



H.R. 9 — A Bill to Amend the Voting Rights Act of 1965

Calendar No. 521

Read the second time on July 17, 2006, and placed on the Senate Legislative Calendar under General Orders.

Noteworthy

- Under a unanimous consent agreement reached on July 19, the Senate today at 9:30 a.m. will consider H.R. 9, an act to amend the Voting Rights Act of 1965, with up to 8 hours of debate, equally divided, with no amendments in order to the bill; following the use or yielding back of time, the Senate will vote on passage without any intervening action or debate.
- The House passed H.R. 9 on July 13, 2006, by a vote of 390-33. That bill was then placed on the Senate Calendar (Order No. 521).
- An identical bill, S. 2703, was introduced by Senator Specter on May 3, 2006. The Judiciary Committee considered the bill in executive session yesterday, and agreed to it, as amended, by a vote of 18-0.
- The Voting Rights Act of 1965 was initially passed in response to post-Civil War Reconstruction efforts to disenfranchise black voters. It was amended in 1970, 1975, 1982, and 1992 and remains the most significant piece of civil rights legislation enacted in the United States.
- Although most provisions of the Voting Rights Act are permanent, key provisions such as Section 5 (which requires “preclearance” of voting changes for covered jurisdictions) and Section 203 (which requires voting materials in non-English languages for certain jurisdictions) are set to expire in the summer of 2007. H.R. 9, in addition to making certain amendments to the VRA, reauthorizes those expiring provisions for an additional 25 years.

Background

The Voting Rights Act of 1965 was initially passed in response to post-Civil War Reconstruction efforts to disenfranchise black voters. Congress enacted the law pursuant to its powers to enforce the Fifteenth Amendment's prohibition on racial discrimination in voting and the Fourteenth Amendment's guarantee of equal protection under the law. Both of those Constitutional Amendments state, "The Congress shall have power to enforce [the Amendments' provisions] by appropriate legislation."¹

The original Act covered seven Southern states, where registration rates for black voters, at the time, averaged only 29.3 percent.² That law suspended all "tests or devices" that had been used by those states in patterns of racial discrimination³ for purposes of disenfranchisement. Through oversight by the Department of Justice, the Act sought to ensure that minority representation would be maximized by requiring all redistricting plans and all changes in voting procedures in covered jurisdictions to be precleared. Jurisdictions were covered based on statistical data revealing a pattern of disfranchising minority voters and evading federal civil rights laws.

The Act was amended in 1970, 1975, 1982, and 1992. Most provisions of the Voting Rights Act are permanent and, therefore, do not need reauthorization. Among the most important of those permanent provisions is Section 2, the provision that codifies the Fifteenth Amendment, confirming by statute that no political subdivision may deny or abridge voting rights on account of race or color.

Other key provisions are temporary and are set to expire on June 29, 2007. Two of the law's most notable temporary provisions are Section 5 and Section 203. Section 5 requires certain covered jurisdictions to preclear any voting change with the Department of Justice, based on election data from 1964, 1968, and 1972. Section 203 requires non-English voting materials be provided to assist citizens in certain jurisdictions where at least 5 percent of the voting age population consists of a single-language, limited English proficient minority or where at least 10,000 voting-age citizens are limited English-proficient.

Bill Provisions

Sections 1 and 2: These sections provide a short title as the "Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006" (VRARA) and make findings addressing the background of this legislation.

Section 3: Changes Relating to Use of Examiners and Observers. Section 3(c) would repeal provisions of the VRA that authorize the court or the Attorney General to send Federal examiners to either covered jurisdictions, or where the court believes it is necessary to protect citizens' voting rights. Under current law, election observers can only be assigned after a jurisdiction has been

¹ U.S. CONST. amend. XIV, § 5; U.S. CONST. amend. XV, § 2.

² Senate Report 162, at 44 (April 21, 1965).

³ See Senate Report 162, at 10.

certified for Federal examiner coverage. Because section 3(c) repeals those Federal examiner provisions, section 3(a) authorizes the Attorney General or court under Section 3(a) of the VRA to *directly* assign Federal observers upon a finding that there is a reasonable belief that a violation of the Fourteenth or Fifteenth amendment has occurred or will occur.

Section 4: Reconsideration of Section 4 by Congress. H.R. 9 extends Section 4 of the VRA, which identifies by formula those jurisdictions subject to the Federal oversight provisions contained in Sections 5 through 8 of the VRA and sets out “bailout” requirements for another 25 years.

Section 5: Criteria for Declaratory Judgment. Section 5 of the VRA requires covered jurisdictions to “preclear” all voting changes with either the Department of Justice or the U.S. District Court for the District of Columbia. H.R. 9 seeks to overturn two Supreme Court decisions that have affected that section, *Reno v. Bossier Parish School Board* and *Georgia v. Ashcroft*. H.R. 9 overturns *Bossier Parish* by amending § 5 of the VRA to make clear that retrogression is not the only violation of voting rights protected by the preclearance procedure; that a voting rule change motivated by “any discriminatory purpose” cannot be precleared. H.R. 9 partly rejects the Court’s decision in *Georgia v. Ashcroft* by providing that minority citizens have the right to elect their “preferred candidate of choice.”

Section 6: Expert Fees and Other Reasonable Costs of Litigation. The VRA currently authorizes prevailing parties (other than the United States) to recover attorneys’ fees in litigation. H.R. 9 adds to this by also allowing prevailing parties to recover costs associated with expert witnesses.

Section 7: Extension of Bilingual Election Requirements. H.R. 9 extends the VRA’s minority language requirements for a period of 25 years. Sections 203 and 4(f) of the VRA require that bilingual election assistance be given to language minority citizens in certain States and subdivisions. Under these sections, covered jurisdictions are required to provide voting materials in the applicable covered language (Spanish, Asian-American, Native American, and Native Alaskan).

Section 8: Use of American Community Survey Census Data. H.R. 9 amends the Voting Rights Act to require that determinations for coverage under § 203 will be made based upon information compiled by the American Community Survey on a rolling 5-year average. Under the VRA, those determinations had been made by the Census Bureau’s long form questionnaire, which will not be used by the Census Bureau after 2010.

Administration Position

On July 13, 2006, the Administration released a Statement of Administration Policy (SAP) on H.R. 9, as it was reported to the House. (Note: The bill passed the House unamended.) That SAP reads as follows:

The Administration is strongly committed to renewing the Voting Rights Act, and therefore supports House passage of H.R. 9. The Voting Rights Act is one of the most significant pieces of civil rights legislation in the Nation’s history, and the

President has directed the full power and resources of the Justice Department to protect each citizen's right to vote and to preserve the integrity of the Nation's voting process. The Administration is pleased the House is taking action to renew this important legislation. The Administration supports the legislative intent of H.R. 9 to overturn the U.S. Supreme Court's 2003 decision in *Georgia v. Ashcroft* and its 2000 decision in *Reno v. Bossier Parish School Board*.

Other Views

Although no "Additional Views" were submitted with the House Committee Report, primary objections to the bill can be gleaned from the Committee's markup transcript. That transcript is contained in H. Rept. 109-478 and begins on page 104.

Possible Amendments

Under the U.C., no amendments are in order.