



## FairVote Policy Perspective: Fixing the Voting Rights Act

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### Summary

- *Shelby County v. Holder (2013)*: Supreme Court invalidates Section 4(b) of Voting Rights Act, nullifies formula for federal pre-clearance of state and local voting laws.
- Rep. Sensenbrenner, Rep. Conyers, and Sen. Leahy propose Voting Rights Amendment Act of 2014 (H.R. 3899).
- This legislation creates a new coverage formula: states would be covered under the new formula if they have had five or more violations in past 15 years; localities with three or more violations would be covered under the proposed formula.
- Other provisions of the legislation would strengthen Section 3 of the Voting Rights Act, providing an easier pathway for citizens to seek injunctive relief against potentially discriminatory voting laws.
- While the VRA Amendment is an important step toward a federally protected right to vote, it is not a cure-all policy.

### Introduction

The Voting Rights Act was signed into law by President Lyndon B. Johnson in 1965. Prior to the law's passage, disenfranchisement based on race was prohibited under the Fifteenth Amendment. But despite this Constitutional guarantee, in much of the South, and even in pockets elsewhere in the nation, a powerful system of racially discriminatory laws and practices acted as de facto disenfranchisement. These racially-discriminatory voting policies were met with demonstrations, and violence against voting rights activists in the South received national attention – creating a perfect storm for the law's passage.

Sections 4 and 5 of the Act created a special provision called pre-clearance, which established a system for federal protection of voting rights in jurisdictions deemed most likely to discriminate. Nine states, mostly in the South, were subject to pre-clearance, meaning election law changes had to be cleared with the Justice Department before being enacted.

Last June's Supreme Court decision in *Shelby County v. Holder* invalidated the formula on which pre-clearance relied, rendering the policy moot. The Court ruled that Section 4(b) was unconstitutional because it infringed upon principles of federalism and equal sovereignty, without sufficient justification for doing so, as the formula was based on evidence of discrimination that was decades old. It didn't invalidate pre-clearance authority itself, but it did effectively take it away until Congress creates a new formula, one which utilizes current data. The VRAA provides just such a formula.

## **Voting Rights Amendment Act**

Rep. Jim Sensenbrenner (R-WI), Rep. John Conyers (D-MI), and Sen. Patrick Leahy (D-VT) proposed the Voting Rights Amendment Act of 2014 (H.R. 3899) last month in an effort to revive pre-clearance in a way that complies with the Supreme Court's ruling that "current burdens [...] must be justified by current needs."

The bill rewrites the criteria for states and localities requiring pre-clearance. States with five or more federal law violations in the past 15 years and localities with three or more violations would be covered, as would localities with one or more violation and what the bill characterizes as "persistent, extremely low minority turnout."

It also amends Section 3 by strengthening the "bail-in" provision. Whereas previously, intentional discrimination had to be proven for an action to count as a violation, the new provision would alter that to include any violation that has a discriminatory effect, which is much easier to prove in court than deliberate intent.

The legislation also expands transparency, requiring all jurisdictions to provide public notice of election procedure changes within 180 days of an election, information about polling locations, and redistricting related changes. Furthermore, it reaffirms the Attorney General's power to send election observers to covered jurisdictions and expands it to include areas with histories of issues with language minority groups.

The Amendment also makes preliminary injunctive relief easier to seek for residents who could potentially be discriminated against. The standard would be that plaintiffs only need to show that a law's hardship to them outweighs hardship to the defendant.

Unfortunately, the bill does exempt voter I.D. laws from counting as violations that would bail-in states to Section 4 unless a federal court judged it so.

## **Conclusions**

We support the passage of Voting Rights Amendment Act. It is an improvement over the post-*Shelby County* status quo and extends important protections to voters ahead of the fall elections.

The legislation is not perfect. The voter I.D. exemption is less than ideal, as is the low bar states must clear to avoid coverage. Several states with histories of discrimination would not be covered under the new formula, at least initially. Still, it is considerably better than what we have now.

The bill has a bipartisan group of 18 co-sponsors in the House of Representatives, and House Majority Leader Eric Cantor (R-VA) has not ruled out his support for the legislation, which could lead to House leadership support. President Obama is on the record calling for Congress to pass a solution to the status quo, and Democrats make up more than half of the bill's co-sponsors.

Passage of the VRAA is by no means a foregone conclusion. We recognize that recent Congresses have found it difficult to pass even historically non-controversial legislation. But the VRAA appears to enjoy some bipartisan support, which is a welcome sign that this law may well be an opportunity for Congress to work together to solve a widely-recognized problem.

## Sources

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