

Date of Hearing: May 7, 2013

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Paul Fong, Chair
AJR 15 (Alejo) – As Introduced: March 6, 2013

SUBJECT: Voting Rights Act of 1965.

SUMMARY: Urges the Supreme Court of the United States (US) to affirm the constitutionality of Section 5 of the Voting Rights Act (VRA) of 1965. Specifically, this resolution:

- 1) Urges the Supreme Court of the US to affirm, as it has done on several occasions since 1965, the clear constitutionality of Section 5 of the VRA, which provides fundamental protections to the right of each citizen of the US to vote and to have his or her vote counted.
- 2) Makes the following findings and declarations:
 - a) Political sovereignty is the cornerstone of the democratic process in our country;
 - b) The remedy and redress of grievances against the government is ensured through the election of representatives who voice the concerns of the public;
 - c) The right to vote is a fundamental right of citizens of the US and is the most important of civic rights and obligations;
 - d) The political sovereignty of our country is jeopardized when eligible people fail to vote;
 - e) American democracy is strengthened when we create and maintain voting systems that ensure the ability of all citizens to practice civic engagement by taking part in elections;
 - f) Voter discrimination based on race is not a thing of the past but a current reality that persists in places such as Monterey County, where discriminatory voting procedures have raised concerns as recently as 2002 and 2004;
 - g) The Fifteenth Amendment to the US Constitution ensures that the right of citizens of the US to vote is not denied on account of race or color;
 - h) The Fifteenth Amendment to the US Constitution grants Congress the authority to protect the right to vote;
 - i) Congress has exercised its authority to protect the right to vote by passing landmark legislation of the civil rights era known as the VRA that seeks to abolish discriminatory procedures and barriers that disenfranchise minority voters;
 - j) Section 5 of the VRA has contributed to the immense progress in protecting and expanding the right to vote over the past few decades by ensuring that state and local election practices are just and fair;

- k) Section 5 of the VRA has played, and continues to play, a critical role in preventing and addressing real threats to the right to vote of all Americans;
- l) Section 5 of the VRA allows for adjustments as conditions change and is justified by the ongoing disproportionate enactment of discriminatory voting policies in the presently affected jurisdictions;
- m) The VRA is a reflection of the assurance provided by the US Constitution that all Americans have the right to vote without facing discrimination, poll taxes, and other abuses;
- n) The Congress of the US has, time and again, reaffirmed the need for protection against abuses that might curtail the right to vote by renewing Section 5 of the VRA; and,
- o) Section 5 of the VRA is currently under review by the Supreme Court of the US.

EXISTING LAW:

- 1) Provides, pursuant to the 15th Amendment to the US Constitution, that the right of citizens of the US to vote shall not be denied or abridged by the US or by any state on account of race, color, or previous condition of servitude. Gives Congress the power to enforce this provision by appropriate legislation.
- 2) Prohibits, pursuant to Section 2 of the VRA, voting practices or procedures that discriminate on the basis of race, color, or membership in specified language minority groups.
- 3) Prohibits, pursuant to Section 5 of the VRA, any change with respect to voting from being enforced in specified covered jurisdictions (and political subunits within those covered jurisdictions) unless and until the jurisdiction first obtains a determination by the US Department of Justice or the US District Court for the District of Columbia that the proposed voting change does not deny or abridge the right to vote on account of race, color, or membership in a language minority group.

FISCAL EFFECT: This resolution is keyed non-fiscal by the Legislative Counsel.

COMMENTS:

- 1) Purpose of the Resolution: According to the author, "Voter discrimination is not just a thing of the past, but a current reality that still persists today. Monterey County—which is one of three California counties covered by Section 5—has benefited from the Voting Rights Act as recently as 2004. In order to protect the welfare of our citizens and voters, we must urge the Supreme Court of the United States to affirm the constitutionality of Section 5."
- 2) Voting Rights Act of 1965: The 15th Amendment to the US Constitution provides, in part, that "[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude." Additionally, the 15th Amendment authorizes Congress to enact legislation to enforce its provisions. The 15th Amendment was ratified in February 1870.

In 1965, Congress determined that state officials were failing to comply with the provisions of the 15th Amendment. Congressional hearings found that litigation to eliminate discriminatory election practices was largely ineffective, because states and local jurisdictions would institute new discriminatory practices to replace any such practices that were struck down in court. As a result, Congress passed and President Johnson signed the VRA. The VRA, among other provisions, prohibits any "voting qualification or prerequisite to voting or standard, practice, or procedure" from being imposed by any "State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color."

While much of the VRA is permanent, certain special provisions of the VRA are temporary, including Section 5. When the VRA was enacted, Section 5 was scheduled to expire in five years. Subsequently, Congress extended those provisions for another five years in 1970, an additional seven years in 1975, an additional 25 years in 1982, and again for an additional 25 years in 2006. As a result, Section 5 currently is scheduled to expire in 2031.

As noted above, Section 5 requires certain covered jurisdictions to receive approval for any changes to law and practices affecting voting from the US Department of Justice or the US District Court for the District of Columbia to ensure that the changes do not have the purpose or effect of "denying or abridging the right to vote on account of race or color." The requirement to obtain approval under Section 5 is commonly referred to as a "preclearance" requirement.

- 3) Coverage Under Section 5: The determination of the jurisdictions that are subject to the preclearance requirements of Section 5 is made primarily in accordance with formulas contained in Section 4 (b) of the VRA. (Jurisdictions can also be subject to the preclearance requirements if they are found by a federal court to have violated the Constitution's prohibition on voting discrimination.) When the VRA was originally enacted in 1965, it provided that a jurisdiction was covered by the preclearance requirements if it maintained a "test or device" restricting the opportunity to vote on November 1, 1964, and if less than 50 percent of persons of voting age were registered to vote on November 1, 1964, or less than 50 percent of persons of voting age voted in the November 1964 presidential election. No California jurisdictions were covered by Section 5 pursuant to this formula.

When Congress reauthorized Section 5 in 1970, it also adopted an additional coverage formula, identical to the original formula except that the relevant dates in the formula were changed to November 1968. This new coverage formula resulted in two California counties being covered by the preclearance requirements – Merced and Yuba Counties. When Section 5 was reauthorized in 1975, Congress again added another coverage formula based on tests or devices and voter registration and participation in November 1972. This new formula also provided that the practice of providing election information only in English in states or political subdivisions where members of a single language minority constituted more than five percent of the citizens of voting age would be considered a "test or device" under the formula. This new formula resulted in two additional California counties being covered by the preclearance requirements—Kings and Merced Counties.

Congress did not create new coverage formulas when it reauthorized Section 5 in 1982 and 2006.

The VRA also provides a mechanism for jurisdictions that are subject to Section 5 to "bailout" of coverage under that section. Last August, Merced County successfully bailed out pursuant to that mechanism. Kings, Monterey, and Yuba Counties remain subject to the provisions of Section 5 of the VRA, though two irrigation districts and one city within those counties have bailed out from Section 5 coverage.

- 4) 2006 Reauthorization of Section 5: As noted above, in 2006, Congress reauthorized Section 5 of the VRA for an additional 25 years. Prior to reauthorizing Section 5, Congress conducted extensive hearings on Section 5, and on the continued use of discriminatory practices in jurisdictions that were covered by Section 5. In reauthorizing Section 5, Congress found that "[t]he continued evidence of racially polarized voting in each of the jurisdictions covered by the expiring provisions of the Voting Rights Act of 1965 demonstrates that racial and language minorities remain politically vulnerable, warranting the continued protection of the Voting Rights Act of 1965," and that "[t]he record compiled by Congress demonstrates that, without the continuation of the Voting Rights Act of 1965 protections, racial and language minority citizens will be deprived of the opportunity to exercise their right to vote, or will have their votes diluted, undermining the significant gains made by minorities in the last 40 years." The legislation to reauthorize Section 5, which included these findings, was approved by a vote of 98-0 in the US Senate, and a vote of 390-33 in the US House. It was signed into law by President George W. Bush.
- 5) Constitutionality of Section 5 and Shelby County v. Holder: In April 2010, Shelby County in Alabama filed suit in the US District Court for the District of Columbia challenging the constitutionality of Section 5 of the VRA, and of the coverage formulas contained in Section 4 (b) of the VRA. Because the State of Alabama is covered under the preclearance requirements of Section 5, Shelby County is also covered as a political subdivision of Alabama. In the lawsuit, Shelby County contends that Congress exceeded its authority under the 15th Amendment and thus violated the 10th Amendment and Article IV of the US Constitution when it voted to reauthorize Section 5 without changing or updating the coverage formulas. The District Court rejected Shelby County's arguments, and upheld the constitutionality of the Section 5 reauthorization and the coverage formulas contained in Section 4 (b). On appeal, the US Court of Appeals for the District of Columbia Circuit affirmed the ruling of the District Court, and Shelby County subsequently appealed to the US Supreme Court. The US Supreme Court heard oral argument in that case, Shelby County v. Holder, in February of this year. The Supreme Court is expected to issue its decision in that case by the end of June.
- 6) Arguments in Support: In support of this resolution, the American Association of University Women - California writes:

The Voting Rights Act is widely acknowledged as the most effective piece of civil rights legislation in American history. It was passed to make real the promise of political equality in the Declaration of Independence and the Constitution. Section 5 ensures state and local governments with a history of voting discrimination don't implement new laws or practices that deny Americans the equal right to vote. Unfortunately, it is still sorely needed....

Section 5 was crucial in turning back the tide and stopping real discrimination. It blocked a discriminatory photo ID requirement in Texas, which required a kind of

ID more than 600,000 eligible voters did not have. It required Florida to restore some early voting hours used especially by minority voters. And it blocked Texas redistricting maps after a federal court found they intentionally discriminated against Latino voters.

But Section 5 did much more. It deterred states from passing discriminatory laws in the first place. In South Carolina, lawmakers rejected a highly restrictive voter ID requirement because they knew it wouldn't pass muster. Instead, the state passed a law that was more flexible for the 216,000 registered citizens without driver's licenses or nondriver's IDs. A federal court approved the less restrictive version.

The last few years have seen some of the biggest fights over voting in decades. After an election marred by discriminatory voting laws and long lines in which minorities had to wait twice as long as whites, Section 5 of the Voting Rights Act is needed more than ever.

REGISTERED SUPPORT / OPPOSITION:

Support

American Association of University Women - California

Opposition

None on file.

Analysis Prepared by: Ethan Jones / E. & R. / (916) 319-2094