based on 40-year-old data. Still, let us be perfectly clear: Everything about the majority's decision is suspect. Everything.

The 15th Amendment is pretty clear. It states:

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

I suppose the adjective "appropriate" is amorphous enough to give the court license to do what it did. Still, as Justice Ruth Bader Ginsburg noted in her dissent yesterday, "When confronting the most constitutionally invidious form of discrimination, and the most fundamental right in our democratic system, Congress' power to act is at its height."

Needless to say, no one in this conservative majority of the Roberts' court can ever again with a straight face invoke judicial restraint to justify one of their rulings. This decision ran roughshod not only over the authority of Congress, but the clear and nearly unanimous sense of that body. The reauthorization of the Voting Rights Act in 2006 passed the Senate 98-0. The majority in the House was not unanimous but nearly so, with only 30-odd votes opposed. The re-authorization was signed by President George W. Bush.

And, to be clear, if the formula is good or bad is for Congress to decide. Reading the ruling, I was reminded of a moment in oral arguments earlier this year, I believe in the arguments over the same-sex marriage cases if memory serves, when Justice Antonin Scalia hammered away at those seeking to declare the denial of marriage to gay couples unconstitutional. He asked more than once: "When did it become unconstitutional?" The idea is that the Constitution sets categorical limits on the actions of government which do not change with the winds of time and culture. So, my question for Justice Scalia: Who signed this majority opinion, and when did this formula become unconstitutional?

Which leads to the most egregious assertion of the chief justice. He wrote: "Our country has changed, and while any racial discrimination in voting is too much, Congress must ensure that the legislation it passes to remedy that problem speaks to current conditions." Although the reauthorization bill in 2006 did not put it this way, I

would ask the chief justice what he thinks of those always useful observations about sociocultural change that begin with the phrase, "If history is any judge ..." In St. Mary and All Saints churchyard in Beaconsfield, Edmund Burke turned over in his grave yesterday at the chief justice's cavalier dismissal of history as a guide.

If confirmation was needed that the Voting Rights Act pre-clearance formula was still needed, and that history is indeed a good guide for discerning where future problems will arise, it was not long in coming. Within hours of the decision, Republican Party leaders in Texas, Alabama, Mississippi and North Carolina all announced plans to proceed with voting restrictions previously disallowed by the pre-clearance review at the Justice Department or held at bay in their state legislatures pending the decision.

Of course, Congress has been invited by the court to devise a different "formula" seeing as the "if history is any judge" standard has been set aside. It is not the chief justice's fault, nor his responsibility, that Congress is so dysfunctional these days, but hoping for a remedy to the Voting Rights Act is like hoping for the eschaton.

It was a bad day for the country yesterday. In my 51 years on this planet, the achievements of the civil rights movement rank right up there with the maturing of environmental concerns as an achievement in our society. (And it is humbling to realize how many ways we have not advanced one inch or even back-slid in those same years!) It took hubris to achieve this result, as Justice Ginsburg said in her dissent: hubris and ideology.

Note to readers: I am suffering from some acute lower back pain today and am trying to get to a doctor or an emergency room. So no more posts today. Please check out NCR Today [1] for commentary on the issues of the day and I hope to be back in the saddle tomorrow.

Links:
[1] http://ncronline.org/blogs/ncr-today