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Adding Race and Ethnicity: Electoral Data Collection Practice and Prospects for New York State

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Executive Summary

As of 2002, only nine states collected racial data on voter registration forms, in six out of the nine states the provision of information about race is optional. This report provides a comparative analysis of electoral data collection practices in Alabama, California, Florida, New York, and Pennsylvania with the purpose of making recommendations that will improve electoral data collection in New York. The working assumption of this research is that electoral data collection by race and ethnicity is justifiable, fair, and necessary.

Provisions about the collection of racial data have been primarily established to aid efforts to identify needs and target services for minority communities, as well as to track discriminatory practices. The risks associated with data collection by race and ethnicity in terms of privacy and governmental abuse are minimal, even in cases where racial and ethnic identification is required rather than optional. California was the most recent example of a state adopting a provision to collect racial data on voter registration forms. The state's experience illustrates that the change has a minimal fiscal impact.

After comparing the experiences of four states that collect racial data, it seems apparent that New York State should also collect racial data on voter registration forms. The state should emulate California but take its initiative one-step further by requiring rather than requesting citizens to specify their racial/ethnic background on the state

voter registration form. The collection of data by race and ethnicity will allow researchers to better gauge voter registration and turnout in the state. With this information efforts to promote voting would be more effective. Policymakers will be better able to monitor and regulate the electoral process to insure the highest degree of participation by citizens. Political parties and civic organizations will be in a better position to mobilize voters. Finally, the collection of electoral data by race and ethnicity will safeguard not just minority voting rights but the rights of all voters as well.

Introduction

Questions about race and ethnicity are commonplace in the United States. Every ten years the U.S. Census Bureau documents not just the size of the population but numerous other conditions using these categories. We know the racial and ethnic distribution of the population at the national level, by state, and place. We are also able to compare socioeconomic status, educational attainment, health disparities, homeownership, employment, unemployment, labor force participation, and many other conditions by race and ethnicity.

At the state level, data collection by race and ethnicity is not uniform. We are particularly interested in one area of discrepancy: electoral data collection. As of 2002, only nine states collected this type of data but only by race. In six out of nine, the provision of information about race is optional (see Table 1). In



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2003, California passed legislation to start collecting electoral data by race and ethnicity.¹ Effective January 1, 2004, California citizens had the option of indicating their racial/ethnic identity on the state's voter registration form. Figure 1 provides information on the kinds of information that states require from voters in addition to racial and ethnic identifiers. New York State is one of 40 states that do not ask voters to declare their race (or ethnicity) when they register to vote.

This report provides a comparative analysis of electoral data collection practices with the purpose of making recommendations that will improve electoral data collection in New York. The working assumption of this research is that electoral data collection by race and ethnicity is justifiable, fair, and necessary. Data collection by race and ethnicity allows us to know more about our differences. This is important to understand how to best nurture our commonalities. Data collection by race and ethnicity also allows us to fashion public policies to address and/or prevent inequality and discrimination. At the national level we know how different racial/ethnic groups compare in terms of registration and voting. This information should be available at the state level as well.

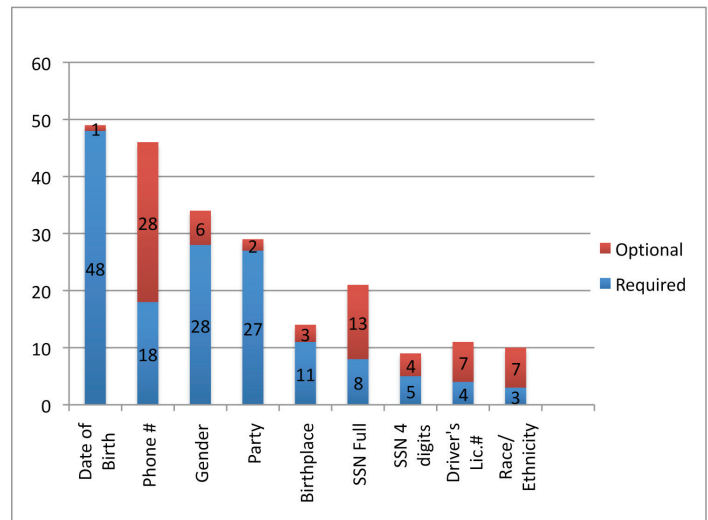
This report answers the following questions: Why does New York State not collect electoral data by race and ethnicity? What explains electoral data collection by race in Alabama, California, Florida, and Pennsylvania? Are there any adverse impacts associated with this practice in these states? Of the ten states that collect electoral data by race and/or ethnicity these were chosen as case studies because they all have significant minority populations. Alabama's and Florida's location in the south, California's location in the west, and Pennsylvania's proximity to New York allow the analysis to control for geographic differences. California, Florida, and Pennsylvania also have significant Latino populations which makes the analysis relevant for Latinos in New York.

TABLE 1. STATES THAT COLLECT ELECTORAL DATA BY RACE/ETHNICITY, 2004

REQUIRED	OPTIONAL
Alabama	California
North Carolina	Florida
South Carolina	Georgia
	Louisiana
	Mississippi
	Pennsylvania
	Tennessee

Sources: *Voter Privacy in the Digital Age*, <http://www.calvoter.org/issues/votprivacy/>; *48th Assembly Newsletter*, December 2003, <http://dist26.casen.govoffice.com/vertical/Sites/%7BE5F4E18B-4980-490F-8CE2-D255D7491405%7D/uploads/%7B2FA18A2C-8696-4936-87EA-8FA38F2B5426%7D.PDF>

FIGURE 1. DATA COLLECTED ON VOTER REGISTRATION FORMS BY NUMBER OF STATES



Source: CA Voter Foundation, www.calvoter.org/issues/votprivacy/pub/votprivacy/graphics/chart1.gif

¹ Nancy Vogel, "Bill to Seek Voters' Racial Data Signed," *Los Angeles Times*, 18 September 2003. <http://articles.latimes.com/2003/sep/18/local/me-voters18> <Accessed Aug. 2009>

Collection of Racial Data and the Voting Rights Act of 1965

After the passage of various Civil Rights laws in the 1960s and 70s, the Office of Management and Budget (OMB) established the "Race and Ethnic Standards for Federal Statistics and Administrative Reporting" in 1977 to promote uniformity and comparability of data on race and ethnicity. The data was needed to "monitor equal access in housing, education, employment opportunities, and other areas, for populations that historically had experienced discrimination and differential treatment because of their race or ethnicity."²

According to the federal standard, official collection of racial and ethnic data should cover the following six categories at a minimum: American Indian or Alaskan Native, Asian or Pacific Islander, Black, and White (for race) and Hispanic origin and Not of Hispanic origin (for ethnicity). According to Wallman "self-identification is the preferred means of obtaining information about an individual's race and ethnicity."³ In 1997, the standards were revised to increase the minimum set of race categories to be used by Federal agencies (White, Black or African American, American Indian or Alaska Native (AIAN), Asian, and Native Hawaiians or Other Pacific Islanders (NHOPI)) and to allow respondents to select one or more race categories.⁴

The key civil rights legislation passed by the federal government to improve equity in political participation is the Voting Rights Act of 1965 (VRA).⁵ It was passed to counter state-level voter disenfranchisement after a number of violent acts, including the murder of voting rights advocates in Philadelphia and Mississippi.⁶ Originally, Section 5 of the VRA targeted areas of the U.S. where discrimination and disenfranchisement were perceived to be the greatest. It granted the Federal Department of Justice oversight over a number of states and counties, including control over electoral procedures.⁷

The initial "covered jurisdictions" under Section 5 of the 1965 VRA included Alabama, Alaska, Georgia, Louisiana,

Mississippi, South Carolina, and Virginia, as well as certain counties or political subdivisions in Arizona, Hawaii, Idaho, and North Carolina.⁸ Since its initial passage in 1965 the VRA has been amended and updated, expanding the initial "covered jurisdictions" to include California (4 counties), Florida (5 counties), Michigan (2 political subdivisions), New Hampshire (11 political subdivisions), New York (3 counties: Bronx, Kings, and New York), South Dakota (2 counties), Texas, and Virginia.⁹ Currently, six states collect race data in order to comply with the VRA. Two of the 10 states collecting racial/ethnic data, California and Pennsylvania, are not located in the U.S. south.¹⁰

Case Studies

Alabama

Prior to the Voting Rights Act, Alabama was one of a number of southern states known for the intimidation of black voters. In March 1965, the Southern Christian Leadership Conference (SCLC) held a protest in Selma, Alabama to draw attention to racial disenfranchisement and racist policies in regards to voting rights. Selma was chosen as the site for the protest because "it was a city whose resistance to black registration and voting was extraordinary, even by southern standards."¹¹ Lang points out that previous Civil Rights Acts (those passed in 1957, 1960, and 1964) had done little to improve voter registration among black voters. In Alabama, the percentage of registered voting-age blacks increased by only 5 percentage points (from 14 to 19 percent) between 1958 and 1964.¹²

The SCLC protest elicited a violent response by Alabama police. State troopers "brutally charged, clubbed, and tear-gassed several hundred peaceful black demonstrators, many of them women and young teenagers."¹³ Footage of the protest and violent, unprovoked police response was broadcast widely on national television. The incident became known as "Bloody Sunday." In August, 6 months after the protest, Congress passed the Voting Rights Act of 1965 and included Alabama as one of the "covered jurisdictions" in Section 5 of the VRA.¹⁴

2 Katherine K. Wallman, "Data on Race and Ethnicity: Revising the Federal Standard," *The American Statistician* 52.1 (February 1998): 31-33.

3 Ibid.

4 B. E. Hamilton, "Implementation of the revised OMB race and ethnicity standards in U.S. Standard Certificate of Live Births: results and data," Unpublished paper presented at the Population Association of America Annual Meeting, Los Angeles, California, March 30 - April 1, 2006. <http://www.popline.org/docs/1745/316752.html> <Accessed Aug. 2009>

5 For an assessment of the effectiveness of the Voting Rights Act in promoting minority voting rights see Peyton McCrary, "How the Voting Rights Act Works: Implementation of Civil Rights Policy, 1965-2005," *South Carolina Law Review*, 57.4 (Summer 2006): 786-825.

6 U.S. Department of Justice, Civil Rights Division, "Introduction to Federal Voting Rights Laws," July 25, 2008. http://www.usdoj.gov/crt/voting/intro/intro_b.php <Accessed Aug. 2009>

7 Hedges Forest, Roman and Carl P. Carlucci, "Implementation of the Voting Rights Act: The Case of New York," *The Western Political Quarterly* 40.1 (1987): 107-120.

8 U.S. Department of Justice, Civil Rights Division, "About Section 5 of the Voting Rights Act," 25 July 2008. http://www.usdoj.gov/crt/voting/sec_5/about.php <Accessed Aug. 2009>

9 U.S. Department of Justice, Civil Rights Division, "Procedure for the Administration of Section 5 of the Voting Rights Act of 1965, as Amended," 25 July 2008. http://www.usdoj.gov/crt/voting/28cfr/51/apdx_txt.php <Accessed Aug. 2009>

10 The California Voter Foundation, 21 July 2008. www.calvoter.org <Accessed Aug. 2009>

11 Chandler Davidson and Bernard Grofman, eds., *Controversies in Minority Voting: The Voting Rights Act in Perspective*. (Washington, D.C: Brookings Institution, 1992).

12 James Lang, "Review: Protest at Selma: Martin Luther King, Jr., and the Voting Rights Act of 1965," *Contemporary Sociology* 9.1 (1980):128.

13 Ibid.

14 Richard L. Engstrom, "The Voting Rights Act: Disfranchisement, Dilution, and Alternative Election Systems," *PS: Political Science and Politics* 27.4 (Dec. 1994): 685-688.

According to Ed Packard, Alabama's Supervisor of the Board of Registration, Alabama collects racial data on their voter registration forms to comply with Section 5 of the Voting Rights Act of 1965. Packard said that the main purpose is to collect statistical data on voters to gauge the racial impact of redistricting.¹⁵ Given Alabama's history of race relations, it is also clear that data collection by race is directly related to the impact of racial discrimination on registration and voting. Voter registration information by status and race compiled by the state is publicly available from the Secretary of State's website.¹⁶

California

In 2003, California passed a bill calling for the collection of racial data on voter registration forms. The bill clearly articulated that the purpose of the legislation was to collect racial data in the hopes of tailoring voter outreach and identifying racist electoral practices. This legislation (AB 587) was authored by Assemblymember Mark Ridley-Thomas (D-Los Angeles) and supported by a number of organizations including the California State Conference of the National Association for the Advancement of Colored People (NAACP), the Service Employees International Union (SEIU), and the California Association of Urban League Executives.¹⁷ According to the *New York Times*, the passage of AB 587 "sparked an angry response from GOPers" who saw AB 587, along with a series of election reform bills, as a way for Democrats to "solidify their political power."¹⁸ Assemblymember Ridley-Thomas argued,

Increasing voter registration and participation has long been one of the most important, universally acknowledged goals in California and the nation. This is particularly significant for certain racial and ethnic groups that have been historically underrepresented. However, there is no concrete data currently available to monitor voter registration and participation rates among these populations. In the absence of this information, the effectiveness of voter outreach programs and the need for additional efforts to engage particular groups cannot be accurately determined.¹⁹

Aside from GOPers, the California Association of Clerks and Election Officials (CACEO) also went on record

opposing the Ridley-Thomas Bill expressing concern that collecting race and ethnic data on voter registration forms could facilitate discriminatory practices. They also argued that it "would impose a significant state mandate because of the necessary modifications to computer software programs, and the ongoing data entry costs."²⁰ Despite their concerns over the cost burden of implementing the provision, the California Assembly Appropriations Committee stated that the Bill's fiscal impact would have "minor absorbable costs for the Secretary of State."²¹

Following the passage of AB 587, California Election Code 2150 § 10(c) now stipulates that "The affidavit of registration shall also contain a space that would enable the affiant to state his or her ethnicity or race, or both. An affiant may not be denied the ability to register because he or she declines to state his or her ethnicity or race."²² Therefore, California now has a space for "ethnic background" on their voter registration form as an optional item. The bill had a minimal fiscal impact because it allowed the Secretary of State to "exhaust already existing supplies of voter registration affidavits prior to printing new or revised forms."²³

Controversy over the collection of racial data was sparked again in 2003 when University of California Regent, Ward Connerly sponsored Proposition 54. The proposition called for altering California's state Constitution to ban the collection of data on race, ethnicity, color, or national origin by the state or local government to classify current or prospective students, contractors, or employees in public education, contracting, or employment operations. Under Proposition 54, exemptions on the ban would include the collection of racial or ethnic data for "law enforcement descriptions, prisoner and undercover assignments, or actions taken to maintain federal funding."²⁴

Opponents of the proposition argued that "eliminating the means by which [discrimination] is monitored hinders rather than helps progress."²⁵ Health care advocates argued that

20 Ibid.

21 California Legislative Bill Analysis, Assembly Committee on Appropriations, 7 March 2003, http://www.leginfo.ca.gov/pub/03-04/bill/asm/ab_0551-0600/ab_587_cfa_20030506_151211_asm_comm.html <Accessed Oct. 2009>

22 California Election Code 2150 § 10(c), <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=elec&group=02001-03000&file=2150-2168> <Accessed July 2009>

23 AB 587 Assembly Bill, "Legislative Counsel's Digest," 18 February 2003, http://www.leginfo.ca.gov/pub/03-04/bill/asm/ab_0551-0600/ab_587_bill_20030917_chaptered.html <Accessed Sept. 2009>

24 "Proposition 54: Summary by the Attorney General," 7 October 2003. <http://www.smartvoter.org/2003/10/07/ca/state/prop/54/> <Accessed Aug. 2009>

25 Evelyn Nieves, "California Battles Over Racial Identification; Oct. 7 Ballot Includes Proposition 54, Controversial Bid for 'Color-Blind' Society," *Washington Post*, 13 September 2003.

15 Phone Interview with Ed Packard, Alabama Supervisor of Board of Registration, by Jackie Hayes, 16 September 2008.

16 Alabama Secretary of State, "Alabama Voter Registration as of 10/31/2008," <http://www.sos.state.al.us/downloads/election/vr/ALVR-2008.xls> <Accessed Nov. 2008>

17 California Legislative Bill History, 2003 CA A.B. 587, Senate Committee on Elections and Reapportionment, 2 July 2003.

18 "California: Bending the Election Rules," *The New York Times*, 4 June 2003.

19 California Legislative Bill History, Op. Cit.

“eliminating race from public records eliminates a major resource for identifying disease cluster and patterns for public health researchers.”²⁶ Proposition 54 was voted down in 2003 by a vote of 64 to 36 percent.²⁷

Florida

According to Holly Sinco, an archivist at the State Library and Archives of Florida, “asking for race (or in their words, “color”) on a voter registration form became state-wide law in 1889 (Ch. 3879).”²⁸ The rationale behind adding race to the voter registration form early in Florida’s history is unclear, but in 1975, five counties in Florida (Collier, Hardee, Hendry, Hillsborough and Monroe counties) were added to the Section 5 preclearance provisions of the Voting Rights Act. Newman explains “Congress was particularly concerned about addressing discrimination against members of language minority groups and literacy requirements.”²⁹

Currently, information included on the Florida voter registration form is dictated by state statute, which has been influenced by federal legislation like the Voting Rights Act of 1975. The voter registration form in Florida includes a race/ethnicity question which is optional and split into 5 categories: American Indian/Alaskan Native, Asian/Pacific Islander, non-Hispanic Black, Hispanic, and non-Hispanic white.³⁰ Florida also has statistical breakdowns of voter registration by race and ethnicity available online.³¹

After passage of the 1993 National Voting Rights Act (NVRA), also known as the “Motor Voter” Act, Florida required each county election supervisor to submit monthly reports on voter registration to the NVRA Administrator. Yet, since state voter registration forms do not require the applicant to include sex, race or ethnicity (it is optional) the counties do not include this data in their monthly reports making it difficult to assess how any changes would impact minority communities.³²

26 Ibid.

27 Ritu Kilotra, “Civil Rights Groups: Proposition 54 Defeat is Victory for All,” 8 October 2003, www.civilrights.org. The implementation and impact of the law has yet to be assessed. Of a total of 998 newspaper stories containing the words “California,” “race,” and “ethnicity” written between February 18, 2004 and February 20, 2009, none discussed the issue of data collection by race and ethnicity in the state.

28 Holly Sinco, Archivist, State Library & Archives of Florida, email message to Jackie Hayes, 11 March 2009.

29 Jonel Newman, “Voting Rights in Florida 1982-2006: A Report of RenewtheVRA.org Prepared by Jonel Newman,” March 2006. <http://www.civilrights.org/voting-rights/vra/states/FloridaVRA.pdf> <Accessed Oct. 2009>

30 Florida Code § 97.052 7(2)(f) http://www.flsenate.gov/Statutes/index.cfm?App_mode=Display_Statute&URL=Ch0097/ch0097.htm <Accessed Aug. 2009>

31 Florida Department of State Division of Elections, “General Election, County Voter Registration by Race,” 6 October 2008. <http://election.dos.state.fl.us/voterregistration/statistics/pdf/2008/2008genRace.pdf> <Accessed Aug. 2009>

32 Florida Division of Elections, “NVRA Monthly Report Statistics,” <https://doe.dos.state.fl.us/NVRA/reports.shtml> <Accessed July 2009>

Florida has experienced a number of voting and voting rights controversies in recent history. During the presidential election of 2000 about 200,000 Floridians were disfranchised. A large and disproportionate number of these were black. How did this happen? According to an investigation conducted by *The Nation*, “In 1998 and 1999, Florida contracted with two data analysis firms to purge the voter rolls of felons and other ineligible voters. In both cases, the results were error-filled and targeted blacks in extremely disproportionate numbers.”³³ Most recently, Florida passed a voter verification law requiring applicants to provide their driver’s license number or the last four digits of their social security number with their application.³⁴ Enforcement resulted in a significant number of voter registration rejections. Yet, since Florida collects information about race and ethnicity on their voter registration forms, it was easy to gauge the impact of the law on Hispanic and black voters, who were disproportionately affected by the law. According to the St. Petersburg Times “of the rejected registrations, 2,403, or 27 percent, said they were Hispanic; 2,382, or 27 percent, identified themselves as African-American; and 1,727 listed their race as white.”³⁵

New York

New York State’s election law notes that registration forms must conform to the “requirements for the national voter registration form in the rules and regulations promulgated by the federal election commission and the federal Help America Vote Act, and shall elicit the information required for the registration poll record.” The state board of elections has the power to require any information that it may “reasonably require to enable the board of elections to assess the eligibility of the applicant and to administer voter registration and other parts of the election process.”³⁶ Currently, registrants have the option to specify their gender when completing the registration form. So why not race and ethnicity?

Three regions of New York State are included under the “covered jurisdictions” in Section 5 of the Voting Rights

33 U.S. Newswire, “Nation Investigation Reveals Florida Officials Shut Out Tens of Thousands of Black Voters on Election Day,” 12 April 2001. http://www.lexisnexis.com.libproxy.albany.edu/us/lacademic/results/docview/docview.do?docLinkInd=true&risb=21_T5796688080&format=GNBFI&sort=BOOLEAN&startDocNo=1&resultsUrlKey=29_T5796688084&cisb=22_T5796688083&treeMax=true&treeWidth=0&csi=8296&docNo=5 <Accessed Aug. 2009>

34 Florida Department of State, Press Release, “Court Decision Upholding Florida’s Voter Verification Law Final,” 28 July 2008. <http://www.dos.state.fl.us/news/communications/pressRelease/pressRelease.cfm?id=311> <Accessed Aug. 2009>

35 Steve Bousquet, “New Voter Registration Law Snares Mostly Minorities,” St. Petersburg Times, 17 October 2008. <http://tampabay.com/news/politics/state/article858377.ece> <Accessed Sept. 2009>

36 New York State Election Law § 5.210 5. <http://www.elections.state.ny.us/NYSBOE/download/law/2008NYElectionLaw.pdf> <Accessed Sept. 2009>

Act. Bronx, Kings and New York counties because “they had a literacy test in November 1968 and in that year’s Presidential election the turnout there was less than 50 percent of the voting-age population.”³⁷ Aside from the three New York counties covered under Section 5 of the VRA, seven counties in the state (Bronx, Nassau, Kings, New York, Queens, Suffolk, Westchester) are covered under Section 203 of the VRA, requiring language assistance in voting for certain language minority citizens.³⁸ Two counties are covered under Section 4 (f)(4) of the VRA, requiring preclearance for certain language minority citizens in Bronx and Kings County.³⁹

In Florida, the Race/Ethnicity question on the statewide voter registration form was expanded after five counties were placed under the “covered jurisdictions” of the Voting Rights Act. Yet, New York State has not reformed their statewide voter registration forms. It is unclear how New York is able to gauge the impact of voting policy or procedural changes on minority voters in Bronx, Kings, and New York counties if they are not collecting race and ethnicity data.

Bob Brehm, the Deputy Public Information Officer at the New York State Board of Elections said a race or ethnicity question was not a statutory requirement and that “we only include on the forms what is a statutory requirement.”⁴⁰ The New York State Board of Elections releases a report every year which provides a general summary of annual changes, accomplishments, and compliance with federal election laws. The annual report is available online.⁴¹

Despite the coverage of some counties in New York under the Voting Rights Act, New York still has room to improve electoral practices to ensure minority populations are not disenfranchised. Since 1982, there have been fourteen objections by the U.S. Attorney General to electoral redistricting and practices due to the potentially discriminatory impact on minority voters. On July 19, 1991 the U.S. Attorney General’s office objected to a redistricting plan that discriminated against Latino voters.⁴² A similar objection was made on June 24, 1992 to a redistricting plan in Washington Heights.⁴³

On February 4, 1999 the U.S. Attorney General objected to the replacement of elected community school board members by appointed trustees in School District 12 where 54% of the electorate was Latino and 36% was African-American, further exemplifying the need for continued monitoring of electoral reforms in New York State.⁴⁴

Pennsylvania

The statute dictating that applicants include their race on voter registration forms dates back to 1937 in Pennsylvania.⁴⁵ The original statute stated that registrants must include “the color of the applicant” on voter registration forms.⁴⁶ The statute was modified several times from 1937 to 2009, with significant modifications in 1995 and 2002.

The sole challenge to the statute was in 1975 when Ira H. Kemp and Yrinda Fortes questioned the constitutionality of requiring registrants to include their race on registration forms.⁴⁷ Kemp and Fortes’ voter registration forms had been rejected by the Dauphin County Board of Election since they failed to state their race on the form.⁴⁸ *Kemp v. Tucker* made it to the Pennsylvania Supreme Court and argued that the requirement violated “the privileges and immunities and equal protection clauses of the Fourteenth Amendment and Section 1 of the Fifteenth Amendment.”⁴⁹

The court ruled that the challenged provisions did not violate the Fourteenth or Fifteenth Amendment since a registrant would not be rejected on account of their race and therefore it would not be an abridgement of the right to vote. The District Judge argued that “there is a great difference between rejecting an applicant because of his race and rejecting an applicant because of his failure to answer relevant questions needed to assist election officials in preventing voter fraud.”⁵⁰ The intention of the Pennsylvania statute, at the time, was mainly to identify voters in an effort to prevent voter fraud.

In 1995, Section 527(a)(1)(vii) of the Pennsylvania’s electoral law was amended to indicate that a registration application could not be rejected if citizens chose not to specify their

37 Robert Pear, “Major Fight Expected Over Efforts to Extend Voting Rights Measure,” *New York Times*, 9 March 1981.

38 Juan Cartagena. “Voting Rights in New York, 1982-2006: A Report of RenewtheVRA.org Prepared by Juan Cartagena.” March 2006.

39 Ibid.

40 Phone interview with Bob Brehm, New York Deputy Public Information Officer, by Jackie Hayes, 20 November 2008.

41 New York State Board of Elections 2007 Annual Report. <http://www.elections.state.ny.us/NYSBOE/download/AnnualReport2007.pdf> <Accessed Oct. 2009>

42 Juan, Cartagena. Op. Cit.

43 Ibid.

44 Ibid.

45 The Pennsylvania statute might date back to before 1937, but the records on file at the NYS library indicate that the statute originated in 1937. Title 25, Purden’s Pennsylvania Statutes Annotated, Sections 623-19 to 623-22.

46 Ibid.

47 396 Federal Supplement 737 (1975), *Ira H. Kemp and Yrinda Fortes v. Delores Tucker*.

48 M.D.Pa. 1975, *West’s Pennsylvania Digest 2d*, Elections 12(4).

49 396 Federal Supplement 737 (1975), Op. Cit.

50 Ibid.

race. A 2002 revision of the 1995 version of the statute maintained that provision, thus keeping racial identification of voters optional. Currently, reporting your race or ethnicity on a voter registration form is optional in Pennsylvania.

Voter registration is also not the only instance where racial data is collected in the state. After the 1997 revisions to the OMB standard for the collection of racial and ethnic data and beginning in 2003, multiple-race data was reported by Pennsylvania for births occurring in the state.⁵¹

Conclusion

The only reason preventing New York State from collecting electoral data by race and ethnicity is bureaucratic inertia. The Board of Elections is not required by statute to ask voters about their racial and ethnic identity and therefore will not ask them to do so unless mandated by law. While some states are compelled to collect racial/ethnic data to comply with VRA provisions, New York is not, despite the fact that state jurisdictions have been found in violation of minority voting rights.⁵² In Port Chester, New York, a U.S. District Judge determined that the at-large electoral system violated the VRA based on three conditions that cannot be established in the absence of racial/ethnic data: a minority group must be sufficiently large and geographically compact to make up a majority in a single-member district; the group must be politically cohesive and vote as a bloc; and the white majority must vote sufficiently as a bloc to enable it, in the absence of special circumstances, to defeat the minority's preferred candidate.⁵³ Using Census Data and/or through special tabulations of Current Population Survey supplements, researchers are able to produce racial/ethnic breakdowns of the electorate at the state and local level. But when this data is available locally, the analysis is simplified and less expensive.

The salutary effects of data collection by race and ethnicity for research and policymaking in the areas of education, health, and civil rights enforcement are substantial. Racial and ethnic data allows researchers and policymakers to identify needs, target services, and monitor progress in policy implementation. In education, racial/ethnic data has been critical in efforts to tackle segregation and to reduce disparities in

access and quality education for minorities. In the health field, such data allows not only for more accurate epidemiological and medical assessments of the population as a whole, but it also facilitates compliance with federal law requirements. Similarly, enforcement of civil rights would be impossible in the absence of data specific to the groups whose civil rights are most vulnerable. In contrast, the risks associated with data collection by race and ethnicity in terms of privacy and governmental abuse are minimal, even in cases where racial and ethnic identification is required rather than optional.⁵⁴ Is it possible that data collection by race and ethnicity could be used for partisan purposes, as claimed by opponents of AB 587 in California? It is possible, but this would be objectionable only if partisanship was illegitimate or if the advantages were monopolized by one party. At the federal level, more than 30 years of experience with data collection by race or ethnicity have yet to yield any discernible advantage to either Democrats or Republicans. In light of this experience, the chances that the state or local party organizations could unequally and disproportionately benefit from electoral data collection by race and ethnicity are nil.

Florida's experience suggests the need to institute safeguards that will prevent or penalize the improper use of electoral data whether collected by race and ethnicity or not. With existing data, the New York State board of elections could find ways of disfranchising voters if the motivation to do so existed. The current statute mandates counties to provide political parties with a complete list of voters including their addresses, their election and assembly districts or wards, if any, and their party enrollments.⁵⁵ Anyone interested in using electoral data for exclusionary purposes could easily correlate the data provided by the counties with census data to target a specific class of voters. The problem, therefore, is not whether data by race and ethnicity is available but whether politicians and/or electoral officials have opportunities to do wrongdoing without penalty. The Florida case illustrates not just the possibility of misuse of racial data but, more importantly, it illustrates the importance of being able to identify disproportionate impact based on race. As noted above, without racial data, the negative impact of the state's voter verification law on minorities would have been more difficult to establish.

51 B. E. Hamilton, *Op. Cit.*

52 U.S. Department of Justice, "Justice Department Settles Voting Rights Lawsuit Against Westchester County, New York," Press Release, 21 January 2005. http://www.usdoj.gov/opa/pr/2005/January/05_crt_028.htm <Accessed Aug. 2009>

53 "Back in court: Port Chester voting rights case," 25 June 2008, <http://immigration.luhudblogs.com/2008/06/25/back-in-court-port-chester-voting-rights-case> <Accessed Aug. 2009>

54 U.S. Commission on Civil Rights, "Briefing on the Consequences of Government Race Data Collection Bans on Civil Rights," 17 May 2002. <http://www.law.umaryland.edu/marshall/usccr/documents/civrightsbriefEXS51702.pdf> <Accessed Aug. 2009>

55 New York State Election Law, § 5.211 15(b).

Expert testimony gathered by the U.S. Department of Justice demonstrates that, on balance, the salutary impact of data collection by race and ethnicity outweighs potential as well as actual drawbacks. This position is embraced by both conservative and liberal analysts such as Professor Peter Skerry, a nonresident senior fellow at the Brookings Institution, on the conservative side, and Professor Jorge Chapa, Director of the Center on Democracy in a Multiracial Society at the University of Illinois - Urbana Champaign, on the liberal side. Concerns about the use of electoral data for racial profiling are both unfounded and misguided. In fact, the consensus among experts and practitioners, which include police departments in a number of states, is that the best way to monitor and ultimately prevent racial profiling is by collecting racial data.⁵⁶

New York State should join this consensus of opinion. The state should emulate California but take its initiative one-step further by requiring rather than requesting citizens to specify their racial/ethnic background in the state voter registration form. California allowed the Secretary of State and local election officials discretion over whether to exhaust the supply of voter registration forms in existence on the effective date of the law prior to printing new or revised forms. New York could do the same while making its revised form available online immediately and encouraging voters to register online or to print and mail the forms themselves thus reducing the costs of printing new forms.

The current New York State registration form requires that prospective voters certify their citizenship and age status to insure that only qualified voters exercise their right to vote. This is in keeping with an approach to electoral participation that focuses on the regulation of voting rather than on its promotion. This leaves the promotion of voting to political parties and other private organizations. Government, however, can and should assist in this effort. The collection of data by race and ethnicity will allow researchers to better gauge voter registration and turnout in the state. With this information efforts to promote voting would be more effective. Policymakers will be better able to monitor and regulate the electoral process to insure the highest degree of participation by citizens. Political parties and civic organizations will be in a better position to mobilize voters. Finally, the collection of electoral data by race and ethnicity will safeguard not just minority voting rights but the rights of all voters as well. New York State is too diverse demographically to rely on general as opposed to targeted strategies to promote political participation. If the health of democratic governance depends on voting, we need to know who registers and who votes with a greater degree of specificity than currently available.

⁵⁶ Editorial, "Putting a focus on profiling," *St. Petersburg Times*, 6 March 2000. According to the *St. Petersburg Times* "Racial profiling was thrust into the national spotlight in 1998 after a shooting on the New Jersey Turnpike. During a traffic stop, two state troopers shot at four unarmed men - three black and one Hispanic. The troopers wounded three of the men and later confessed to racial profiling. Departments have reacted by gathering race and ethnicity data on traffic stops. That way, officials can see whether officers stop a disproportionate number of people in a minority group." Leanan Minai, "Police close to rules on profiling," *St. Petersburg Times*, 3 July 2002.