To Strengthen Civil Rights Laws

Our nation is at a moment to begin commemorating golden anniversaries of the federal legislative victories of the civil rights movement. These include the Civil Rights Act of 1964, protections against employment and accommodation discrimination; the Voting Rights Act of 1965; the Immigration Act of 1965, recognized as a civil rights achievement because it eliminated the more blatant racial bias in our federal policies; and the Fair Housing Act of 1968. Fifty years is a significant accomplishment for these laws, particularly because it took more than one hundred years to achieve meaningful enforcement of pre–Civil War Constitutional amendments.

Thus, as many have recognized, these commemorations must involve more than a celebration, but a recommitment to and strengthening of these civil rights laws. We recognize this imperative in the face of narrowed-minded pundits who regularly assert that fifty years is long enough to accomplish necessary and needed policy. Consistent with this historical and antecedent context, each U.S. Supreme Court term presents threats to restrict or vitiate civil rights protections. This year saw the conservative majority, in Shelby County v. Holder, inappropriate one of the most powerful Voting Rights Act provisions, requiring preclearance of electoral changes in certain jurisdictions. New terms already pose threats of undermining equal protection and of limiting the disparate impact theory.

Shelby County, of course, demands legislative remediation, presenting an opportunity to understand the Voting Rights Act, using knowledge garnered since 1965 to improve on its protections. This opportunity, thrust upon us by the Supreme Court, ought to be voluntarily extended to other civil law rights. Golden anniversaries should invite discussion, and ultimate improvement, of enactments informed by half a century of challenging experience. Improvements might include finessing what was not completed, the possibility of federal immigration reforms offers the chance to eliminate the remaining vestiges of whites-only discriminatory origin spectacles—that, though equalized among nations, still subject similarly situated Mexican potential immigrants to longer waits to reunify families. Improvements might also include importing tools from one law to another; imagine what might have been accomplished if in closing the so-called achieved gap if a Voting Rights Act–like preclearance obligation applied to changes in state education policy.

Improvements should also respond to key social development. First is the demographic growth of the nation’s population, and thereby the growth of the Latino community, now the nation’s largest minority group. The Latino community’s historical and continuing struggle with discrimination by proxy–language, accent, presumed or actual immigration status, for example—and with fitting the legal frameworks should inform civil rights legislation a o.

Second is recognizing the entire Constitution as a tool for civil rights progress. In past the last twenty years, preemption under the supremacy clause, previously seen as primarily a business tool to block state–law regulation, has become a staple of civil rights law, particularly for immigrants. Beyond the contracts clause and even the Tenth Amendment, the states’ rights amendment, have potentially served civil rights goals. An expanded view of the Constitution should inform civil rights legislation 2.0.

These and other changes should form the further impetus and foundation for a twenty-first century civil rights legislation. This special issue of Clearinghouse review of the critical connections between racial justice and legal services, should contribute to this golden civil rights endeavor.

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