

VRA for Today

Moving Voting Rights Forward

BILL SUMMARY: Voting Rights Amendment Act of 2014

We need a modern, flexible, and forward-looking Voting Rights Act (VRA). A bipartisan bill introduced on January 16, 2014 in Congress, the Voting Rights Amendment Act of 2014 (H.R.3899/S.1945), includes many elements of an effective approach.

Enhancing the Ability to Apply Preclearance Review when Needed

The VRAA amends Section 3(c) of the Voting Rights Act to permit a federal court to use its discretion to order a preclearance remedy if it finds any violation of the VRA, including a violation based on a finding of discriminatory intent or result. Under current law, a court can only order a preclearance remedy if it finds a constitutional violation, which requires a finding of intentional discrimination. This bill does contain a notable exception: a federal court could not order a preclearance remedy based on a finding that a state's photo ID law resulted in racial discrimination in violation of Section 2 of the Act.

Nationwide Review and Remedies for Current Discrimination

The VRAA provides that any state that has had five (5) voting rights violations in the prior 15 years, including one statewide violation, would be subject to Section 5 preclearance, meaning a review of all voting changes at the state and county level, before those changes can be implemented. A county in a non-covered state would be required to have voting changes precleared if it had either three (3) voting rights violations in the prior 15 years or one (1) violation and a determination by the Department of Justice (DOJ) that the county's minority voter turnout was "persistently extremely low." The DOJ will perform a nationwide, annual assessment to determine which states and counties meet these new criteria. In this way, the coverage is constantly updated to reflect the most recent record of discrimination in each state and county. A state or county covered by this mechanism would remain covered for 10 years.

Greater Transparency with Nationwide Notification

The VRAA requires all states and counties to provide public notice of certain voting changes, including: last-minute changes, changes to polling place resources, and changes relating to demographics and electoral districts, such as redistricting, reapportionment, change from at-large to district-based elections, and changes from district-based to at-large elections. It also requires states and counties to disclose certain demographic information about the change under particular circumstances.

Expanding the Effective Federal Observer Program

The VRAA clarifies that the U.S. attorney general retains the ability to send federal observers to monitor elections in places with Section 5 preclearance obligations. It also expands the program to permit the attorney general to send federal observers to places that are required under the VRA to provide election materials in multiple languages.

Stopping Discriminatory Voting Changes Before They Take Effect

The VRAA enhances the ability of voters to obtain preliminary injunctive relief when challenging certain types of voting changes that are likely to be discriminatory. This provision would allow

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courts to maintain the status quo while reviewing a potentially discriminatory voting change. This standard would be applied by the courts on a case-by-case basis, is designed to address what the Supreme Court calls “current needs,” and would apply nationwide. This ability for a court to “press pause” on a voting change is especially important because after-the-fact remedies are generally not helpful in voting rights cases given the difficulty of fashioning a remedy that restores to voters the equal opportunity to participate in an election that has already taken place.