

Federal VRA Compliance:

A primer on fair representation

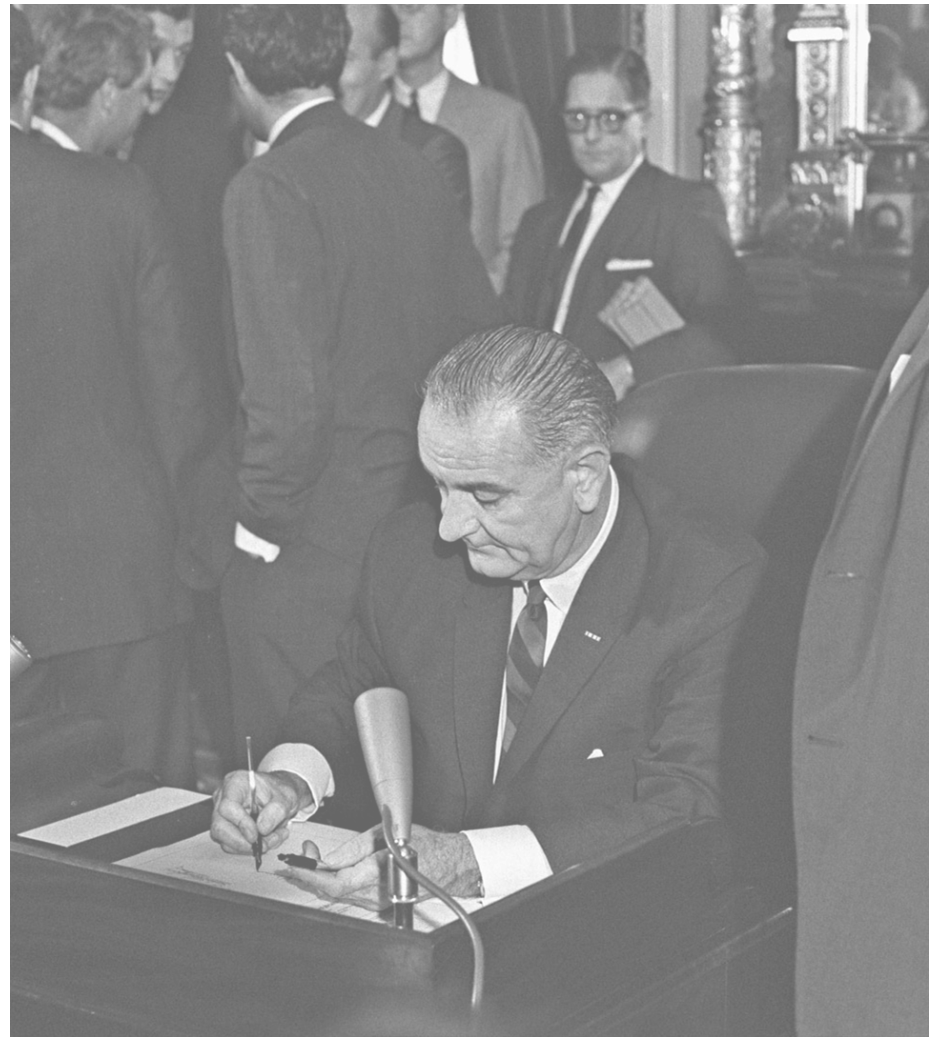
Yurij Rudensky

Counsel, Democracy Program

May 12, 2021

History and Background

- Signed into law on July 2, 1965
- Key provisions for redistricting:
 - Section 2
 - Section 4(b)
 - Section 5



Section 2: Statutory Language

A Section 2 violation exists if members of a protected class “have less opportunity than other members of the electorate to participate in the political process and to elect representatives of choice.” 52 U.S.C. § 10301.

Section 2: Judicial Interpretation

- Three preconditions must be satisfied (**quantitative inquiry**)
 1. Sufficiently large and geographically compact
 2. Politically cohesive
 3. Majority votes as a bloc to enable it, in the absence of special circumstances, usually to defeat candidate of choice
- Totality of circumstances must substantiate (**qualitative inquiry**)

Section 2: Numerosity

- Must be able to demonstrate 50% + 1 VAP or CVAP for liability
- A more functional inquiry needed for remedy that could see that number go up or down depending on political realities
- District sizing can come into play (population deviation)
- Multi-racial coalitions can be protected, but no definitive SCOTUS guidance

Section 2: Cohesion

- Measure the degree to which community has **common electoral preferences** (consider elections at all levels)
- Other factors to consider:
 - Common political needs
 - Common social/economic outcomes
- Important to preempt attempts of disaggregation (e.g. claims of differences within racial group or multi-racial coalition)

Section 2: Majority Usually Thwarts Preferred Candidate

- Necessity of measuring **racially polarized voting** in elections where **community candidate of choice** is present
- Candidate of choice \neq candidate who receives majority of votes from voters of color in **general** election.
- Many inputs should be considered to identify candidates of choice:
 - Primary elections
 - Campaign locations and contributions
 - Platform

Section 2: Qualitative (Senate) Factors

- History of discrimination
- Extent of RPV
- Use of other dilutive practices
- Candidate slating
- Ongoing discrimination
- Racial appeals in campaigns
- Success of candidates of color
- Significant lack of responsiveness
- Tenuous policy justifications

Yurij Rudensky, Counsel

yurij.rudensky@nyu.edu; @yurijrudensky

**BRENNAN
CENTER**

FOR JUSTICE

**BRENNAN
CENTER**

FOR JUSTICE