



Legislative Bulletin.....June 21, 2006

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H.R. 9 — Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006

Summary of the Bills Under Consideration Today:

Total Number of New Government Programs: 0

Total Cost of Discretionary Authorizations: \$15 million over five years

Effect on Revenue: \$0

Total Change in Mandatory Spending: \$0

Total New State & Local Government Mandates: 0

Total New Private Sector Mandates: 0

Number of Bills Without Committee Reports: 0

Number of Reported Bills that Don't Cite Specific Clauses of Constitutional Authority: 0

H.R. 9 — Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006 — *as reported* (Sensenbrenner, R-WI)

Order of Business: The bill is scheduled for consideration on Wednesday, June 21, 2006, subject to a structured rule. The two amendments made in order under the rule ([H. RES. 878](#)) are also summarized in this document.

Summary: H.R. 9 would amend the Voting Rights Act of 1965 to modify and extend provisions regarding election examiners, disfranchising voting qualifications, bilingual balloting, payment of certain attorney fees in enforcement proceedings, etc. The specific provisions of the bill are as follows:

- Directs the Office of Personnel Management (OPM) Director to assign as many observers for a political subdivision as he deems appropriate when:
 - 1) a court has authorized the appointment of observers for such subdivision;
 - 2) the Attorney General certifies that he has received legitimate written complaints (from residents, elected officials, or civil organizations) that efforts to disfranchise voters are “likely to occur;” or
 - 3) the assignment of observers is necessary to enforce the 14th or 15th amendment, in the judgment of the Attorney General (AG). Stipulates that the AG should consider, among other things, “whether the ratio of nonwhite persons to white persons registered to vote within a subdivision appears to be **reasonably** attributable to violations of the 14th or 15th amendment, or whether **substantial evidence exists that bona fide efforts are being made** to comply with the 14th or 15th amendments.” It appears from the text that the burden to prove a violation has *not* occurred is substantially higher than the burden to show a violation may have “reasonably” occurred. Thus, in those instances, the assignment of observers seems to be highly probable.

Note: According to the Committee Report, current law (Section 8 of the VRA) authorizes the AG to request that OPM assign observers to jurisdictions where examiners are located to ensure voters are not disfranchised *only* after a jurisdiction has been certified for federal examiner coverage. The above mentioned provision would eliminate the requirement to first obtain certification by a federal examiner.

- Directs that observers must be assigned, compensated, and separated (for their observer duty) without regard to any other OPM statute (that may impede or conflict with their role as an observer).

- Directs the OPM Director to designate suitable persons in the official service of the United States to serve as observers, and authorizes observers to:
 - 1) enter and attend any election place for the purpose of observing whether eligible persons are being permitted to vote, and
 - 2) enter and attend any place for tabulating the votes cast in any election, to observe whether (legitimate) votes are being properly tabulated.

- Provides for the termination of assigned observers whenever the AG notifies OPM, or whenever the DC District Court determines in a declaratory judgment case, that there is no longer “reasonable cause to believe that persons will be deprived of or denied the right to vote on account of race or color.”

- Defines a political subdivision as one which the Director of the Census has determined that more than 50 percent of nonwhite persons of voting age residing there are registered to vote.

- Permits a political subdivision to petition the AG for a termination of election observers.

- Repeals sections 6, 7, and 9 of the VRA of 1965, relating to federal examiners (their role is supplanted by federal observers based on new provisions discussed above).
- Renames the Voting Rights Act in the U.S. Code to the “Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006.”
- Expands the criteria for a declaratory judgment (defined [here](#)) by a court to include any voting qualification or procedure that has the purpose of diminishing the ability of a citizen (on account of race or color) to elect their preferred candidate or that abridges their right to vote.
- Expands the legal fees to include “reasonable expert fees, and other reasonable litigation expenses” that the court may allow the prevailing party to include as part of their costs (to be paid for by the losing party).
- Extends bilingual election requirements for 25 years, through August 5, 2032; the bilingual provision in current law states “no covered state or political subdivision shall provide voting materials only in the English language.”
- Extends the coverage formulas and preclearance procedures of the VRA to 2032, whereby states and subdivisions are required to obtain clearance from the Department of Justice or the U.S. District Court for the District of Columbia *prior* to changing any election law.
- Revises the requirement in current law to use “census data” to instead use the “2010 American Community Survey census data” and subsequent data in 5-year increments; this provision effectively modifies the requirements for determining which states and political subdivisions will be covered by VRA provisions.
- Directs the Comptroller General to study the “implementation, effectiveness, and efficiency of the current section 203 of the Voting Rights Act” (regarding the required bilingual language assistance provisions) and alternatives to current implementation; requires a report be submitted to Congress within one year of enactment of this Act.

H.R. 9 also states a number of findings, including the following:

- “The 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;
- “The evidence clearly shows the continued need for Federal oversight in jurisdictions covered by the Voting Rights Act of 1965 since 1982, as demonstrated in the counties certified by the Attorney General for Federal examiner and observer coverage and the tens of thousands of Federal observers that have been dispatched to observe elections in covered jurisdictions;

- “Despite the progress made by minorities under the Voting Rights Act of 1965, the evidence before Congress reveals that 40 years has not been a sufficient amount of time to eliminate the vestiges of discrimination following nearly 100 years of disregard for the dictates of the 15th amendment and to ensure that the right of all citizens to vote is protected as guaranteed by the Constitution; and
- “Present day discrimination experienced by racial and language minority voters is contained in evidence, including the objections interposed by the Department of Justice in covered jurisdictions; the section 2 litigation filed to prevent dilutive techniques from adversely affecting minority voters; the enforcement actions filed to protect language minorities; and the tens of thousands of Federal observers dispatched to monitor polls in jurisdictions covered by the Voting Rights Act of 1965.”

Additional Information: The Voting Rights Act was initially passed in 1965 in response to evidence of disfranchisement of black citizens in several southern states. The primary purpose of the Act was to safeguard against potential efforts by states and localities to use tests to determine eligibility to vote, thereby discouraging voter participation among minorities. Thus, the VRA attempts to enforce the 13th Amendment (prohibiting slavery), the 14th Amendment (providing for equal protection under the law to all citizens, voting apportionment provisions, etc.), and the 15th Amendment (the right of all citizens to vote without regard to race, color, or previous condition of servitude).

According to CRS, at present, there are 16 states (in whole or in part) that are covered by the VRA. The VRA was modified and extended in 1970, 1975, 1982, and 1992. The major provisions of the VRA are summarized below:

Section 4. Prohibits the use of all literacy tests and any other “device” or undue requirement as a condition for voter registration in states and political subdivisions of states that are subject to the coverage formulas defined in VRA. The coverage formulas are based on census data, stipulates a state or subdivision is covered if 1) it maintained a test or device as a condition for voter registration in certain presidential election years (1964, 1968, and 1972), and 2) either less than 50 percent of citizens of legal voting age were registered to vote or less than 50 percent of citizens voted in the presidential election held in the year in which it used the test or device.” This section also includes a “bailout” provision that allows states to be removed from coverage of VRA.

Section 5. Establishes “preclearance” procedures whereby covered states and jurisdictions must obtain clearance for any change in voting law or procedures from either the Justice Department of the U.S. District Court for D.C. *prior* to implementing the proposed change.

Section 6-9. Establishes federal examiners and observers that are authorized to enter voting locations to ensure that valid citizens are not being disfranchised.

Section 203. Requires bilingual election assistance for covered areas (added in 1975). Specifically, this provision prohibits a covered state or subdivision from providing voting materials only in the English language.

Administration Policy: A Statement of Administration Policy (SAP) was not available at press time.

Possible Conservative Concerns: Conservatives have historically been concerned primarily with Sections 4 and 5 of the Voting Rights Act (discussed above). Many conservatives have found the preclearance requirements in Section 5 of VRA onerous and overly restrictive, and some covered Southern states have expressed concerns with the provisions in Section 4 that determine VRA coverage based on outdated census data. Conservatives have also expressed concerns about the cost and extension of the bilingual balloting provisions in section 203, arguing that they are expensive and unnecessary, and also criticizing the formula under which languages must be included.

This legislation does not significantly address these concerns, and primarily expands or extends the provisions of VRA, with the exception of the elimination the federal examiner's role (assumed by the federal observer).

Amendments: There are two amendments (Norwood and Westmoreland) made in order under the rule, which are summarized below (based on the actual text of the amendment):

1. Norwood (R-GA). Modifies Section 4 of the VRA regarding the formula for determining a “covered” state or subdivision; the amendment would update the current formula (which uses the 1964, 1968, and 1972 presidential elections for the voter turnout formula and uses 1964 to determine if a state had a discriminatory test in place) to use the last three presidential elections. Thus, it would be a “rolling formula” that would always include the *three most recent* presidential elections. The sponsor states that this amendment would “ensure that all states are treated equally under the VRA... rather than a certain few states and jurisdictions based on actions taken forty years ago.”

2. Westmoreland (R-GA). Directs the Attorney General to annually determine if each state and political subdivision covered by the VRA meets the requirements for a declaratory judgment (a court decision declaring the rights of each party, without awarding damages or instructing action). In other words, a covered state must seek a declaratory judgment in order to “bailout” from the provisions of the VRA, and this amendment would direct the DoJ to compile an annual list those states or subdivisions that could seek bailout. It would require the DoJ to publicly release this information and inform each state of its findings. If a state or subdivision was found to meet the requirements, the amendment would direct the DoJ to consent to the entry of a declaratory judgment in favor of the state. Therefore, the DoJ would be directed to agree with the state's contention that they meet the requirements for a bailout. According to the sponsor, this would “drastically reduce the cost and fact-finding necessary to achieve bailout under the statute.”

Committee Action: H.R. 9 was introduced on May 2, 2006, and referred to the Committee on the Judiciary's Subcommittee on the Constitution. The bill was marked-up and amended on May 10, and it was reported to the House by a vote of 33-1 the same day (H. Rept. [109-478](#)).

Cost to Taxpayers: CBO estimates that implementing H.R. 9 would cost \$1 million in FY07 and \$15 million over the FY07-FY11 period, subject to the availability of appropriated funds.

Does the Bill Expand the Size and Scope of the Federal Government?: The bill revises and extends current law and provisions of the Voting Rights Act, as described above.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: CBO notes that “Section 4 of the Unfunded mandates Reform Act (UMRA) excludes from the application of the act any legislative provisions that enforce constitutional rights of individuals” and has determined that VRA falls within that exclusion. As such, CBO has not reviewed this legislation for mandates as defined by UMRA.

Constitutional Authority: The Committee Report, H. Rept. [109-478](#), cites constitutional authority for this legislation under Section 5 of the Fourteenth Amendment (equal protection of the laws) and Section 2 of the Fifteenth amendment (right of citizens to vote). House Rule XIII, Section 3(d)(1), requires that all committee reports contain “a statement citing the *specific* powers granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution.” (*emphasis added*)

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