

Date of Hearing: September 12, 2013

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING  
Paul Fong, Chair  
SJR 14 (Yee & Wright) – As Introduced: July 10, 2013

SENATE VOTE: 27-10

SUBJECT: Voting Rights Act of 1965.

SUMMARY: Urges Congress and President of the United States (U.S.) to enact amendments to the Voting Rights Act of 1965 (VRA) that would restore Section 4 of the VRA with a new coverage formula and update the entire VRA in order to address ongoing violations of voting rights in the states. Specifically, this resolution:

- 1) Makes the following findings and declarations:
  - a) The 15<sup>th</sup> Amendment to the U.S. Constitution ensures that the rights of citizens of the U.S. to vote is not denied on account of race or color;
  - b) The 15<sup>th</sup> Amendment to the U.S. Constitution grants the U.S. Congress the authority to protect the right to vote;
  - c) The U.S. Congress has exercised its authority to protect the right to vote by passing landmark legislation of the civil rights era known as the VRA;
  - d) Sections 4 and 5 of the VRA have contributed to the immense progress in protecting and expanding the right to vote over the past few decades by ensuring that state and local elections practices are just and fair; and,
  - e) The U.S. Supreme Court, in *Shelby County v. Holder*, held that the coverage formula in Section 4 of the VRA is unconstitutional in violation of the 10<sup>th</sup> Amendment of the U.S. Constitution and can no longer be used as a basis for requiring jurisdictions to subject proposed changes in voting procedures to federal preclearance under Section 5 of the VRA.
- 2) Declares that the Legislature of the State of California urges Congress and U.S. President to enact amendments to the VRA that would restore Section 4 with a new coverage formula and update the entire VRA in order to address ongoing violations of voting rights in the states.

EXISTING LAW:

- 1) Provides, pursuant to the 15<sup>th</sup> Amendment to the U.S. Constitution, that the right of citizens of the U.S. to vote shall not be denied or abridged by the U.S. 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 unless and until the jurisdiction first obtains a determination by the U.S. Department of Justice (DOJ) or the U.S. 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 authors:

On Election Day, voters across our state and nation make their voices heard by electing representatives to best represent their district and its issues.

The Voting Rights Act of 1965 was a landmark piece of legislation that established federal oversight of elections administration. Specifically this oversight would be over states and local governments, falling under the Section 4(b) coverage, that have historically been discriminatory with their voting practice. These states would not be able to implement any changes affecting voting without the approval of the United States Attorney General or preclearance, as stated in Section 5 of the Voting Rights Act. This has curbed much of voter suppression and allowed minorities their fundamental right to vote.

Though groundbreaking, this legislation had provisions that should be updated. This year, the United States Supreme Court struck down section 4(b) of the Voting Rights Act of 1965. This took out all federal oversight for voting suppression. Without a covered jurisdiction, Section 5 is also null and void.

- 2) Voting Rights Act of 1965: The 15<sup>th</sup> Amendment to the U.S. 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 conditions of servitude." Additionally, the 15<sup>th</sup> Amendment authorizes Congress to enact legislation to enforce its provisions. The 15<sup>th</sup> Amendment was ratified in February 1870.

In 1965, Congress determined that state officials were failing to comply with the provisions of the 15<sup>th</sup> Amendment. Congressional hearings found that litigation to eliminate discriminatory practices was largely ineffective because state 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."

Section 2 of the VRA is a nationwide prohibition against voting practices and procedures,

including redistricting plans and at-large election systems, poll worker hiring, and voting registration procedures, that discriminate on the basis of race, color, or membership in a language minority group. Section 2 allows the Attorney General (AG), as well as affected private citizens, to bring lawsuits in federal court to challenge practices that may violate the VRA. Section 4 of the VRA sets the criteria for determining whether a jurisdiction is covered under certain provisions of the VRA, including the requirement for review of changes affecting voting under Section 5. Section 5 of the VRA requires certain states and covered jurisdictions to receive approval for any changes to law and practices affecting voting from the U.S. DOJ or the U.S. District Court of 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) Constitutionality of Section 5 and Shelby County v. Holder: 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, and 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.

In April 2010, Shelby County in Alabama filed suit in the U.S. 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 was covered under the preclearance requirements of Section 5, Shelby County was also covered as a political subdivision of Alabama. In the lawsuit, Shelby County contends that Congress exceeded its authority under the 15<sup>th</sup> Amendment and thus violated the 10<sup>th</sup> Amendment and Article IV of the U.S. Constitution when it voted to reauthorize Section 5 without changing or updating the formulas that determined which jurisdictions were covered under Section 5. 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 U.S. Court of Appeals for the District of Columbia Circuit affirmed the ruling of the District Court, and Shelby County subsequently appealed to the U.S. Supreme Court.

On June 25, 2013, the U.S. Supreme Court, in *Shelby County v. Holder*, held that the coverage formula in Section 4(b) of the VRA is unconstitutional and can no longer be used as a basis for subjecting jurisdictions to preclearance under Section 5 of the VRA. The Court stated that although the formula was rational and necessary at the time of its enactment, it is no longer responsive to current conditions. The Court, however, did not strike down Section 5, which contains the preclearance conditions. Without Section 4(b), however, no jurisdiction will be subject to Section 5 preclearance unless Congress enacts a new coverage formula.

The effect of the Shelby County decision is that the jurisdictions identified by the coverage formula in Section 4(b) no longer need to seek preclearance from the AG or the U.S. District Court for the District of Columbia before implementing new voting changes, unless they are covered by a separate court order entered under Section 3(c) of the VRA.

All or specific portions of the following states were required to have their voting changes precleared before the U.S. Supreme Court decision in Shelby: Alabama, Alaska, Arizona,

Florida, Georgia, Louisiana, Michigan, Mississippi, New Hampshire, New York, North Carolina, South Carolina, South Dakota, Texas, and Virginia. Also included were the California counties of Kings, Monterey, and Yuba. Merced County previously was subject to the preclearance requirement, but it successfully bailed out from Section 5 coverage last year.

According to the U.S. DOJ, the ruling in Shelby County does not affect Section 3(c) of the VRA. Jurisdictions covered by a preclearance requirement pursuant to court orders under Section 3(c) remain subject to the terms of those court orders. Additionally, the Supreme Court's decision states that Section 2 of the VRA, which prohibits discrimination in voting based on race or language minority status, and which applies on a permanent nationwide basis, is unaffected by the decision. Likewise, other provisions of the VRA that prohibit discrimination in voting remain in full force and effect, as do other federal laws that protect voting rights, including the Uniformed and Overseas Citizens Absentee Voting Act, the National Voter Registration Act, and the Help America Vote Act.

REGISTERED SUPPORT / OPPOSITION:

Support

California NAACP  
San Francisco NAACP  
Organization of Chinese Americans San Mateo

Opposition

None on file.

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