



PROMOTING CIVIC PARTICIPATION

Issue: Renewal of the Voting Rights Act of 1965

What's at Stake?

As we move forward in addressing the voting irregularities that were highlighted in the recent elections, we must also continue to encourage the proper enforcement of our current laws like the Voting Rights Act (VRA) – considered one of the most important civil rights laws of our time.

Forty years ago, thousands of Americans risked their lives to challenge systems that prevented millions of Americans from exercising their right to vote. After continued protests by civil rights activists and everyday citizens over the gross disenfranchisement of African Americans – culminating in a violent confrontation in 1965 during an Alabama protest for voting rights – President Johnson finally signed the VRA into law. The VRA continues to ensure that all racial minorities in America have equal access to the ballot box. Since being enacted, the temporary provisions of the VRA have been renewed and extended four times. These key temporary provisions must be reauthorized again by August of 2007. People For the American Way (PFAW) resoundingly supports the renewal and restoration of these temporary provisions within the VRA. Reauthorizing these provisions should be of paramount importance to anyone concerned about protecting the right to vote.

In particular, we must make certain that the following provisions are reauthorized:

- the requirement of preclearance by the DOJ or the federal court before any significant changes in local voting laws are authorized,
- the requirement of bilingual voting materials in certain counties, and
- the use of federal registrars and election monitors.

What Are the Issues?

Permanent Provisions – Section 2

Section Two of the VRA bans discrimination based on race nation-wide and requires certain localities to provide bilingual assistance to language minority voters. This section prevents the use of restrictive voter registration requirements and districting plans that undermine minority voter influence. **This section will remain in place whether or not temporary provisions are extended beyond 2007.**

Temporary Provisions

Pre-clearance

- Section 5 of the VRA requires jurisdictions with a history of discrimination to have their voting laws and regulations pre-approved (or “pre-cleared”) by the federal government or a federal court before they may be changed. The U.S. Department of Justice also has authority to send federal observers and examiners to covered jurisdictions to monitor elections for fairness. Section 5 was reauthorized with broad bi-partisan support in 1970, 1975, and 1982 (for 25 years).
- Section 5 applies to any state or county where a literacy test was used as of November 1, 1964, and where less than 50% of the voting age residents of the jurisdiction were registered to vote, or actually voted, in the presidential election of 1964, 1968, or 1972.
- Currently, Section 5 affects all or part of 16 states: All of Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, and Texas. Most of Virginia, 4 counties in California, 5 counties in Florida, 2 townships in Michigan, 10 towns in New Hampshire, 3 counties in New York, 40 counties in North Carolina, and three counties in South Dakota.

Bilingual voting materials

- Section 203 of the Act requires certain jurisdictions to provide bilingual language assistance to voters in communities where there is a concentration of citizens who are limited English proficient. This provision was added to the VRA in 1975 and reauthorized in 1982 and 1992 (for 15 years).
- The language assistance provisions of the VRA apply to four language groups:
 - Americans Indians,
 - Asian Americans,
 - Alaskan Natives, and
 - those of Spanish heritage.
- A community with one of these language groups will qualify for bilingual assistance under Section 203 of the Act if (1) more than 5% of the voting-age citizens in a jurisdiction belong to a single language minority community and have limited English proficiency; OR (2) more than 10,000 voting-age citizens in a jurisdiction belong to a single language minority community and are LEP; AND (3) the illiteracy rate of citizens in the language minority group is higher than the national illiteracy rate.

- As of 2002, there are 382 local jurisdictions that need to provide language assistance in Spanish and 119 that must provide assistance to Asian Americans, Alaska Natives, and/or Native Americans. Because some of these jurisdictions overlap, a total of 466 local jurisdictions across 31 states are covered by the language minority provisions of the Act.

Federal Examiners and Observers

Sections 6-9 of the Act authorize the federal government to send federal election examiners and observers to certain jurisdictions covered by Section 5 where there is evidence of attempts to intimidate minority voters at the polls.

Status in 109th Congress

A bill has not yet been filed to renew Sections 5, 203, or 6-9. However, Representatives John Lewis (D-5th GA), James Sensenbrenner (R-5th WI), John Conyers (D-14th MI), Steve Chabot (R-1st OH), and Jerrold Nadler (D-8th NY) introduced a concurrent resolution (H.R. 216) on Wednesday, July 27, 2005 stating their commitment to the renewal of the VRA.

The House Judiciary Subcommittee on the Constitution completed its first series of oversight hearings on the VRA in fall 2005. They conducted nine hearings. On Wednesday, March 8, 2006, another oversight hearing was held where additional reports documenting continued voter disenfranchisement and discrimination were introduced into the record. We expect to see reauthorization legislation by the end of March, with additional hearings scheduled in the full House Judiciary Committee and floor action in April.

Senate Judiciary Committee Chairman Arlen Specter (R-PA) recently recommitted himself to hold Senate hearings soon, with the goal of reauthorizing the bill before the end of 2006. Senator Ted Kennedy (D-MA) has been leading negotiations with Chairman Specter to move VRA reauthorization forward. We currently expect Senate hearings to commence in April and continue in May, and hope for Senate floor action before the August recess.

What Can You Do to Support the Renewal of the Voting Rights Act?

Renew and Restore the VRA

- It is important not only to reauthorize these expiring provisions, but we must also restore these expiring provisions to their original intent as contemplated by its drafters in 1965. Unfortunately, certain Supreme Court cases have weakened the enforceability of these provisions and we must take this opportunity to clarify these provisions legislatively so that there will not be any weakening by the courts in the future. With the current Supreme Court, this is particularly important. Thus, simply asking for straight reauthorization is not sufficient.

Diffuse Myths about the VRA

- Many have questioned why we don't simply make the temporary provisions permanent. While this may seem attractive, doing so would actually make it vulnerable to a constitutional challenge and ultimately eliminate the effectiveness of the VRA. Current legal doctrine requires that statutes such as Section 5 that are race conscious be "narrowly tailored" to address the harms they are designed to cure. As a result, many legal experts question whether the federal courts would find a *permanent* Section 5 to be "narrowly tailored," such as to survive a constitutional attack.
- Many have also questioned why we don't simply make Section 5 nationwide. Similar to the argument against making Section 5 permanent, making it "nationwide" would also make the section vulnerable to constitutional attack as not "narrowly tailored" to address the harms it is designed to cure. Section 5 is directed at jurisdictions with a history of discriminating against minority voters, and expanding it nationwide does not meet this requirement. Moreover, nationwide application of Section 5 would be extremely difficult to administer, given the volume of voting changes that would have to be reviewed. This expansion of coverage would dilute the Department of Justice's ability to appropriately focus their work on those jurisdictions where there is a history of voting discrimination.

Take Action

- Participate in PFAW public meetings, Congressional call-in days, and stay alert for other PFAW-sponsored activities that arise as the renewal process gets underway.
- If you suspect a violation of the Voting Rights Act has occurred, record the violation, violation date, and where the violation took place. Report the violation to your local voting agency and keep a copy of what you submit for yourself.
- Call PFAW (1-800-326-7329) to report the violation so that we may also document these problems.

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