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## **The Voting Rights Act of 1965, As Amended: Its History and Current Issues**

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# The Voting Rights Act of 1965, As Amended: Its History and Current Issues

## Summary

Congress passed the Voting Rights Act in 1965 in response to widespread evidence of disfranchisement of black citizens in several southern states. This act protects citizens' right to vote primarily by forbidding covered states from using tests of any kind to determine eligibility to vote, by requiring these states to obtain federal approval before enacting any election laws, and by assigning federal officials to monitor the registration process in certain localities.

In 1970, Congress extended the Voting Rights Act for an additional five years, and its coverage to other jurisdictions when evidence presented at congressional hearings revealed continued racial discrimination in voting. Coverage of the act was extended to the entire country instead of just southern states. Under provisions of the act, private citizens can challenge in court discriminatory voting practices and election procedures. Covered jurisdictions must submit any proposed voting procedure or election law change to the U.S. District Court for the District of Columbia or to the U.S. Attorney General for preclearance. A nationwide ban on all literacy tests for voter registrants was added. Amendments also addressed residency requirements for voting in federal elections.

Amended again in 1975, Congress continued the Voting Rights Act for seven more years. It extended coverage of the act to more jurisdictions to protect the voting rights of ethnic groups whose language is other than English. The act requires that bilingual election assistance be provided for voters who need it. It permanently prohibits the use of literacy tests for voter registration and requires the Census Bureau to compile registration and voting statistics.

In 1982, Congress amended the act by expanding the conditions required for states to secure release from coverage. It extended the required period for compliance with the act under Section 4(a). The amendments provide that Congress "reconsider" the administrative provisions of the act (preclearance of election-law changes and assignment of examiners and election observers) in 1997, and that these provisions shall expire in 2007. The amendments enable courts to judge an election law to be discriminatory without proof that it was intended to be so, if the law resulted in abridging minority voting power.

With passage of the Voting Rights Language Assistance Act of 1992, Congress amended Section 203 of the Voting Rights Act to require election officials to provide bilingual services in jurisdictions with significant numbers of non-English speaking citizens of voting age and to extend the expiration date of Section 203 to 2007.

After the presidential election of 2000, there were allegations of voting irregularities and of violations of the Voting Rights Act in several states. Investigations into these allegations by private, state, and federal officials are presented. Lawsuits filed concerning the electoral processes in some states are discussed. Policy questions and pending legislation on the VRA in the 108<sup>th</sup> Congress are identified. This report will be updated when legislative activity occurs.



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# The Voting Rights Act of 1965, As Amended: Its History and Current Issues

## Introduction

### Right to Vote

Prior to the Civil War, the franchise was denied to nearly everyone except white male property owners who were over 21 years of age. After the War, the 38<sup>th</sup> Congress proposed the 13<sup>th</sup> Amendment to the state legislatures; it became a part of the Constitution in December 1865. The **13<sup>th</sup> Amendment** prohibits slavery in the United States and gives Congress power to enforce this article. The 39<sup>th</sup> Congress sought to expand suffrage to citizens in the United States. With passage of the First Reconstruction Act of 1867, it required former confederate states to write new constitutions that guaranteed the right of all males to vote, irrespective of race. To insulate its efforts from partisan politics and presidential vetoes, Congress turned to constitutional amendments. In June 1866, it proposed the 14<sup>th</sup> Amendment to the state legislatures.

The **14<sup>th</sup> Amendment** contains five sections. Section 1 prohibits the states from denying citizens of the United States equality before the law. Section 2 was devised to prevent the southern states from using literacy and property tests to keep African Americans from voting while retaining their full population-based representation in the House of Representatives. It provides that when the right to vote is denied to any 21-year old male resident of a state at any election for electors for President and Vice President of the United States, congressional representatives, the executive and judicial officers of the state or members of the state legislature, that state's congressional representation shall be reduced in proportion to the number of male citizens who were denied the right to vote. The exception for Section 2 is if the voter has been guilty of rebellion or other crime. Section 3 bars persons who voluntarily participated in the rebellion against the United States from election to any federal office, civil or military, until Congress, by a vote of two-thirds majority in each House, removes such disability. Section 4 prohibits payment of the Confederate debt. In Section 5, Congress is empowered to enforce provisions of this article through appropriate legislation. On July 28, 1868, the 14<sup>th</sup> Amendment became a part of the Constitution.

The 40<sup>th</sup> Congress proposed the 15<sup>th</sup> Amendment to the state legislatures in 1869. The **15<sup>th</sup> Amendment** protects the right of male suffrage without regard to "race, color, or previous condition of servitude" and empowers Congress to enforce this article. In March 1870, the 15<sup>th</sup> Amendment became a part of the Constitution.

From 1867 to 1875, Congress passed election laws that guaranteed the right to vote in national and state elections and established federal supervision of election and voter registration. To protect the political, legal and social equality of all Americans, Congress passed civil rights legislation that contained provisions for the imposition of fines and criminal penalties on those convicted of conspiring to deprive citizens of their civil rights. As a consequence of these laws, black participation in the political process rose dramatically. For example, during this nine-year period nearly 70% of the eligible black voters were registered; 10 blacks were elected to the House and two to the U.S. Senate. Besides electing blacks to office, black voters heavily influenced the outcome of local, state, and national elections throughout the South.<sup>1</sup>

Most southern whites opposed the enfranchisement of former slaves. Some resorted to a number of tactics to discourage or stop blacks from participating in the political process, such as fraud, violence (including murder), and economic blackmail. The Compromise of 1877 essentially ended Reconstruction, as withdrawal of federal troops from the South allowed those who supported the disfranchisement of blacks to assume control of most state governments. These legislatures used creative measures to make voting difficult. They passed bills to reduce the numbers of black voters by requiring them to travel great distances to voting precincts and designed complex balloting procedures that amounted to literacy tests. Challenges to registration rulings were heard by local officials who were unlikely to be sympathetic.<sup>2</sup>

A South Carolina law of 1882, for example, required that special ballots and boxes be placed in every polling place for each office on the ballot, and that voters put their ballots in the correct boxes. No one was allowed to speak to a voter, and if he failed to find the correct box, his vote was thrown out.<sup>3</sup> All of these tactics — both legal and illegal — combined to minimize the presence of blacks in the electoral process. But some southern whites were uncomfortable with the resort to fraud, murder, bribery, and theft to disfranchise most blacks. They sought a permanent legal way to limit black voting.<sup>4</sup>

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<sup>1</sup> U.S. Congress, House, Committee on the Judiciary, Subcommittee #5, *Voting Rights. Hearings on H.R. 6400*, 89<sup>th</sup> Cong., 1<sup>st</sup> sess. (Washington: GPO, 1965), pp. 3-4; U.S. Congress. Senate, Committee on the Judiciary, Subcommittee on the Constitution, *Voting Rights Act. Report*, (at head of title: committee print), 97<sup>th</sup> Cong., 2<sup>nd</sup> sess. (Washington: GPO, 1982), p. 7; John Hope Franklin and Alfred A. Moss, Jr., *From Slavery to Freedom: A History of Negro Americans* (New York: McGraw-Hill, 1988), pp. 216-223. For a fuller discussion of the Reconstruction Period see also: Foner, *Reconstruction, America's Unfinished Revolution, 1863-1877*.

<sup>2</sup> Franklin, *From Slavery to Freedom*, pp. 255-258, 227-231, 235-238.

<sup>3</sup> *Ibid.*, pp. 231-235.

<sup>4</sup> *Ibid.*, pp. 232-235.



## Constitutional Disfranchisement

During the last decade of the nineteenth century, a number of southern states held constitutional conventions to permanently disfranchise black Americans. Although delegates at these conventions favored repeal of the 15th Amendment, they feared the reaction of the rest of the nation. They need not have though, for the political climate of the country, both north and south, seemed to favor limiting black participation in the political process (though for different reasons). Federal enforcement of election laws and protection of citizens were being withdrawn. The Supreme Court, in 1883, narrowly interpreted provisions of civil rights laws passed during Reconstruction or declared them unconstitutional. Congress repealed many sections of the Enforcement Act. These rulings effectively removed the federal government from the business of protecting the civil rights of all Americans for decades.<sup>5</sup>

At its constitutional convention of 1890 (called for the express purpose of removing blacks from the voting booth), Mississippi devised a system that effectively disfranchised most blacks and was variously adopted by other southern states. Because delegates at the convention feared voters would reject the new constitution, they did not submit it for popular approval; instead the convention, itself, approved, promulgated and declared the constitution to be in effect. The Mississippi constitution of 1890 differed from its predecessor in that it replaced the six months residency requirement with a two-year one; imposed a literacy test for prospective voters, as well as a property requirement of three-hundred dollars; introduced an annual poll tax of two dollars; and disqualified convicts.<sup>6</sup>

Virginia's election code in 1894 required that registration and poll tax certificates be shown at the polls, and that the names of candidates be printed on the ballot by *office* not party. This was an extremely confusing arrangement for barely literate and illiterate voters. Voters had a maximum of two-and-a-half minutes to vote, if others were waiting in line. As a consequence of this code many black and white illiterate residents were disfranchised.<sup>7</sup>

In 1898, Louisiana introduced a new device into its constitution, the "grandfather clause." It required an addition to the permanent registration list of the names of all male persons whose fathers and grandfathers were qualified to vote on January 1, 1867. Since blacks were denied the franchise in 1867, none of them qualified under this provision. The Supreme Court in 1915 declared the "grandfather clause" unconstitutional.<sup>8</sup>

All but two southern states used literacy tests as voting limitation devices; however, none of the new constitutional provisions mentioned race, i.e., they were

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<sup>5</sup> Ibid., pp. 228-231, 238.

<sup>6</sup> Ibid., pp. 235-238.

<sup>7</sup> Ibid., p. 232.

<sup>8</sup> Jack Greenberg, *Race Relations and American Law* (New York: Columbia University Press, 1959), p. 139.

racially neutral. But the impact of these laws was devastating for blacks. For instance, in Mississippi, in 1867, 70% of eligible blacks were registered to vote; by 1889, only 9%. In Louisiana, in 1896, 130,334 blacks were registered to vote, by 1900, only 5,320. Alabama in 1900 had 181,471 black males of voting age, but after the new constitution was adopted only 3,000 registered.<sup>9</sup>

## Other Disfranchisement Tactics

Although the vast majority of African-American voters were disfranchised by 1910, some continued to vote, causing concern for some southern whites. In an address on the right of suffrage before Congress in 1927, Senator Cole Blease of South Carolina reflected the political climate for African Americans in his state. He boldly admitted that the purpose of the 1895 South Carolina constitution was to disfranchise African Americans. Concerning the presidential election of 1922, he stated, “I think Mr. [Calvin ] Coolidge received 1100 votes in my state. I do not know where he got them. I was astonished to know they were cast and shocked to know they were counted.”<sup>10</sup> Unfair examinations, intimidation, and delaying registration until the deadline had passed were other tactics employed to effectively remove African Americans from the ballot box.

In Florida, payment of the poll tax automatically carried registration with it, but other methods were used to keep African Americans from voting. In the 1920s, an African American who attempted to vote might discover that his name was not on the voters list, that the name or address on his certificate differed from that on the voters list, or that his name through oversight had been placed on the white list — all of which were technicalities that could disqualify him from voting. His only recourse was the courts, the expense of which he would have to bear, and even if a court ruled in his favor (which was unlikely) the ruling would not be timely.<sup>11</sup>

African Americans who tried to register to vote in New Orleans, Louisiana, complained that ignorant whites employed at registration offices were empowered to decide whether an individual had correctly interpreted the constitution of the United States; if the individual were African American, the registrars would declare that his answer was incorrect.<sup>12</sup>

A teacher in North Carolina reported that when she attempted to register to vote, she was told that her request to vote at three places had been reported and she was

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<sup>9</sup> Ibid., pp. 264-267; Patricia Gurin, Shirley Hatchett, and James S. Jackson, *Hope and Independence, Blacks' Response to Electoral and Party Politics* (New York: Russell Sage Foundation, 1989), p. 23.

<sup>10</sup> *Congressional Record*, vol. 68, part 5, Mar. 2, 1927, pp. 5361-5363.

<sup>11</sup> Paul Lewinson, *Race, Class, and Party, a History of Negro Suffrage and White Politics in the South* (New York: Russell & Russell, Inc., 1963), p. 119.

<sup>12</sup> Ibid., p. 117.

being watched by hostile observers and other such statements that implied she could become a victim of violence.<sup>13</sup>

## Early Supreme Court Cases

These laws stood for decades. Eleven southern states determined that the state political party nominating process was a private action and, therefore, that party officials could legally restrict participation in the primary to whites only (thus the name “white primary”). Since the winner of the primary in a one-party state, was in essence elected to office, African Americans were eliminated from the electoral process.<sup>14</sup> A suit was filed in Texas, *Smith v. Allwright*,<sup>15</sup> challenging the constitutionality of the white primary; in 1944, the Supreme Court declared the white primary unconstitutional.

Generally, southern legislatures developed other means to minimize blacks’ access to the voting booth. In July 1957, the Alabama legislature, with Act No. 140, redrew the boundaries of the city of Tuskegee to exclude Tuskegee Institute (now Tuskegee University) and a majority of the nearly 5,400 black residents. As a consequence, thousands of black residents and nearly all blacks who were registered to vote could no longer participate in Tuskegee municipal elections. A resident, Charles G. Gomillion, in *Gomillion v. Lightfoot*<sup>16</sup> charged that the act violated both the 14th Amendment (the equal protection clause) and the 15th Amendment. This was an important case because two issues were involved — voting rights for blacks and redistricting by state legislatures.<sup>17</sup>

In the past, Supreme Court rulings appeared to give state legislatures absolute control over setting municipal boundaries. In 1957, as the Court began to dismantle barriers to black political participation, it considered the redistricting issue inherent in *Gomillion v. Lightfoot*. Although Act No. 140 did not mention race, it was clear that its intent was racially discriminatory. Yet, on appeal, the Fifth Circuit Court of Appeals, by a 3-2 vote, upheld a lower court’s dismissal of the case on the grounds that it lacked “authority or jurisdiction” to declare the law void. Dissenting Judge John Brown wrote that the fact that act No. 140 did not discriminate on its face was insignificant; the act “effectively disfranchised all but four or five black voters.”<sup>18</sup> Brown also considered the fact that Macon county (the county in which Tuskegee was located) had been without a board of registrars for 18 months and that the state legislature was trying to abolish the county through a constitutional amendment. Since most eligible whites were already registered, they had no real need for a registrar. But thousands of blacks were not registered and were unable to register in Tuskegee for lack of a board of registrars. Therefore, the traditional method of

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<sup>13</sup> Ibid., p. 119.

<sup>14</sup> Jack Bass, *Unlikely Heroes* (New York: Simon and Schuster), p. 266.

<sup>15</sup> 321 U.S. 649 (1944).

<sup>16</sup> 270 F. 2d 594, 611.

<sup>17</sup> Bass, *Unlikely Heroes*, pp. 97-100.

<sup>18</sup> Ibid., p. 107.

correcting political abuse at the polls was denied blacks. Consequently, Judge Brown found the law unconstitutional. He wrote that “the business of judging in constitutional fields is one of searching for the spirit of the Constitution in terms of the present as well as the past, not the past alone.” On appeal, the Supreme Court agreed with Judge Brown and ruled unanimously that act No. 140 violated the 15th amendment.<sup>19</sup>

## **Civil Rights Acts of 1957, 1960 and 1964**

Congress passed the Civil Rights Act of 1957 to protect black voting rights through the judicial process. By provisions of the act, the Attorney General was authorized to bring lawsuits to protect equal voting rights, and persons who disobeyed court orders prohibiting discrimination in voting could be held in criminal contempt. Further, the act authorized appointment of another Assistant Attorney General to head a Civil Rights Division in the Department of Justice. It provided that special three-judge federal district courts be convened, with jurisdiction to hear civil rights cases taken out of state courts by the Department of Justice. A six-member Commission on Civil Rights was created to gather information on discrimination in voting and to issue annual reports.<sup>20</sup>

The Commission on Civil Rights held hearings throughout the nation and discovered that some registrars discriminated against blacks for racial reasons. Because of the length of legal hearings and the delaying but legal tactics employed during lawsuits, the Civil Rights Act of 1957 was mostly ineffective. After three years only four cases were heard and decided. It was felt that the law needed strengthening to prevent evasive measures by registrars and produce more timely rulings; so, in 1960, Congress passed another civil rights law.

The Civil Rights Act of 1960 sought to fill some of the loopholes in the 1957 Act. It provided that if a registrar resigned after complaints had been filed, the proceeding could be instituted against the state. It authorized federal referees to investigate complaints of voting discrimination and to register qualified voters. The act required voting records to be preserved for 22 months following any primary, special, or general election at which there were candidates for federal office; and it empowered a federal district court judge to issue a registration order, and to replace state registrars with federal officials.<sup>21</sup>

These measures were found inadequate, in part because the individual black citizen, operating in a hostile environment, had to be the primary initiator of legal action. In a report prepared in 1963, the Commission on Civil Rights concluded that this was a role that the federal government should assume. Federal efforts to ban racial discrimination relied heavily on litigation. The Commission rejected this

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<sup>19</sup> Ibid., pp. 106-109.

<sup>20</sup> P.L. 83-315; 71 Stat. 634.

<sup>21</sup> P.L. 86-449; 74 Stat. 86.

litigious approach because it was time consuming and did not increase black registration significantly.<sup>22</sup>

Most national political leaders remained committed to a litigious, low-profile approach to registering blacks in the South until violence erupted in Birmingham, Alabama, in 1963, and Philadelphia, Mississippi, in 1964. After the violence, Congress passed the Civil Rights Act of 1964, which contains provisions that attempted to have three-judge federal district courts hear cases more quickly, and allow for temporary voting registrars. It forbids local officials to apply standards to some voter registrants (e.g., black registrants) that had not been applied to others (e.g., white registrants) already found qualified to vote. The act also provides that in any voting rights court case there shall be a presumption of literacy for all voter applicants who have completed the sixth grade in an accredited, English-speaking school.

These provisions proved ineffective as well. Sometimes, after lengthy litigation caused an election law to be judicially invalidated as discriminatory, the state or local jurisdiction would pass and enforce a different law or regulation designed to circumvent the court order. The Justice Department called for a “new approach” that would go “beyond the tortuous, often-ineffective pace of litigation.”<sup>23</sup> In drafting another voting rights bill, it sought to impose constraints on the use of literacy tests and other devices that denied blacks access to the ballot box, and to establish an administrative presence of federal marshals in the southern states to assist blacks in their efforts to vote. The outbreak of violence in Selma, Alabama, as a result of a black voter registration drive, aided the Department in its efforts. On August 6, 1965, the Voting Rights Act was signed into law.<sup>24</sup> It created administrative remedies that automatically became applicable to certain jurisdictions under a statutory coverage formula, without the need for prolonged litigation. In *South Carolina v. Katzenbach*,<sup>25</sup> the Supreme Court upheld the constitutionality of the Voting Rights Act.

## **The Voting Rights Act of 1965 (P.L. 89-110)**

Congress passed the Voting Rights Act of 1965 to protect the voting rights of American citizens. The act was amended in 1970, 1975, 1982 and 1992 and the following provisions reflect those changes.<sup>26</sup>

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<sup>22</sup> U.S. Congress, House, Committee on the Judiciary, Subcommittee No. 5, *Voting Rights*, hearings on H.R. 6400, 89<sup>th</sup> Cong., 1<sup>st</sup> sess. (Washington: GPO, 1965), pp. 121-128; 258, 286-288. (Statements of Reverend Theodore M. Hesburgh, President of the Civil Rights Commission and William L. Taylor, Staff Director-Designate of the Civil Rights Commission.)

<sup>23</sup> House Subcommittee No. 5, pp. 5, 9.

<sup>24</sup> P.L. 89-110; 79 Stat. 437.

<sup>25</sup> 383 U.S. 301 (1966).

<sup>26</sup> In order to provide a more logical order of presentation, the following summary does not  
(continued...)

### Major provisions of the Voting Rights Act of 1965:

- (1) Prohibit the enactment of any election law to deny or abridge voting rights on account of race or color;
- (2) Suspend all literacy tests in states and counties that used them and where less than 50% of adults had voted in 1964;
- (3) Prohibit the enforcement of new voting rules or practices until federal reviewers determine if their use would continue voting discrimination;
- (4) Assign federal examiners to list qualified applicants to vote and to serve as poll watchers;
- (5) Authorize the Attorney General to institute civil actions to seek enforcement of the act; and
- (6) Prohibits any person acting under color of law or otherwise from intimidating or denying *any* eligible person from voting.

### Coverage Formula (Section 4(b))

Federal intervention in state regulation of the electoral process was restricted to jurisdictions in which there was evidence that voting discrimination had occurred. A coverage formula was adopted to determine which states and political subdivisions of states would be covered by the act. It was assumed that low registration and voting statistics in jurisdictions requiring literacy tests and devices resulted from the discriminatory application of those tests and devices. Therefore, according to the formula established in Section 4(b),<sup>27</sup> any states or political subdivisions are covered if they used any test or device as a condition for voter registration on November 1, 1964, and if either less than 50% of age-eligible persons living there were registered to vote on that date or less than 50% of such persons voted in the Presidential election of that year. The following jurisdictions were covered by the “triggering” provisions of Section 4(b) in 1965: Alabama, Georgia, Louisiana, Mississippi, South Carolina, Virginia, 39 counties in North Carolina, and specified counties in Arizona and Hawaii.<sup>28</sup>

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<sup>26</sup> (...continued)

follow the numerical sequence of sections of the Voting Rights Act. Thus, the summary rearranges the subject matter as follows: first, the rationale for deciding which jurisdictions are to be subject to the act; second, the requirements imposed on covered jurisdictions; third, how these jurisdictions may be released from coverage. Other sections of the act are placed after these. As a result of this rearrangement, parts of the act in Title I are taken up after parts in Titles II and III. In order to avoid confusion, title numbers have been omitted. Sections numbered below 200 are in Title I; those in the 200's are in Title II; and those in the 300's are in Title III. The summary includes only the fundamental sections of the act; other sections are omitted.

<sup>27</sup> 42 U.S.C. § 1973b.

<sup>28</sup> The Justice Department publishes the list of covered jurisdictions in 28 C.F.R. Pt. 51.54, Appendix.

## Suspension of Tests and Devices (Section 4(a))

The act forbids the use of all literacy tests as well as any other “device,” such as a voucher requirement, as a condition for voter registration in states and political subdivisions of states that fall under the coverage criteria of Section 4(b).<sup>29</sup>

## Preclearance of Changes in Election Laws (Section 5)

With Section 4(a) the framers of the Voting Rights Act sought to stop the practice of discouraging black registration and voting. But they also realized that covered jurisdictions could limit the effectiveness of the black vote in other ways, for instance, by locating polling places in white but not in black neighborhoods, and by gerrymandering electoral districts in such a way that blacks would not comprise a majority in any electoral district. Section 5<sup>30</sup> is intended to prevent enforcement of any election law made after November 1, 1964 with racially discriminatory effect.<sup>31</sup>

The act prohibits a covered state or political subdivision from putting into effect “any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964” before first submitting the change in election law for “preclearance” either to the Justice Department or to the U.S. District Court for the District of Columbia (in an action for a declaratory judgment) in order for the Department or the Court to determine if such law would deny or abridge the right to vote on account of race or color.<sup>32</sup> In order to object to an election law change submitted for federal preclearance, the Justice Department or the U.S. District Court for the District of Columbia need not find that the jurisdiction *intended* to discriminate against minority voters; it need only determine that implementation of the law would, in fact, *result* in denying or abridging voting rights. If the Justice Department does not object to the proposed law within 60 days after a jurisdiction submits it for review, then the jurisdiction may put the law into effect.

## Laws Affecting Elections That Require Preclearance

Section 5<sup>33</sup> requires federal preclearance of every change in election laws, not only laws affecting procedural requirements that individuals must observe in order to register and vote, but laws setting up electoral systems as well. Between 1965 and 1980 (Section 5 was continued when the act was amended in 1970, 1975 and 1982) in the preclearance process the Justice Department objected more times to three of

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<sup>29</sup> 42 U.S.C. § 1973b.

<sup>30</sup> 42 U.S.C. § 1973c.

<sup>31</sup> U.S. Congress, House, Committee on Rules, *To Extend The Voting Rights Act of 1965 With Respect to the Discriminatory Use of Tests and Devices*, hearings on H.R. 4249, 91<sup>st</sup> Cong., 1<sup>st</sup> sess. (Washington: GPO, 1969), p. 3, (Statement of Representative Celler, Chairman of the House Judiciary Committee).

<sup>32</sup> 42 U.S.C. § 1973c.

<sup>33</sup> 42 U.S.C. § 1973c.

these ways than to any others — methods of election, urban annexations, and electoral redistricting. These methods were objectionable because they would have resulted in abridging or “diluting” the voting power of blacks, Hispanics or other protected minority voters.

## **Altering Methods of Election**

**Changing from single-member districts to at-large voting.** One objectionable way of altering the method of election was changing from election by single-member districts or precincts to at-large voting. For example, in a majority-white city governed by several commissioners, if each commissioner were elected in a different district, and if blacks, as a minority in the city as a whole, nevertheless comprised the majority in one or more districts, then black voters would be in a position to elect one or more candidates of their own choice. But, if commissioners were elected at-large, it would usually mean that all voters in the city as a whole would vote for each commissioner position, and consequently, that the white majority in the city as a whole could elect every one of the nine commissioners. Thus, a change in method of election from election by single-member districts to at-large elections could dissolve any black majorities in separate districts and allow the white city-wide majority to decide the entire outcome of elections for the city commission.

It is this kind of “dilution” of black voting power to which the Justice Department often has objected. It should be noted that at-large elections in white-majority jurisdictions are not necessarily discriminatory. They may become so in certain circumstances, however, where racial antagonism and racial bloc voting characterize the jurisdiction, or where socioeconomic issues such as unemployment or poverty divide a jurisdiction along racial lines.

**Urban annexations.** The Justice Department found that urban annexations also may abridge black voting power. For instance, if a majority-black city annexed a largely white suburban area, the enlarged city might change from majority-black to majority-white. If the city conducted elections for municipal offices at-large, and if the addition of suburban whites gave whites a city-wide majority, then black voters might lose the chance to elect their own candidates to any municipal office. This development occurred with the annexation of suburban areas by Petersburg, Virginia, in 1971; the black percentage of the population changed from 55% to 46%. Because Petersburg conducted at-large elections for the City Council the Justice Department believed that the annexation would have diluted black voting power. Petersburg was allowed to annex suburban areas only on the condition that it change from at-large elections to elections by single-member districts.<sup>34</sup>

**Redistricting.** Changing the boundaries of single-member electoral districts is another electoral alteration that the Justice Department determined may result in lessening the effectiveness of the black vote. In a jurisdiction with concentrations of black voters, such concentrations constitute potential majorities to elect candidates responsive to the needs of the black community. If district boundaries are drawn to

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<sup>34</sup> U.S. Commission on Civil Rights, *The Voting Rights Act: Ten Years After* (Washington: U.S. Commission of Civil Rights, 1975), pp. 304-305.



divide concentrations of black voters into adjoining, majority-white areas, black majorities may be liquidated. Conversely, boundaries of single-member electoral districts may be drawn in such a way as to minimize the number of black-majority districts by placing black voters in as few districts as possible.

It has been suggested that implementation of Section 5 by the Justice Department has fostered the expectation that fair electoral processes should result in racially proportional representation among elected officials.<sup>35</sup> That is, blacks should be able to elect officeholders in numbers fairly proportional to the percentage that they comprise of the entire electorate. But Section 5 does not establish a right to proportional representation. Rather, the purpose of preclearance of election law changes is to prevent jurisdictions with a history of discrimination and racial polarization from manipulating the electoral systems to render the black vote ineffective.<sup>36</sup>

### **Federal Examiners for Voter Registration (Sections 6 and 7)**

Whenever the Attorney General of the United States receives written complaints of denial of the right to vote for racial reasons from 20 or more residents of a jurisdiction, or whenever the Attorney General thinks it is advisable, Section 6<sup>37</sup> authorizes the him or her to request the U.S. Office of Personnel Management to send federal examiners to list eligible voters for registration in any political subdivision of a state if the political subdivision is covered by Section 4(a) (suspension of tests and devices).

Section 7<sup>38</sup> prescribes procedures for the listing of voter registrants by federal examiners.

### **Federal Election Observers (Section 8)**

Section 8<sup>39</sup> authorizes the Attorney General to request the Office of Personnel Management to send election observers to any political subdivision where an examiner has been assigned. Election observers assure that all registered voters are allowed to vote, and that all votes are counted.

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<sup>35</sup> Abigail Thernstrom, "The Odd Evolution of the Voting Rights Act," *The Public Interest*, no. 55, spring 1979: pp. 49-76.

<sup>36</sup> U.S. Commission on Civil Rights, *The Voting Rights Act: Unfulfilled Goals* (Washington: U.S. Commission on Civil Rights, 1981), pp. 38-42; U.S. Congress, House, Committee on the Judiciary, *Voting Rights Extension*, report to Accompany H.R. 3112, 97<sup>th</sup> Cong., 1<sup>st</sup> sess., H.Rept. 97-227 (Washington: GPO, 1981), pp. 17-20.

<sup>37</sup> 42 U.S.C. § 1973d.

<sup>38</sup> 42 U.S.C. § 1973e.

<sup>39</sup> 42 U.S.C. § 1973f.

## Release from Coverage (Section 4(a))

To obtain release from federal regulations a state or subdivision must obtain a declaratory judgment to the effect that for the preceding years no literacy tests or similar devices were used to deny the right to vote for racial reasons. By 1970, Alaska and counties within Arizona, Idaho and North Carolina were released from the prohibitions of the act.<sup>40</sup>

## Prohibition of English-Language Literacy Requirement for Citizens Educated in American Schools (Section 4(e))

Section 4(e)<sup>41</sup> forbids any American citizen who has successfully completed the sixth grade in any accredited, American-flag school in which the language is other than English from being denied the right to vote because of inability to read, write, or understand the English language. This provision was intended to protect the half-million Puerto Ricans of voting age residing in New York City who had been educated in American schools in Puerto Rico where classroom instruction was entirely in Spanish (as contrasted with bilingual schools). Many could not meet the English-literacy requirement for voting in New York.<sup>42</sup>

## General Prohibition of Discriminatory Voting Laws (Section 2)

Section 2<sup>43</sup> forbids any state or political subdivision to enact any election law “to deny or abridge” voting rights on account of race or color. It is a statutory form of the Fifteenth Amendment, and is a basis for judicial enforcement by court suits.<sup>44</sup> Section 2 is applicable not only to jurisdictions covered through Section 4(b), but applies nationwide. Unlike other sections of the act, it is a requirement from which jurisdictions cannot be released from coverage after a certain period of time. Moreover, while Section 5 preclearance is limited to changes made in election laws since November 1, 1964, election laws may be challenged in court under Section 2 regardless of when they were enacted.

Prior to its amendment in 1982, the standard for determining whether an election law violated Section 2 differed from the standard applicable in Section 5. The standard for determining violation of Section 2 from 1965 to 1982 was whether the law in question was enacted with the *purpose* or *intention* of abridging voting rights. Because of the difficulty of demonstrating such a violation in court, this

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<sup>40</sup> 42 U.S.C. § 1973b.

<sup>41</sup> 42 U.S.C. § 1973b(e).

<sup>42</sup> *Congressional Record*, vol. 111, part 8: pp. 11060-11061.

<sup>43</sup> 42 U.S.C. § 1973b.

<sup>44</sup> U.S. Congress, Senate, Committee on the Judiciary, Subcommittee on the Constitution, *Voting Rights Act*, Report on S. 992, (at head of title: committee print), 97<sup>th</sup> Cong., 2<sup>nd</sup> sess. (Washington: GPO, 1982), p. 20.

standard was changed in 1982, to require only that the law in question *resulted* in the abridgment of voting rights.<sup>45</sup>

## **Civil Actions to Enforce Compliance (Section 12(d))**

Under the provisions of Section 12(d)<sup>46</sup> the Attorney General of the United States can institute civil actions in federal district courts to seek enforcement of the provisions of the act described above — suspension of tests and devices, abolition of English literacy tests for citizens educated in foreign-language American schools, preclearance of election-law changes, and prohibition of discriminatory election laws.

## **Prohibits Intimidation of *Any* Qualified Person from Voting (Section 11)**

Section 11 prohibits any person whether acting under color of law or otherwise from:

- (1) failing or refusing to permit *any* qualified person from voting in general, special, or primary federal elections;<sup>47</sup>
- (2) refusing to count the vote of a qualified person; or
- (3) intimidating any one attempting to vote or any one who is assisting a person in voting under certain provisions of this act.<sup>48</sup>

It also forbids any person from giving false information in order to establish eligibility to register or vote, or conspiring with someone else for that purpose. Penalties for such conduct are a maximum fine of \$10,000 or imprisonment for five years, or both.

Section 11(d) provides that a person within the jurisdiction of an examiner who knowingly falsifies or conceals a material fact or makes false statements or representations, or uses a document that contains false or fraudulent statements is subject to a fine of \$10,000, imprisonment for five years, or both.

## **Protection of Paper Ballot or Any Official Voting Record (Section 12(b))**

Anyone who, within a year following an election in a political subdivision where an examiner has been appointed, destroys or alters the marking of a paper ballot that has been cast in that election or changes an official voting record in that

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<sup>45</sup> *City of Mobile v. Bolden*, 446 U.S. 55 (1980).

<sup>46</sup> 42 U.S.C. § 1973j.

<sup>47</sup> That is, office of the President, the Vice President, presidential elector, Member of the United States Senate, Member of the House of Representatives, Delegates or Commissioners from the territories or possessions, and the Resident Commissioner of Puerto Rico.

<sup>48</sup> Specifically, sections 3(a), 6, 8, 9, 10, or 12(e).

election is subject to a maximum fine of \$5,000, or imprisonment for five years, or both.

## **The Voting Rights Amendments of 1970 (P.L. 91-285)**

Following the 1965 Act, the registration of nearly one million new black voters was recorded. The litigation record following passage of the act, a report of the Commission on Civil Rights, and testimony at congressional hearings, however, revealed that various devices were being used to negate the newly gained voting strength of blacks.<sup>49</sup> They included:

- (1) Switching to at-large elections when black voting strength is concentrated in particular districts,
- (2) Extending the terms of incumbent white officials,
- (3) Making certain offices appointive rather than elective,
- (4) Changing the dates of elections suddenly,
- (5) Changing the qualifications of candidates,
- (6) Increasing the costs of a filing fee for election, and
- (7) Gerrymandering to dilute the nonwhite vote.

After much debate, Congress amended the Voting Rights Act of 1965. The Voting Rights Amendments of 1970, signed into law by President Richard M. Nixon on June 22, 1970, contained several new provisions that:

- (1) Extended the expiration date for five more years to August 1975,
- (2) Extended from five to 10 years the period of time for which an area covered by the act must abstain from the use of any literacy test or similar device to discriminate against voters because of race or color,
- (3) Amended Section 4 of the act to make the “trigger formula” cover three districts in Alaska; Apache County, Arizona; Imperial County, California; Elmore County, Idaho; Bronx, Kings (Brooklyn) and New York (Manhattan) counties, New York; and Wheeler County, Oregon
- (4) Suspended the use of literacy tests in all states until August 6, 1975,
- (5) Provided that any person could vote in a Presidential election if he had established residency 30 days prior to a Presidential election, and
- (6) Lowered the voting age to 18 years.<sup>50</sup>

### **Extension of Duration of the Act (Section 4(a))**

Congress extended from five to 10 years the period of time during which states and political subdivisions covered by the triggering provisions of Section 4(b) and seeking release from coverage must not have used any literacy test or device as a

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<sup>49</sup> U.S. Commission on Civil Rights, *Political Participation*, Report, 1968 (Washington: GPO, 1968), p. 256.

<sup>50</sup> P.L. 91-285, June 22, 1970; 84 Stat. 314; *Congressional Quarterly Almanac*, 91<sup>st</sup> Cong., 2<sup>nd</sup> sess., 1970, vol. 26 (Washington: Congressional Quarterly, Inc., 1971), pp. 192-193.

condition of voter registration with the purpose or effect of denying the right to vote on account of race.<sup>51</sup>

## **Expansion of Coverage of the Act (Section 4(b))**

In 1970, the amendments also changed the coverage formula of Section 4(b) to include any state or political subdivision that used a literacy test for voter registration on November 1, 1968, and in which less-than-50% registration or voting occurred in the 1968 presidential election. With the amendments, jurisdictions covered have to preclear election law changes made since November 1, 1968, and are subject to assignment of federal examiners and election observers. The formula was extended from regional (southern states) to national coverage. The extension was also intended to establish the principle that the effort to protect voting rights is not limited by a date in the past, i.e., 1964, but is ongoing.<sup>52</sup> Subdivisions in the following states were covered through the 1970 amendment of Section 4(b) — Arizona, California, Connecticut, Idaho, Massachusetts, New Hampshire, New York and Wyoming.

## **Ban on Literacy Tests**

A new Section 201<sup>53</sup> imposed a ban on literacy tests and devices as conditions for voter registration in all jurisdictions in the country not already subject to the suspension of tests and devices under Section 4(a) until August 6, 1975. Thus, it was made coterminous with the suspension of literacy tests under Section 4(a). The rationale for this new provision was that the law should not discriminate against one part of the country, and that literacy requirements may prevent many minority citizens from voting in jurisdictions not covered by Section 4(a).<sup>54</sup>

## **Residence Requirements (Section 202)**

A new Section 202<sup>55</sup> provides that if a person applies for registration in his or her state not later than 30 days prior to the election, then he or she if otherwise qualified to vote, shall not be denied the right to vote in a presidential election because of a residence requirement. If a citizen moved to another state after the 30<sup>th</sup> day preceding a presidential election, that person has the right to vote in his or her former state.

Any citizen who is a resident of a state must be permitted to vote in a presidential election by absentee ballot if he or she applies to that state not later than seven days prior to the election.

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<sup>51</sup> 42 U.S.C. § 1973b.

<sup>52</sup> *Congressional Record*, Mar. 10, 1970, vol. 116, part 5, pp. 6654-6655.

<sup>53</sup> 42 U.S.C. § 1973aa.

<sup>54</sup> *Ibid.*, Dec. 10, 1969, vol. 115, part 28, pp. 38133-381355; Mar. 2, 1970, vol. 116, part 4, p. 5521.

<sup>55</sup> 42 U.S.C. § 1973aa-1.

## The Eighteen-Year-Old Vote (Section 302)

Section 302<sup>56</sup> of the act grants the right to vote at age 18 in every primary and general election. Although the Supreme Court invalidated this provision for state and local elections, the 26th Amendment in 1971 guaranteed the right of 18-year-olds to vote in all elections.<sup>57</sup>

## The Voting Rights Amendments of 1975 (P.L. 94-73)

In 1975, the Voting Rights Act came up for extension again. The Justice Department urged another five-year extension of the special coverage provisions of the act, until 1980, arguing the need to bring black political participation to levels comparable with that of whites, and to give an incentive to covered states to foster black registration and voting and, thereby, to demonstrate that special coverage is no longer needed.<sup>58</sup>

The Commission on Civil Rights recommended an additional 10-year extension of the act, until 1985, for several reasons. Because black registration in the covered states was still below that of whites, and the proportion of black elected officials in covered states was low in comparison to the black percentage of the voting-age population in the covered states, there was a continuing need to foster black political participation. Another reason offered was that the Justice Department had only recently begun to enforce, effectively, Section 5 (federal preclearance of changes in election laws); therefore, enforcement of the preclearance requirement should continue. The Commission felt that Section 5 should remain in effect also to enable the Justice Department to monitor the electoral redistricting that would be required after the 1980 census. Such electoral redistricting would be required extensively under the “one man, one vote” rule, which mandates that electoral districts within states and political subdivisions be as nearly equal in population as possible. The Commission recommended extension of Section 5 so that this redistricting would be subject to federal preclearance of election law changes in order to prevent dilution of black voting power through racial gerrymandering.<sup>59</sup>

At congressional hearings, Puerto Rican and Chicano voters and candidates for political office related voting experiences that paralleled those of blacks. They pointed out that many Hispanics cannot fill out registration forms and have difficulty understanding referenda and proposed constitutional amendments. They complained of inadequate or nonexistent bilingual election material, threats of economic reprisals for voting, location of polling places in areas where Chicanos were not welcomed, and burdensome absentee ballot procedures that resulted in limited numbers of

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<sup>56</sup> 42 U.S.C. § 1973bb-1.

<sup>57</sup> *Oregon v. Mitchell*, 400 U.S. 112 (1970).

<sup>58</sup> U.S. Congress, House, Committee on the Judiciary, Subcommittee on Civil and Constitutional Rights, hearings on H.R. 939 [and other bills], 94<sup>th</sup> Cong., 1<sup>st</sup> sess (Washington: GPO, 1975), pp. 173-174 (testimony of Assistant Attorney General Pottinger).

<sup>59</sup> *Ibid.*, p. 29.

migrant workers' voting. In addition, they accused the "Anglo" majority of reducing Hispanics to a minority of voters in previously Spanish-majority areas through annexations, gerrymandering of electoral districts, and at-large elections.<sup>60</sup>

Some local officials denied that discrimination against Puerto Rican and Chicano voters and candidates occurred. They claimed that usually Mexican Americans declined invitations to serve as election officials. Others opposed extension of the Voting Rights Act to their state because they argued that counties with large populations of Spanish speakers had the largest number of registered voters and highest number of citizens voting in primary and general elections in the state. Some state officials cited state laws that permitted voters unable to read English to receive assistance in preparing ballots.<sup>61</sup>

After debate, Congress extended the act for seven years, through August 6, 1982. The trigger formula provisions were continued for seven years, as well as the method by which jurisdictions could remove themselves from coverage; and it made permanent the temporary nationwide ban on use of literacy tests or similar devices. It extended coverage to more jurisdictions to protect the voting rights of ethnic groups whose language is other than English. President Gerald R. Ford signed the Voting Rights Amendments of 1975 into law on August 6, 1975.<sup>62</sup>

### **Extension of Duration of Act (Section 4(a))**

The 1975 amendments extended the duration of the temporary provisions of the act for jurisdictions already covered an additional seven years, thus lengthening the period of coverage of these jurisdictions from 10 to 17 years. To accomplish this, Section 4(a)<sup>63</sup> was amended to provide that, in order to be released from coverage, any jurisdiction covered by Section 4(b) (the triggering formula) must not have used a discriminatory test or device for voter registration during the previous 17 years. (Coverage was based on determinations from the Presidential elections of 1964 or 1968.) This meant that jurisdictions originally covered in 1965 could not seek release from provisions of the act until 1982, and those covered in 1970 until 1987. A seven-year instead of a five-year extension was enacted to ensure that jurisdictions covered in 1965 would not be released until two years after the 1980 census and to ensure that electoral redistricting as a result of the census would be subject to federal preclearance under Section 5.<sup>64</sup>

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<sup>60</sup> House Subcommittee on Civil and Constitutional Rights, *Extension of the Voting Rights Act*, pp. 27-29, pp. 519-535, 598-604, 800-828, 853-886, 922-932.

<sup>61</sup> U.S. Congress, Senate, Committee on the Judiciary, Subcommittee on Constitutional Rights, *Extension of the Voting Rights Act of 1965*, hearings on S. 407 [and other bills], 94<sup>th</sup> Cong., 1<sup>st</sup> sess. (Washington: GPO, 1975), pp. 361-362, 1040-1041; U.S. Commission on Civil Rights, *The Voting Rights Act: Ten Years After*, Report, 1975 (Washington: GPO, 1975), pp. 438.

<sup>62</sup> P.L. 94-73, Aug. 6, 1975; 89 Stat. 400.

<sup>63</sup> 42 U.S.C. § 1973b.

<sup>64</sup> *Congressional Record*, July 23, 1975, vol. 121, part 19, pp. 24241-24246; 42 U.S.C. § (continued...)

## **Nationwide Ban on Literacy Tests (Section 201)**

In 1975, Congress amended Section 201<sup>65</sup> to make permanent the prohibition of literacy tests for voter registration in noncovered jurisdictions and to extend it to jurisdictions already subject to the suspension of tests and devices under Section 4(a). Thus, even if a covered jurisdiction under Section 4(a) were released from coverage it could not reinstitute tests or devices.

## **Extension of Coverage to Protect Language Minorities (Section 4(b))**

Major provisions of the amended Voting Rights Act of 1975 pertained to certain language minorities, defined in Section 14(c)(3)<sup>66</sup> as persons of Spanish heritage, American Indians, Asian Americans and Alaskan Natives. Preclearance and federal observer protections were applied in any jurisdiction where:

- (1) The Census Bureau determined that more than 5% of the voting age citizens were of a single language minority;
- (2) Election materials had been printed only in English for the November 1, 1972, elections; and
- (3) Less than 50% of the voting age citizens had registered for or voted in the 1972 presidential election.<sup>67</sup>

The presumption behind the new coverage formula was that in jurisdictions using literacy tests as conditions for voter registration, low rates of registration and voting result, in part at least, from discriminatory application of such tests. With respect to language minorities, English-only elections were presumed *ipso facto* to be discriminatory. The extension of Section 4(b) to protect language minorities covers the states of Alaska, Arizona and Texas and political subdivisions in California, Colorado, Florida, Hawaii, Michigan, New York, North Carolina and South Carolina.<sup>68</sup>

## **Jurisdictions Covered With Respect to Language Minorities Subject to Special Provisions of the Act (Sections 4(a), 5, 6, and 8)**

Jurisdictions covered in 1975 with respect to language minorities are subject to the same provisions as are jurisdictions covered in 1965 and 1970. Under Section

<sup>64</sup> (...continued)  
1973b.

<sup>65</sup> 42 U.S.C. § 1973aa.

<sup>66</sup> 42 U.S.C. § 1973l.

<sup>67</sup> 42 U.S.C. § 1973bF9(b), 1973aa-1a.

<sup>68</sup> *Congressional Quarterly Almanac*, 94<sup>th</sup> Cong., 1<sup>st</sup> sess., 1975, vol. 31, (Washington: Congressional Quarterly, Inc., 1976), pp. 521-523.



4(a),<sup>69</sup> jurisdictions covered in 1975 may not use any test or device as a condition for voter registration. These jurisdictions are required to provide election materials in the language of the applicable language minority as well as in English.<sup>70</sup> Such jurisdictions must preclear election-law changes enacted since November 1, 1972, pursuant to Section 5,<sup>71</sup> and are subject to assignment of examiners under Section 6<sup>72</sup> and of election observers under Section 8.<sup>73</sup>

### **Duration of Coverage (Section 4(a))**

Under Section 4(a)<sup>74</sup> as amended in 1975, jurisdictions covered in that year with respect to language minorities were subject to the provisions of the act for 10 years instead of 17 years, i.e., until 1985. They could be released from coverage by obtaining a declaratory judgment from the Federal District Court in the District of Columbia that the jurisdiction's English-only elections had not been a voting barrier during the last 10 years.

### **Bilingual-Election Requirement (Section 203)**

Congress, with the addition of Section 203<sup>75</sup> in 1975, sought to increase the voter turnout of language minorities by requiring bilingual elections through August 6, 1985, if:

- (1) The Census Bureau determined that 5% of the jurisdiction's voting age citizens were of a single language minority, and
- (2) The illiteracy rate in English of the language minority was greater than the national English illiteracy rate. Illiteracy was defined as failure to complete 5th grade.

This section does not apply to any political subdivision in which each language minority is less than 5% even though any language minority resident in the political subdivision comprises more than 5% of the statewide population of voting age citizens. Jurisdictions covered by Section 203 are required to provide election materials and oral assistance in the language of the applicable language minority as well as in English. But jurisdictions that are covered only under Section 203 and not through the coverage formula of Section 4(b) are not subject to the other special

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<sup>69</sup> 42 U.S.C. § 1973b.

<sup>70</sup> 42 U.S.C. § 1973aa-1a(c).

<sup>71</sup> 42 U.S.C. § 1973c.

<sup>72</sup> 42 U.S.C. § 1973d.

<sup>73</sup> 42 U.S.C. § 1973f.

<sup>74</sup> 42 U.S.C. § 1973b(a)(1).

<sup>75</sup> 42 U.S.C. § 1973aa-1a.

provisions of the act — preclearance of election laws, federal examiners or federal election observers.<sup>76</sup>

A jurisdiction can be removed from this bilingual election requirement when it can demonstrate in federal district court that the illiteracy rate of the language minority was equal to or had dropped below the national illiteracy rate.

These bilingual requirements were scheduled to remain in effect for 10 years, until 1985, the same duration as that of Section 4(b) coverage for language minorities. Subdivisions in 30 states were covered by the bilingual election requirements of Section 203 (with considerable overlap of coverage under Sections 4(b) and 203).<sup>77</sup>

## **Addition of Language-Minority Status to Section 2**

As originally enacted, Section 2 forbade any jurisdiction in the country to enact an election law that denies or abridges voting rights on account of race or color. The 1975 amendments added language minorities to this section as a protected class.<sup>78</sup>

## **Compilation of Registration and Voting Statistics (Section 207)**

A new Section 207<sup>79</sup> requires the Census Bureau to compile registration and voting statistics in every jurisdiction covered by Section 4(a) for every statewide general election for United States Representatives after January 1, 1974, and in any jurisdiction for any election designated by the Civil Rights Commission. Census Bureau surveys are to include only a count of citizens of voting age, and of these by race or color and national origin, and determination of the extent to which such persons registered and voted. Section 207 provides that in making such surveys no participant shall be required to disclose his or her race, color, national origin, political party affiliation, or how he or she voted.

## **The Voting Rights Amendments of 1982 (P.L. 97-205)**

On August 6, 1982, jurisdictions originally covered by the Voting Rights Act of 1965 could have sought release from its provisions by showing in the U.S. District Court for the District of Columbia that they had not used a discriminatory literacy test

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<sup>76</sup> 42 U.S.C. § 1973aa-1a.

<sup>77</sup> These states are Alaska, Arizona, California, Colorado, Connecticut, Florida, Hawaii, Idaho, Kansas, Louisiana, Maine, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Virginia, Washington, Wisconsin and Wyoming.

<sup>78</sup> 42 U.S.C. § 1973b(e)(2)(f).

<sup>79</sup> 42 U.S.C. § 1973aa-5.

or device as a condition for voter registration during the previous 17 years. The House Judiciary Committee noted that blacks and other minorities may not yet be “in a position to compete in the political arena against non-minorities on an equal basis,”<sup>80</sup> and that, despite increased registration and voting and election of blacks to public office, they still may be vulnerable “to attempts by opponents of equality to diminish their political influence.”<sup>81</sup> In order to protect “the ability of minorities to participate effectively within the political process,” Congress sought to prevent immediate release of these jurisdictions.<sup>82</sup> At the same time, it was perceived that covered jurisdictions would be given little incentive to foster minority political participation if they could not obtain release from coverage until the expiration of a certain number of years, regardless of their efforts to encourage such participation. The Voting Rights Act Amendments of 1982 were intended to provide such incentive by offering the possibility of release in the near future to states and political subdivisions that tried to promote minority political participation.

Congress in 1982 amended Section 4(a)<sup>83</sup> of the Voting Rights Act to enable jurisdictions to seek release from coverage in 1984 instead of their having to wait an additional five or more years as with previous amendments to the act, provided they had not used a discriminatory test or device during a certain time period. Congress also amended Section 2<sup>84</sup> to provide that courts could judge an election law to be discriminatory without proof that it was *intended* to be so, if it *results* in abridging minority voting power. Further, Congress extended coverage of the bilingual provisions of the act (Section 203) to August 6, 1992.

The Voting Rights Act Amendments of 1982 contain four major provisions. These

- (1) Extend the preclearance section of the act for 25 years,
- (2) Require nine states and portions of 13 others to obtain preclearance from the Justice Department before making any changes in election laws or procedures,
- (3) Overturn a 1980 Supreme Court ruling in the case of *Mobile v. Bolden* (that an *intent* to discriminate must be shown to prove a violation) and allow certain voting rights violations under Section 2 to be proved by showing that an election law or procedure had *resulted* in discrimination, and
- (4) Extend provisions requiring certain areas of the country to provide bilingual election materials until 1992 (the old expiration date was 1985).

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<sup>80</sup> U.S. Congress, House, Committee on the Judiciary, *Voting Rights Act Extension*, report to accompany H.R. 3112, 97<sup>th</sup> Cong., 1<sup>st</sup> sess., H.Rept. No. 97-227 (Washington: GPO, 1981), p. 11.

<sup>81</sup> *Ibid.*

<sup>82</sup> *Ibid.*

<sup>83</sup> 42 U.S.C. § 1973aa-1a.

<sup>84</sup> 42 U.S.C. § 1973b, 1973aa-1a.

President Ronald Reagan signed the Voting Rights Act Amendments of 1982 into law on June 29, 1982.<sup>85</sup>

### **Extension of Duration of the Act (Section 4(a))**

The 1982 amendments extended the current provisions of the act for two years, which meant that the period of time during which states and political subdivisions seeking release under Section 4(a)<sup>86</sup> could not have used a discriminatory test or device as a condition for voter registration was increased from 17 to 19 years. (The 10-year period for jurisdictions covered in 1975 with respect to language minorities was not changed.) Congress decided to hold jurisdictions that were covered in 1965 under the act for two more years, from 1982 until 1984, for two reasons. The first reason was to give the Justice Department time to prepare for the large number of court actions for release that were expected as soon as the conditions for release were changed.<sup>87</sup>

The second reason was to ensure that redistricting in covered jurisdictions necessitated by the 1980 census (which had not been completed by 1982) would still be covered by the Section 5 preclearance requirement. It will be recalled that the Congress, in 1975, extended that act for seven years, until two years after the 1980 census, so that covered jurisdictions would have to submit their new electoral districts for federal preclearance. This preclearance enabled the Justice Department and the U.S. District Court for the District of Columbia to guarantee that such redistricting would not abridge or dilute black or Hispanic voting power. Congressional redistricting had to be completed before the 1982 elections. But there were other elections — state and local — for which redistricting might not have to have been completed until after 1982, and Congress extended the current provisions of the act from 1982 until 1984 so that such redistricting would also be reviewed at the federal level.<sup>88</sup>

### **Amended Conditions for Release from Coverage (Section 4(a))**

The 1982 amendments<sup>89</sup> provide that on August 5, 1984, any jurisdiction covered in 1965, 1970 or 1975 may be released from coverage if it can show in the U.S. District Court for the District of Columbia that it has met the following conditions during the preceding 10 years:

- (1) It has not used a discriminatory test or device for voter registration;
- (2) No court has found it to have denied or abridged voting rights;

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<sup>85</sup> P.L. 97-205; 96 Stat. 131; *Congressional Quarterly Almanac*, 97<sup>th</sup> Cong., 2<sup>nd</sup> sess., 1982, vol. 38, (Washington: Congressional Quarterly, Inc., 1983), pp. 373-374.

<sup>86</sup> 42 U.S.C. § 1973aa1a.

<sup>87</sup> House Committee on the Judiciary, *Voting Rights Act Extension*, H.Rept. 97-227, p. 39.

<sup>88</sup> *Congressional Record*, July 23, 1975, vol. 121, part 19, pp. 24241-24246.

<sup>89</sup> 42 U.S.C. § 1973aa-1a.

- (3) It had complied with the preclearance requirement of Section 5 by submitting all election-law changes for federal review;
- (4) There has been no federal objection to any election law change submitted under Section 5;
- (5) No federal examiners have been assigned to the jurisdiction;
- (6) It has fostered political participation by minority citizens; and
- (7) It can present evidence of minority registration, voting and other political participation.

The U.S. District Court for the District of Columbia is to retain jurisdiction of any action for release from coverage for 10 years, and is to reopen the case if the Attorney General or an aggrieved person alleges that voting discrimination has occurred. No jurisdiction may be released from coverage while it is defending itself in a voting rights case, provided that the case was initiated prior to the jurisdiction's filing a court action for release from coverage. This proviso was added to prevent persons or groups from precluding a jurisdiction from seeking release simply by filing a voting rights suit in court.<sup>90</sup>

### **Separate Release for Political Subdivisions (Section 4(a))**

Prior to the 1982 amendments, only a state covered statewide or a political subdivision of a noncovered state could seek release from coverage. Congress amended Section 4(a)<sup>91</sup> in 1982 to allow a political subdivision of a covered state to obtain release from coverage separately.

### **Reconsideration and Termination of the Act (Section 4(a))**

The 1982 amendments provide that Congress shall "reconsider" the special, administrative provisions of the act (preclearance of election-law changes and assignment of examiners and election observers) 15 years after the effective date of the 1982 amendments, in 1997; and that these provisions shall expire 25 years after their effective date, in 2007.

### **Extension of Bilingual-Election Requirement (Section 203)**

The 1982 amendments extended the bilingual election provisions of Section 203<sup>92</sup> for seven years, until August 6, 1992. The amendments further provided that the count of members of any language minority in a jurisdiction is to be limited to those who cannot read English well enough to use English-language registration and voting materials, as determined by the Census Bureau in the 1980 census and in studies conducted thereafter. This limitation on the counting of language-minority members applies only to Section 203. In counting members of a language minority

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<sup>90</sup> For a further discussion of Section 4, see CRS Report RS21911, *The Voting Rights Act of 1965, As Amended: Provisions with Expiration Dates of 2007*, by Garrine P. Laney and L. Paige Whitaker.

<sup>91</sup> 42 U.S.C. § 1973b.

<sup>92</sup> 42 U.S.C. § 1973aa-1a.

to determine whether a jurisdiction is covered under Section 4(b), all members are counted even if they can read English well enough to register and vote in English.

Following enactment of the 1982 amendment to Section 203, the Census Bureau determined that one or more political subdivisions in the following 20 states were subject to the bilingual election requirement: Alaska, Arizona, California, Colorado, Connecticut, Florida, Hawaii, Idaho, Massachusetts, Michigan, Montana, New Jersey, New Mexico, New York, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wisconsin.<sup>93</sup>

## Amendment to Judicial Standard of Proof Under Section 2

In the 1980 case of *City of Mobile v. Bolden*,<sup>94</sup> the Supreme Court affirmed that the proper standard for courts to use in deciding cases under Section 2 was demonstration of discriminatory intention. The Court said that courts can find any law to be in violation of the Fourteenth or Fifteenth Amendment only if it is shown that the law was enacted with the *purpose* or *intention* of discriminating. Because it regarded Section 2 of the Voting Rights Act as a statutory restatement of the Fifteenth Amendment, the Court held that the same judicial standard — intent — applies to cases brought under Section 2.<sup>95</sup>

To make it easier to challenge discriminatory election laws, Congress amended Section 2<sup>96</sup> to establish discriminatory *effect* or *result* as a standard of proof in voting rights cases. For example, if elections for the city council in a majority-white city were conducted at-large, with the result that black voters were unable to elect even one councilman of their own choice, blacks, prior to 1982, could have prevailed in a court suit seeking an injunction against the at-large election law only if they could have proven that it was instituted for the deliberate purpose of preventing black candidates from being elected. Discriminatory motivation is often difficult to prove. After the 1982 amendment to Section 2, they might obtain such an injunction by showing that blacks are unable to elect any of their own candidates because of the discriminatory result of the at-large system.

Congress recognized a danger in adopting a “results” standard for Section 2, namely, that electoral outcomes in which black voters fail to elect their own candidates in numbers proportional to the percentage that blacks comprise of the total electorate might be adduced as evidence sufficient to eliminate any at-large electoral systems through court suits. In this way, the results standard could have led to acceptance of a right of racial- or ethnic-group proportional representation. To avoid this conclusion, Congress provided that racially or ethnically unequal results of an electoral system may indicate a violation of Section 2 only if such results occur within a wider context of discrimination against a racial or ethnic minority. Where

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<sup>93</sup> 49 *Federal Register* 25887, June 25, 1984. This list replaced the list of covered jurisdictions published after the 1975 amendments to the act (see page 19).

<sup>94</sup> 446 U.S. 55.

<sup>95</sup> *Ibid.*, at 60-1.

<sup>96</sup> 42 U.S.C. § 1973b.

such official or societal discrimination is absent, unequal results of an electoral system would not suffice to convict the electoral system that produced such results. The statute states that a protected class has no right to have its members elected to office in numbers proportional to their percentage in the population.<sup>97</sup>

The 1982 amendments of Section 2 forbid application of any law “in a manner which results in a denial or abridgment” of the voting rights of members of protected classes — blacks and members of language minorities. Section 2 now provides that a court may find such a violation of voting rights if, within a community characterized by widespread discrimination, it determines that either of the following conditions obtains:

- (1) party nominating procedures deny equal opportunity for members of protected classes to have persons of their own choice selected as candidates for election to public office; or
- (2) the method of election denies equal opportunity for members of protected classes to elect candidates of their own choice to public office.

To prove a violation of Section 2, it must be shown that either of the above conditions occurs as part of a “totality of circumstances” constituting societal discrimination and racial or ethnic polarization, as evidenced, for example, by: a history of official discrimination; residual effects of discrimination in education, employment and health; expressed racism in election campaigns; unresponsiveness of elected officials to needs of the minority community; and racial bloc voting if it is indicative of racial antagonism.<sup>98</sup>

The new standard of proof under Section 2 is not, then, a pure “results” standard that might open the way to challenges of electoral systems throughout the country in which minorities cannot achieve proportional representation. Rather, it is a standard by which electoral results may be adduced as evidence of discrimination if an apparently fair electoral system — i.e., one that meets the “one man, one vote” principle — can be shown to perpetuate the domination of a white “power structure” to the disadvantage of a minority group.

## **The Voting Rights Amendments of 1992 (P.L. 102-344)**

In 1992, Congress passed the Voting Rights Language Assistance Act, which amended Section 203 of the Voting Rights Act. The Voting Rights Language Assistance Act requires election officials in states and political subdivisions with significant numbers of non-English speaking citizens of voting age to provide

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<sup>97</sup> For further discussion of racial proportional representation, see CRS Report RS21593, *Redistricting and the Voting Rights Act: A Legal Analysis of Georgia v. Ashcroft*, by L. Paige Whitaker.

<sup>98</sup> U.S. Congress, Senate, Committee on the Judiciary, *Voting Rights Act Extension*, report on S. 1992, 97<sup>th</sup> Cong., 2<sup>nd</sup> sess., S.Rept. 97-417, pp. 28-30.

bilingual services to them. The expiration date of Section 203 was extended for 15 more years to 2007.

## Debate on Bilingual Voting Assistance

**Proponents of Assistance.** Proponents of bilingual language assistance argued that considerable numbers of recently naturalized immigrants were not sufficiently fluent in English to understand complicated election procedures and electoral issues. Some long-time citizens of the United States, such as older Hispanics who learned very little English in school because they grew up in communities where Spanish was the principal language, needed language assistance too. As a result of their limited English, many of these citizens did not register and vote, even though, through the use of non-English news publications and radios, they were informed on the issues. Those who recommended bilingual language assistance argued that historically this country acknowledged and tolerated linguistic pluralism and diversity in education and should do likewise in the political arena. Advocates of providing bilingual election materials rejected the charge that language assistance discourages people from learning English. They maintained that people learn English for many reasons, most importantly to secure good employment and to communicate with others in the community. The provision of language assistance, they argued, did not diminish the motivations for learning English. On the contrary, it strengthened the ties that bound the people of the United States, for it was inclusive in nature rather than exclusive, and thereby ensured that no citizen was denied the fundamental right to vote because of a lack of fluency in English.<sup>99</sup>

**Opponents of Assistance.** The extension of Section 203 was opposed for several reasons. Opponents of the extension questioned whether it was needed. They contended that evidence submitted when the 1975 amendments were added was feeble then and had become even less persuasive. Some denied that there had been sufficient proof offered that bilingual ballots were effective in increasing voter registration, voter participation, or in changing the voter registration and/or participation between white and minority voters. Opponents who considered the bilingual election requirement a distortion of the intent of the Voting Rights Act argued that Congress passed the act in response to discrimination against racial minorities at the polling place. According to them, a person's ability to understand English was not immutable in the way a person's race is; thus, applying the Voting Rights Act in this way discouraged persons from learning English and, thereby, perpetuated divisions in society. Some opponents were also concerned about problems involved in accurately translating complex legal language from English to another language. The Canadian problem with bilingualism often was cited as an example of what would occur in the United States if we supported bilingual election material. Some opposition to bilingual election materials was based on the fear that it would corrupt the democratic process or would be expensive. The argument was also made that bilingual ballots delayed the progress of certain ethnic groups, because

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<sup>99</sup> U.S. Congress, House, Committee on the Judiciary, Subcommittee on Civil and Constitutional Rights, hearings on *Voting Rights Act: Bilingual Education, Expert Witness Fees, and Presley*, 102<sup>nd</sup> Cong., 2<sup>nd</sup> sess. (Washington: GPO, 1992), pp. 25-29.



English is the language of this country and persons who do not speak it cannot advance.<sup>100</sup>

## Reauthorization and Modification of Section 203

In addressing the extension and modification of Section 203 of the Voting Rights Act, some leaders of Hispanic, Asian and Native American populations offered evidence showing how the provision of bilingual voting assistance had impacted their communities and how coverage of the act could be widened to ensure that large numbers of limited-English speakers participated in the electoral process.

**Hispanics.** From 1980 to 1990, the Hispanic electorate increased greatly. The Hispanic electorate grew by over 50%, while the national electorate increased by less than 10%. Yet, Hispanics remained far behind the general voting population in registering, voting, and electing Hispanic officials. Several factors have been cited to explain this. One was that 37% of all Hispanics were non-citizens and thus were ineligible to vote. A third of Hispanics were too young to vote. Low education and income levels played a role in reducing Hispanic participation in the political process. Some argued that the bilingual provisions of the Voting Rights Act needed to be broadened and extended. They cited several million potential Hispanic voters who were still unregistered in 1988 as an indication of the continued significant need for language assistance.<sup>101</sup>

Many voting populations that had limited English language proficiency lived in major metropolitan areas where the surrounding population was so large that the limited-English population could not meet the 5% standard. For instance, the 69,000 Spanish monolinguals residing in Los Angeles in 1984 did not total 5% of the population and, consequently, were denied bilingual voting assistance. In contrast, a city of 100,000 residents with only 5,000 non-English speakers could qualify for language assistance under the Voting Rights Act as amended. Examples of counties that did not meet the 5% standard yet had sizeable limited-English-speaking populations included Los Angeles County, California; Cook County, Illinois; Queens County, New York; Philadelphia County, Pennsylvania; and Essex County, New Jersey.<sup>102</sup>

Some jurisdictions recognized the lack of federal voting protections for limited-English speakers and, accordingly, passed state and municipal laws to provide multilingual ballots. Others chose to supplement the provisions of the Voting Rights Act by passing laws requiring affidavits to be in Spanish for Spanish speakers, by

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<sup>100</sup> U.S. Congress, House, Committee on the Judiciary, *Voting Rights Language Assistance Act of 1992*, report to accompany H.R. 4312, 102<sup>nd</sup> Cong., 2<sup>nd</sup> sess., H.Rept. 102-655 (Washington: GPO, 1992), pp. 777-779, 787-791; Subcommittee on Civil and Constitutional Rights, hearings on *Voting Rights Act*, pp. 246-255.

<sup>101</sup> Subcommittee on Civil and Constitutional Rights, hearings on *Voting Rights Act*, pp. 312-316; National Association of Latino Elected and Appointed Officials Educational Fund, *The Latino Vote in 1992* (Washington: NALEO Educational Fund, 1992), p. iv.

<sup>102</sup> Sandra Guerra, "Voting Rights and the Constitution: The Disenfranchisement of Non-English Speaking Citizens," *Yale Law Review*, vol. 97, pp. 1423-1424.

providing interpreters for persons who do not speak, read, or write English, or by providing for elections conducted in both Spanish and English. Still other states chose not to take any action in this respect. Thus, nationally, there was no uniform bilingual voting coverage for limited-English speakers. In amending the Voting Rights Act to assist language minorities, coverage in every jurisdiction was made the same.<sup>103</sup>

Prior to 1982, in states and political subdivisions where the Director of the Census found that more than 5% of eligible voters were members of a language minority and that the illiteracy rate of these voters exceeded the national average, Section 203 of the Voting Rights Act prohibited English-only elections. But in 1982, after Congress amended Section 203, only those members of a minority “who do not speak or understand English adequately enough to participate in the electoral process” were covered. Congress intended for the formula that identified covered jurisdictions to more accurately target bilingual assistance for those who needed it. Some leaders of limited English populations questioned if that was indeed what had occurred.

To determine the English speaking comprehension element of the coverage formula, the Bureau of the Census used wording that offered respondents four choices — very well, well, not well, or not at all. Those who answered other than “very well” were presumed to need bilingual voting assistance. Some advocates of bilingual assistance for limited English populations claimed this wording gave a poor indication of language ability. In using this method, many counties previously required to provide Spanish language assistance no longer had to as a result of the amendments of 1982. Some felt that this method of identifying limited English minorities in need of language assistance was inadequate because it tended to overestimate English proficiency.<sup>104</sup>

**Asian Americans.** Difficulties in voting were also experienced by large Asian-American communities in California (Los Angeles, San Francisco and Santa Clara counties) and three New York City counties (Kings, Queens, and New York). Although the Asian American population had increased remarkably in the previous decade, it was still not expected to meet the 5% trigger for bilingual assistance coverage because the total State/county eligible Asian American voting population was numerically small in large metropolitan areas. Two of the five counties previously covered by Section 203 were no longer required to provide language assistance in California. Also, because each individual Asian language group had to qualify for Section 203 coverage on its own, frequently, a political subdivision was not covered under Section 203. For instance, although the Asian or Pacific Islander population in San Francisco county totaled over 200,000, the county was not required to provide bilingual voting assistance because no one language assistance group met individually all requirements of Section 203. San Francisco, the only mainland

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<sup>103</sup> Ibid., pp. 1423-1424.

<sup>104</sup> U.S. Congress, Senate, Committee on the Judiciary, Subcommittee on the Constitution, *The Voting Rights Act Language Assistance Amendments, 1992*, hearings, 102<sup>nd</sup> Cong., 2<sup>nd</sup> sess., on S. 2236, Feb. 26, 1992 (testimony of Marshall Plummer, Vice-President of the Navajo Nation).

county to provide Asian language assistance — in this case in Chinese — was dropped from federal coverage even though Chinese Americans comprised the largest language minority group (over 127,000)<sup>105</sup> in the county. (Because San Francisco was obligated under the provisions of a Consent Decree to develop a comprehensive voter registration outreach plan, the city had continued to provide language assistance.)<sup>106</sup>

The language barrier reportedly prevented many Asian Americans from voting and electing Asian Americans to office.<sup>107</sup> According to a report of the Civil Rights Commission, nearly 70% of the Asian-American population aged 15 and over were foreign-born and a large number of Asian Americans had limited English proficiency in the 1980 census. Using data based on the 1990 census, Charles Pei Wang, Chairman of the U.S. Commission on Civil Rights, stated that close to 70% of the Asian-American population is foreign-born and has limited-English proficiency. In New York City, 31% of District 20's approximately 140,000 residents were Asian American, but Asian Americans were only 6.7% of registered voters. Some attributed Asian-Americans' limited success in electing more of their own to political office to low Asian-American voter registration. Four out of five limited-English-proficient Asian Americans stated that they would have voted more often if bilingual assistance had been provided.<sup>108</sup> Results of a survey of Asian and Pacific Islander Americans in Los Angeles indicated support for the bilingual provisions. Eighty-four percent of all respondents believed that bilingual ballots would be helpful. Of American-born respondents, 77.7% thought bilingual ballots would be helpful, while 89% of those naturalized thought bilingual ballots would be helpful.<sup>109</sup>

Since many non-English-speaking citizens relied on the oral assistance mandated by Section 203, advocates argued that reauthorization of Section 203 would prevent voting obstacles to these citizens and increase their participation in the political process. To more accurately determine eligible limited-English-speaking populations, they suggested that the coverage formula include a numerical threshold in addition to the 5% calculation feature.

**Native Americans.** Native Americans comprised less than 1% of the total population of the United States. Since they did not exceed 5% of most counties, the 5% threshold would not have protected their voting rights. Native American leaders argued that Section 203's definition of a "political subdivision" as a county or parish

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<sup>105</sup> *Asian Week*, May 17, 1991, p. 1.

<sup>106</sup> Subcommittee on Civil and Constitutional Rights, *Voting Rights Act*, p. 207, pp. 284-285.

<sup>107</sup> Su Sun Bai, "Affirmative Pursuit of Political Equality for Asian Pacific Americans: Reclaiming the Voting Rights Act," *University of Pennsylvania Law Review*, vol. 139, pp. 731-767.

<sup>108</sup> U.S. Congress, Senate, Committee on the Judiciary, Subcommittee on the Constitution, *The Voting Rights Act Language Assistance Amendments, 1992*, hearings, 102<sup>nd</sup> Cong., 2<sup>nd</sup> sess., on S. 2236, p. 162; U.S. Civil Rights Commission, *Civil Rights Issues Facing Asian Americans in the 1990s*, pp. 158-162.

<sup>109</sup> Asian-Pacific American Legal Center of Southern California's Language Rights Project, *Voting Rights Survey: Asian and Pacific Islander Americans in Los Angeles*, Jan.-Feb. 1992.

ineffectively identified limited-English Native Americans who lived on reservations because many reservations included two or more counties and sometimes crossed state boundaries. They believed their unique history and demography created an atypical situation for Section 203's definition of a political subdivision, and that because of this the reservation, not the county or parish, should have been the standard of comparison.

As a result of the amendments of 1982, many counties with significant numbers of limited-English Native American residents were no longer required to provide language assistance for them. For example, in New Mexico, two counties were no longer required to provide language assistance to Native Americans. Six out of eight counties in South Dakota; four out of five in North Dakota; 24 out of 25 counties in Oklahoma, and six out of seven counties in Montana no longer were required by federal law to provide language assistance to Native Americans.<sup>110</sup>

There was evidence that on at least one reservation the availability of language assistance had been split along county lines. As a result, Indians residing on a reservation in one county received language assistance while others living on the same reservation but in another county did not.<sup>111</sup>

Another anomalous result of the 1982 amendments occurred when counties contained two tribes, each speaking a different language. Under provisions of Section 203, the tribe that met the 5% single language minority threshold received language assistance while the other did not. Therefore, some Native American representatives supported amending Section 203 to prohibit English-only elections where limited-English Indian speakers of voting age:

- (1) lived on or near a reservation or other identifiable Indian community (such as the Pueblo communities in New Mexico), and
- (2) exceeded 5% of the American Indian voting age population of that reservation or community.

## **Cost of Bilingual Election Assistance**

A major objection to extension of Section 203 was related to the costs for states of providing bilingual voting assistance to limited-English speakers. Information provided on the costs of bilingual election materials in San Francisco and New York showed the costs as minimal. The San Francisco Registrar of Voters office in San Francisco reported total costs for the November 1991 election was \$1.1 million; total costs for providing bilingual materials was \$42,000 or less than 4%. The New York City Board of Elections reported the costs of preparing 15,000 Chinese and Korean-language election assistance brochures for the 1991 City Council election was about \$3,300. Chinese language interpreters were hired also at minimal costs.<sup>112</sup>

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<sup>110</sup> Subcommittee on the Constitution, hearings on *Voting Rights Act Language Assistance Amendments of 1992*, p. 183.

<sup>111</sup> *Ibid.*

<sup>112</sup> House Subcommittee on Civil and Constitutional Rights, *Voting Rights Act*, pp. 296, (continued...)

**Written.** In 1986, the General Accounting Office (GAO) prepared a report on the costs and use of bilingual voting assistance during the November 6, 1984, general election that was based on data obtained through exit polls it sponsored in Texas, and responses from covered state governments. Of 295 jurisdictions that responded to the GAO questionnaire, an estimated 83 incurred \$388,000 in additional costs to provide written assistance. This figure represents an average of about 7.6% of their total costs for the general election. GAO estimated that 18 additional states provided written assistance but incurred no costs to do so.

Additional costs associated with the provision of minority language text in election publications resulted from translating text into the minority language, higher printing costs for using more paper and ink, and because of the extra time needed for typesetting and proofreading.<sup>113</sup>

**Oral.** Of 259 responding jurisdictions that reported providing oral assistance, GAO estimated no additional costs were incurred by 205. An estimated 15 of these jurisdictions did not know the amount of additional costs they incurred in providing bilingual assistance. The 39 jurisdictions that provided oral assistance spent about \$30,000 for it. This figure represents an average of about 2.8% of their costs to hold the November 1984 general election.

A majority of jurisdictions did not incur costs for providing oral assistance for several reasons. Some did not hire additional workers; rather, they found poll workers who were able to converse in the covered minority language. Usually, jurisdictions paid bilingual and monolingual poll workers at the same rate. In other cases, rather than hiring a bilingual worker for polling places, they made someone available if the polling place indicated a need for language assistance. Even then, standby workers were often unpaid volunteers or were paid only if they actually provided oral assistance at the polling place.<sup>114</sup>

## Use of Language Assistance

According to GAO, 80% of 277 jurisdictions in Texas that had provided written assistance on official ballots could not estimate the number of people who used the assistance. Jurisdictions lacked this information because they overwhelmingly used a bilingual format for election materials with both English and the minority language in one document, and also used voting machines to accommodate the bilingual needs of voters.

Of the 49 officials who could estimate the use of minority language assistance available on official ballots in their jurisdictions, 26 said that no one used the

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<sup>112</sup> (...continued)  
323.

<sup>113</sup> United States General Accounting Office, *Bilingual Voting Assistance, Costs of and Use During the November 1984 General Election*, report to the Congress by the Comptroller General of the United States, GGD-86-134BR, Sept. 1986 (Washington: 1986), pp. 16-17.

<sup>114</sup> *Ibid.*, pp. 19-20.

assistance. Twenty-three officials using professional judgment, requests for ballots, minority language statistics, and other methods, singularly or in combination, estimated that from 1 to 7,500 people used the assistance on official ballots. Based on exit poll interviews with voters, GAO estimated that 69,000 of approximately 275,000 Hispanics who voted in the 1,012 Texas precincts used written assistance on election day.<sup>115</sup>

Seventy-four percent of responding jurisdictions that provided oral assistance were unable to estimate the number of voters who received the assistance. Of the 62 jurisdictions that offered estimates of oral assistance, 29 reported that no one used the assistance and 33 provided estimates ranging from one to 2,634 people. About 85,000 out of 263,000 Hispanic voters received oral assistance in Spanish.<sup>116</sup>

## **Key Provisions of the Voting Rights Language Assistance Act of 1992**

The Voting Rights Language Assistance Act of 1992 maintains language assistance for selected language minority populations and offers coverage for jurisdictions with significant populations that previously had not offered language assistance under federal mandate.<sup>117</sup>

### **Bilingual Voting Materials Requirement (Section 203, (b))**

Provisions of Section 203<sup>118</sup> of the Voting Rights Act of 1965 were extended for 15 more years to 2007, making it coextensive with the rest of the act.

### **Covered States and Political Subdivisions**

The triggering mechanism of Section 203<sup>119</sup> was strengthened by adding a numerical threshold provision and by more effectively identifying Native Americans who need language assistance. A state or political subdivision is a covered state or political subdivision if the Director of the Census determines, based on census data, that more than 5% of the citizens of voting age there are members of a single language minority and are limited-English proficient; more than 10,000 of the citizens of voting age are members of a single language minority and limited-English proficient; or if a political subdivision contains all or any part of an Indian reservation with more than 5% of the American Indian or Alaska Native citizens of voting age within the reservation who are members of a single language minority and who are limited-English proficient.

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<sup>115</sup> Ibid., p. 26.

<sup>116</sup> Ibid., pp. 32-34.

<sup>117</sup> P.L. 102-344, 106 Stat. 921; U.S. Congress, H.Rept. 102-655, p. 3.

<sup>118</sup> 42 U.S.C. § 1973aa-1a.

<sup>119</sup> 42 U.S.C. § 1973aa-1a.

## Current Major Provisions of the Act

Following is a summary of the major provisions of the Voting Rights Act in effect at the present time.<sup>120</sup>

### Coverage (Section 4(b))<sup>121</sup>

A state or political subdivision of a state is subject to the administrative enforcement provisions of the act if it maintained a literacy test or device (such as the requirement that a qualified voter vouch for the eligibility of a registration applicant) as a condition for voter registration on November 1 of 1964, 1968 or 1972. A state or political subdivision of a state also is subject to the enforcement provisions of the act if either less than 50% of age-eligible citizens were registered to vote or less than 50% of such citizens voted in the presidential election held in the year in which it used such a test or device. A jurisdiction is considered to have used a literacy test on November 1, 1972, if more than 5% of its voting-age population were of a single language minority (American Indian, Alaskan Native, Asian American or of Spanish heritage) and it conducted elections with exclusively English-language materials or assistance.<sup>122</sup>

### Suspension of Tests and Devices (Section 4(a))<sup>123</sup>

Jurisdictions covered under the act through one of the coverage formulas of Section 4(b) may not use any test or device as a condition of voter registration. With respect to jurisdictions covered through 1972 criteria, suspension of tests and devices means providing electoral materials and assistance in the language of the applicable language minority as well as in English.

### Preclearance of Election-Law Changes (Section 5)<sup>124</sup>

Covered jurisdictions are required to submit for federal review any change in law affecting elections before putting such a law into effect. Jurisdictions that have been covered because they used literacy tests for voter registration and had low

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<sup>120</sup> For further discussion of the Voting Rights Act of 1965, as amended, see the following reports: CRS Report RS21593, *Redistricting and the Voting Rights Act: A Legal Analysis of Georgia v. Ashcroft*, by L. Paige Whitaker, and CRS Report RS21585, *Congressional Redistricting: Is At-Large Representation Permitted in the House of Representatives?*, by David C. Huckabee and L. Paige Whitaker.

<sup>121</sup> 42 U.S.C. § 1973b.

<sup>122</sup> Jurisdictions covered under Section 4(b) are listed in 28 C.F.R. Pt. 51.54, Appendix. Those covered for language minorities are also listed in 28 C.F.R. Pt. 55.24, Appendix. This Appendix indicates the minority language applicable for each jurisdiction.

<sup>123</sup> 42 U.S.C. § 1973b(a)(1).

<sup>124</sup> 42 U.S.C. § 1973c. Also, see CRS Report RS21911, *The Voting Rights Act of 1965, As Amended: Provisions with Expiration Dates of 2007*, by Garrine P. Laney and L. Paige Whitaker.

political participation in the 1964, 1968 or 1972 presidential election must submit election-law changes made since November 1 of 1964, 1968 or 1972, respectively. They must submit such changes in law either to the U.S. Justice Department or the U.S. District Court for the District of Columbia to ensure that new laws affecting elections do not have the purpose and will not have the effect of denying or abridging voting rights on account of race, color or language-minority status. The jurisdiction may put a new law into effect only after it has been submitted to the Attorney General and the latter has not objected to it within 60 days.

### **Federal Examiners to List Eligible Voters (Section 6)<sup>125</sup>**

At the request of the Justice Department, the U.S. Office of Personnel Management is to send one or more federal examiners to list eligible voters for registration in a covered political subdivision of a state whenever the Department receives 20 or more written complaints of voting discrimination on account of race, color or language-minority status, or whenever the Attorney General thinks it is necessary to protect voting rights.

### **Federal Election Observers (Section 8)<sup>126</sup>**

The Attorney General may request the Office of Personnel Management to send federal observers to any jurisdiction where an examiner has been assigned. Observers are to ensure that all registered voters are allowed to vote, and that all votes are properly counted.

### **Conditions for Release From Coverage (Section 4(a))<sup>127</sup>**

A covered state or political subdivision of a state may be released from required preclearance of election law changes under Section 5 and from being subject to assignment both of examiners under Section 6 and of observers under Section 8 if it can meet several specified conditions. The state or political subdivision of a state must be able to demonstrate in an action for a declaratory judgment in the U.S. District Court for the District of Columbia that during the previous 10 years it has:

- (1) not used a discriminatory test or device for voter registration;
- (2) not been found in a court case to have denied or abridged voting rights, and it has not agreed through a consent decree to discontinue any discriminatory practice with respect to voting;
- (3) precleared all election-law changes with the Justice Department or with the U.S. District Court for the District of Columbia;
- (4) not received a single objection to an election-law change submitted for federal preclearance;
- (5) not been assigned a federal examiner;

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<sup>125</sup> 42 U.S.C. § 1973d.

<sup>126</sup> 42 U.S.C. § 1973f. Also, see CRS Report RS21911, *The Voting Rights Act of 1965, As Amended: Provisions with Expiration Dates of 2007*, by Garrine P. Laney and L. Paige Whitaker.

<sup>127</sup> 42 U.S.C. 1973b.



- (6) promoted political participation by racial or language minorities; and
- (7) collected presentable evidence of minority registration, voting and other political participation.

The U.S. District Court for the District of Columbia is to retain jurisdiction over any action for release from coverage for 10 years, and is to reopen the case whenever during that time period either the Attorney General or an aggrieved person alleges that voting discrimination has occurred in the jurisdiction.

A jurisdiction cannot be released from coverage while it is defending itself in a voting rights case, unless the case was filed in court after the jurisdiction initiated a court action for release from coverage.

### **Termination of Coverage Provisions (Section 4(a))<sup>128</sup>**

Congress shall reconsider provisions that require preclearance of election-law changes and assignments of examiners and election observers in 1997. These provisions will expire in 2007.

### **Prohibitions of English-Language Literacy Requirement for Citizens Educated in American Schools (Section 4(e))<sup>129</sup>**

Any citizen educated in an American-flag school in which classroom instruction is given in a language other than English (e.g., a public school in Puerto Rico in which instruction is given in Spanish) may not be denied the right to vote because he or she cannot meet an English-language literacy requirement.

### **Prohibits Intimidation of *Any* Qualified Person from Voting (Section 11)**

Section 11 prohibits any person whether acting under color of law or otherwise from:

- (1) failing or refusing to permit *any* qualified person from voting in general, special, or primary federal elections;<sup>130</sup>
- (2) refusing to count the vote of a qualified person; or
- (3) intimidating any one attempting to vote or any one who is assisting a person in voting under certain provisions of this act.

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<sup>128</sup> 42 U.S.C. § 1973b. For information on this temporary provision, also see CRS Report RS21911, *The Voting Rights Act of 1965, As Amended: Provisions with Expiration Dates of 2007*, by Garrine P. Laney and L. Paige Whitaker.

<sup>129</sup> 42 U.S.C. § 1973aa-1a.

<sup>130</sup> That is, office of the President, the Vice President, presidential elector, Member of the United States Senate, Member of the House of Representatives, Delegates or Commissioners from the territories or possessions, and the Resident Commissioner of Puerto Rico.

## **Bilingual-Election Requirement (Section 203)<sup>131</sup>**

A state or political subdivision in which the Census Bureau determines that citizens of voting age who number more than 10,000 or who comprise 5% of a single language minority and whose illiteracy rate (failure to complete the 5<sup>th</sup> grade) is higher than the national illiteracy rate must be provided with election materials and assistance in the language of the applicable minority as well as in English. If more than 5% of the American Indian or Alaska Native citizens of voting age on an Indian reservation that is either partially or wholly within a political subdivision are members of a single language minority and are limited-English proficient, then bilingual services must be provided them. Only members of a language minority who cannot read English well enough to use English-language election materials are counted.

This bilingual election requirement will expire on August 6, 2007.<sup>132</sup>

## **Nationwide Literacy Test Ban (Section 201)<sup>133</sup>**

Every jurisdiction in the country is forbidden to impose a literacy test or device, such as a voucher requirement, as a condition for voter registration.

## **Registration and Voting Statistics (Section 207)<sup>134</sup>**

The Census Bureau is to compile statistics in every covered jurisdiction showing the extent to which all citizens of voting age and all such citizens by race, color and national origin registered and voted in every congressional election after January 1, 1974. It is also to compile these statistics in any jurisdiction and for any election designated by the U.S. Civil Rights Commission. No person whom the Census Bureau questions may be compelled to state his or her race, color, national origin, political party affiliation or how he or she voted.

## **Limitation of Residence Requirements for Voting (Section 202)<sup>135</sup>**

No state may deny any citizen the right to vote in a Presidential election if he or she registers to vote at least 30 days prior to the election. If a citizen moves to

<sup>131</sup> 42 U.S.C. 1973aa-1a..

<sup>132</sup> Jurisdictions covered under Section 203 are listed in 28 C.F.R. Pt. 55.24, Appendix. The listing indicates the applicable minority language for each jurisdiction. For information on this temporary provision, also see CRS Report RS21911, *The Voting Rights Act of 1965, As Amended: Provisions with Expiration Dates of 2007*, by Garrine P. Laney and L. Paige Whitaker.

<sup>133</sup> 42 U.S.C. 1973aa.

<sup>134</sup> 42 U.S.C. § 1973aa-5.

<sup>135</sup> 42 U.S.C. § 1973aa-1.

another state after the 30th day preceding a Presidential election, that person may vote in his or her former state.

If a citizen applies for an absentee ballot seven days before a Presidential election, then no state may deny him or her the right to vote in the election.

## **General Prohibition of Discriminatory Voting Laws (Section 2)<sup>136</sup>**

Section 2 prohibits any state or political subdivision of a state from putting into effect an election law that results in a denial or abridgment of voting rights on account of race, color or language-minority (American Indian, Alaskan Native, Asian American or of Spanish heritage) status.

A court may find a violation of Section 2 if a protected class is disadvantaged by official and social discrimination and either political nominating processes or a method of election denies to the protected class equal opportunity to elect to office candidates of its own choice. Section 2 does not grant to any protected class a right to elect a number of candidates to public office in proportion to the percentage that class comprises of the total electorate.

## **Civil Actions to Enforce Compliance (Section 12(d))<sup>137</sup>**

Section 12(d) authorizes the Attorney General to seek compliance enforcement through the federal district courts.

## **Presidential Election of 2000**

On November 7, 2000, American citizens went to the polls to cast their votes for President of the United States. Not everyone's vote, however, was counted. Some charge that election irregularities and minority vote dilution involving African Americans, ethnic groups such as Hispanics and Haitians, as well as white Americans that occurred in jurisdictions in a number of states, effectively disfranchised thousands of citizens. Although other states have been accused of having voting irregularities, the state of Florida has come under particular scrutiny. A number of investigations into the election procedures and experiences of voters have been conducted by civil rights groups, the state of Florida, the federal government, and the media.

## **NAACP Hearing**

Because of the kind and extent of alleged voting irregularities that were reported to elected officials and civil rights organizations, the National Association for the Advancement of Colored People (NAACP) held a hearing in Florida on November

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<sup>136</sup> 42 U.S.C. § 1973b.

<sup>137</sup> 42 U.S.C. § 1973(j)(e).

11, 2000. It promised to hold hearings on the election experiences of voters in Michigan, California, Massachusetts, Missouri and, perhaps, Maryland. Based on testimony provided by some Floridians of their experiences on election night, national civil rights organizations such as the NAACP, Lawyers Committee for Civil Rights under Law, the Advancement Project, People for the American Way, and the American Civil Liberties Union, among others, alleged that provisions of the Voting Rights Act of 1965, as amended, were violated. Problems broadly identified included the registration process, election procedures, election equipment, training of election staff, and discriminatory practices at polling precincts. Specifically, Florida election officials were accused of:

- Failing to provide bilingual ballots;
- Purging of names, disproportionately of black individuals, from county voting lists;
- Eliminating, in error, thousands of individuals from registration lists on the grounds that they were felons;
- Training poll workers inadequately;
- Denying Haitian-Americans access to translators and language assistance;
- Intimidating African Americans on their way to the polls by using an unauthorized traffic checkpoint near a voting precinct;
- Failing to pick up some ballot boxes in African-American neighborhoods;
- Refusing, when asked, to provide new ballots to voters who made errors;
- Telling individuals that they had voted when they had not voted;
- Changing designated polling places without advance notice or without adequate notice to the community;
- Sending individuals from one precinct to another only for the individuals to find that they were not on the registration lists or that it was too late to vote;
- Asking some minority voters for photo identification while not asking the same of white voters;
- Denying some voters the right to vote because of minor discrepancies between their names as they appeared on registration lists and on the photo-ID they presented, such as the absence of a middle initial;
- Failing to process registration applications and to provide voting cards in a timely manner, resulting in some voters' names not appearing on the voting list;
- Failing to send requested absentee ballots to individuals and then refusing to let these same individuals vote when they appeared at the precinct to vote; and
- Using antiquated and error prone equipment in minority precincts, which resulted in a disproportionate number of African-American votes not being counted.<sup>138</sup>

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<sup>138</sup> Press Release, Lawyers Committee for Civil Rights Under Law, Jan. 10, 2001, at

## Florida Task Force

In response to the close presidential election of November 2000 and concerns expressed regarding election procedures, standards, and technology used in counties in Florida, Governor Jeb Bush, on December 14, 2000, through Executive Order Number 00-349, created the Select Task Force on Election Procedures, Standards and Technology (hereafter, Task Force on Election Procedures). By March 1, 2001, the Task Force on Election Procedures was to have studied and have written policy recommendations and/or proposed legislation to improve the election procedures, standards, and technology used in Florida counties. Governor Bush stated that the U.S. Department of Justice was the appropriate body to address complaints of residents that some polls were closed even though individuals were still in line to vote, that election officials used lists that they knew were inaccurate to remove individuals from voting rolls, and that on election night law enforcement officers conducted traffic stops near some black precincts. Given the tight schedule within which it had to operate, the Governor advised the Task Force on Election Procedures to limit its scope and come up with a series of recommendations for the Florida legislature.”<sup>139</sup>

At its first meeting on January 2001, several members of the Task Force on Election Procedures made recommendations, among which were to:

- offer provisional ballots to persons whose voting registration was questioned;
- end state runoff elections to extend the time between primary and general elections;
- replace antiquated voting systems that used punch cards, paper ballots, or lever-operated voting machines with optical scanners; and
- create a statewide database that allowed instant verification of a voter’s registration in the state.

Estimates of the cost of providing election equipment that would minimize the difficulty individuals had in casting their votes included a total of \$45 million to provide an optical scanning ballot system in each of the 4,555 precincts in Florida and \$200 million for a statewide database that would verify instantly the registration status of a voter in the state.<sup>140</sup>

**Final Report of Florida Task Force.** In March 2001, the Select Task Force on Election Procedures, Standards and Technology submitted its final report to Governor Jeb Bush. Its major recommendations addressed upgrading the voting system technology, recount and vote certification issues, voter registration and

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<sup>138</sup> (...continued)

[<http://www.lawyerscomm.org/2005website/publications/press/press011001statement.html>].

<sup>139</sup> Klas, Mary Ellen, “Election Officials Urge Purchase of Optical Scanners,” *Palm Beach Post*, Jan. 9, 2001, p. 1A.

<sup>140</sup> Iorio, Pam, “Election Officials Urge Purchase of Optical Scanner Recommendations Could Cost \$245 Million,” *Palm Beach Post*, Jan. 9, 2000, p. 1A.

absentee voting. The Task Force recommended: a certified voting system based on a minimum standard of precinct-tabulation optical scan technology; a state grant or loan program for counties to lease or purchase precinct-tabulation optical scan technology; decertification of punch card, mechanical lever, and manual paper ballots and central-tabulation optical scan voting systems for the 2002 election; and continuing review of new voting systems, such as touch-screen technology for use in future elections.

For recount and vote certification issues, the recommendation was to pass legislation which provides that: a machine count of votes is presumed correct unless it can be shown clearly that there is a machine tabulation error; only ballots not counted by otherwise properly functioning machines would be subject to manual recounts; manual recounts would apply to all counties involved in multi-county district, statewide, and federal elections; a clear threshold for invoking a manual recount process that is distinct from a need to determine the outcome of an election be statutorily established; manual recounts would apply to an entire county rather than selected precincts; and statutorily clarifies the basis upon which results of an election may be contested.

For voter registration the Task Force recommended that \$3 million be provided to design a statewide centralized voter registration database.

The Task Force would repeal the statutory restrictions for voting an absentee ballot; statutorily clarify that errors in absentee ballots should not automatically be thrown out; and continue the absentee voting via the Internet for eligible voters who are overseas.

While commending the report, Commissioner Chairperson Mary Frances Berry said the election involved more than just poor technology but that voter disenfranchisement appeared to be at the heart of the issue. "It is not a question of a recount or even an accurate count, but more pointedly the issue is those whose exclusion from the right to vote amounted to a 'No Count.'"<sup>141</sup>

**Florida Election Law.** On May 9, 2001, Governor Jeb Bush signed into law the Florida Election Reform Act of 2001. The legislation for the most part included many of the recommendations of the Task Force on the Election. The law's provisions: require the use of precinct-based voting technology with touch screen systems permitted which allow a voter to correct mistakes made while voting; prohibit punch card and other antiquated voting systems; provide funding for modernizing voting equipment, educating voters, training poll-workers, and to develop a statewide centralized voter registration database by June 2002; allow a provisional ballot to be counted; clarify and provide standards for recounting votes; and require the posting of a Voter's Bill of Rights and Responsibilities in each polling place in the state.

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<sup>141</sup> *World Socialist Web Site*, White, Jerry, "U.S. Commission on Civil Rights Charges "Voter Disenfranchisement...at Heart" of Bush Victory in Florida," Mar. 10, 2001, at [<http://www.wsws.org/articles/2001/mar2001/vote-m10.shtml>]

## Federal Action

Both the Department of Justice (DOJ) and the U.S. Commission on Civil Rights (CCR) provided a federal presence in Florida. DOJ reviewed a number of allegations of voting irregularities in the state. At a press conference on March 7, 2001, Attorney General Ashcroft revealed his voting rights initiative. He recommended the appointment of a senior counsel who would examine the 2000 elections for good practices to share with states and local governments in their voting reform efforts. He also offered to share DOJ's 35 years of experience on voting issues with states and local governments. In coordination with local governments, he supported increasing DOJ's assistance in monitoring and observing elections. In addition, the Attorney General increased the number of attorneys in the Voting Section of DOJ from 36 to 44. In response to the thousands of complaints of citizens and organizations of voter irregularities, he stated that DOJ would investigate and prosecute if provisions of the Voting Rights Act or the National Voter Registration Act were violated. When asked if in DOJ's review of voting irregularities it found fraud, the Attorney General declined comment.<sup>142</sup>

On January 11 and 12, 2001, the U.S. Commission on Civil Rights, in trying to determine if any violations of the Voting Rights Act occurred during the November 2000 elections, held hearings in Tallahassee, Florida. The Commission questioned Governor Jeb Bush, Secretary of State Katherine Harris, State Attorney General Robert Butterworth, Director of Florida Division of Elections Clayton Roberts, and some county election supervisors on election procedures in the state, including interacting with election supervisors, training staff, educating voters, handling complaints of fraud, and recounting ballots. Some citizens testified that they had problems trying to vote at different stages of the process. Attorney General Butterworth's office received 2,500 complaints from voters on use of the butterfly ballot, an unauthorized traffic checkpoint that was near a voting precinct, and poll workers' refusal to provide on request second ballots to voters.

Governor Bush testified that the Florida Secretary of State, not his office, was responsible for carrying out elections. Secretary of State Harris said that her office was responsible for candidates' qualification for state and federal offices and for district elections that involved more than one county, for campaign finance reports, and for maintaining a central voter file. She directed questions to the elections director, Clayton Roberts, who implemented state election codes and handled daily operations. Mr. Roberts, on the other hand, stated that control of local elections was the responsibility of county elections supervisors.<sup>143</sup>

Some election supervisors complained that Secretary Harris's office did not provide financial assistance for non-partisan voter education projects or pay for mailing sample ballots as requested. Mr. Roberts testified that the state spent about \$7,000 for voter education efforts and several hundred thousand dollars for a voter

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<sup>142</sup> Attorney General John Ashcroft, U.S. Department of Justice, News Conference, Mar. 7, 2001.

<sup>143</sup> U.S. Commission on Civil Rights, hearings held in Tallahassee, Florida, C-SPAN, Jan. 11-12, 2001; *St. Petersburg Times*, Jan. 12, 2001, p. 1A.

fraud hot line. According to Ion Sancho, Leon County election supervisor, this compared to \$30 million that Florida spent some years on educating people on how to play Lotto.<sup>144</sup> When questioned about difficulties citizens encountered in trying to vote, including vote recounts, and the role of the Secretary of State, Roberts replied that while Secretary Harris had statutory *responsibility* to set standards for conducting elections and any recounts, she lacked the legal *authority* to set those standards, so she didn't set any.<sup>145</sup>

Commission Chairperson Mary Frances Berry stated that intent as a motive was not necessary to rule that violations of the Voting Rights Act occurred; rather, a pattern of neglect and/or incompetence would suffice. While CCR cannot apply specific remedies, it can recommend civil and/or criminal penalties for persons responsible for civil rights violations.<sup>146</sup>

**Final Report of the U.S. Commission on Civil Rights.** The Commission on Civil Rights released its report on June 8, 2001. The report was endorsed by eight of the 10 commissioners. The findings of the report were based on three days of hearings, interviews with over 100 witnesses and the review of over 118,000 documents. While not finding “conclusive evidence” that Florida officials conspired to disenfranchise voters, the Commission charged Governor Jeb Bush and his secretary of state, Katherine Harris, with “gross dereliction” of duty for ignoring the problem despite “mounting evidence” of it. Harris’ rejection of a budget proposal to spend \$100,000 for voter education is cited. The report found the extraordinary feature in the Florida election to be widespread voter disenfranchisement, not the dead-heat contest. The report concluded that Florida’s electoral system was unjust, inept, and inefficient, which resulted in the disenfranchisement of thousands of black residents. The Commission found that black voters were disproportionately the victims of faulty voting equipment, erroneous purging of voter lists, switching of polling places at the last minute, and potential intimidation by the presence of police at heavily black voting precincts. Blacks, who were 11% of voters statewide, comprised 54% of votes rejected during the Florida election. Further, it found that some Hispanic and Haitians voters were denied access to ballots in their native tongue or bilingual assistance by poll workers.<sup>147</sup> Some specific findings of the report were:

- black voters were nearly 10 times as likely as whites to have their ballots rejected;

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<sup>144</sup> Pressley, Sue Anne, “Florida Panel: Money Key to Election Reforms,” *Washington Post*, Jan. 10, 2001, p. A3.

<sup>145</sup> *The Nation*, at [<http://www.thenation.com/doc.mhtml?i=20010716&s=lantigua0115>].

<sup>146</sup> Robinson, Andrea, “Governor Refuses Blame for Florida Election Problems,” *Miami Herald*, Jan. 12, 2001.

<sup>147</sup> *The Guardian*, (Manchester, UK), Borger, Julian, “Jeb Bush Blamed for Unfair Florida Election: Civil Rights Commission Says Minorities Were Disenfranchised by Governor’s ‘Gross Dereliction’ in Ignoring Problems,” June 6, 2001, p. 1.10



- there were no clear guidelines to protect eligible voters from being erroneously purged from the state list of felons, people with dual registrations and the deceased;
- election supervisors in counties with the worst problems failed to prepare adequately for the election or to demand adequate resources; and
- the Florida Division of elections failed to educate voters on how to vote.<sup>148</sup>

Commission Chairperson Mary Frances Berry stated that she hoped the report findings would encourage both the state of Florida and Congress to initiate reforms. Berry wanted the Justice Department to probe further and determine whether the obstacles minority voters encountered while trying to vote constituted a violation of the Voting Rights Act. In addition, she wanted DOJ to get Florida officials to act, either by taking them to court or by getting a voluntary agreement from them not to let this be repeated. The office of the Attorney General of Florida said that it was investigating allegations of civil rights violations and would give “due consideration” to the Commission’s report. A spokesman for the Department of Justice said that thousands of complaints from citizens were investigated and by early January, all but 12 of them had been closed. Those complaints still under review involved possible violations of the Voting Rights Act. The Justice Department was trying to determine if a lack of bilingual ballots and an insufficient number of Spanish-speaking poll workers prevented some Spanish-speaking voters from casting a ballot. In Osceola County, with an Hispanic population of 29%, the election supervisor refused to print ballots in Spanish.<sup>149</sup>

Two dissenting members of the Commission charged it with using “inflammatory language” and stated that its findings were not supported by facts. They cited blacks’ lower education levels, the high volume of voters, and in particular, the high volume of first-time voters, who they claimed always made more mistakes. Another criticism offered by others was that the report claimed that blacks suffered from inferior voting equipment; a charge that was refuted in a study by Stephen Knack and Martha Kropf. *The Washington Post* conducted a computer analysis of the election which revealed that the more black and Democratic a precinct, the more likely it was to suffer high rates of invalidated votes.”<sup>150</sup>

Spokespersons for some civil rights organizations found the Commission’s report consistent with their findings. Barbara Arnwine of the Lawyers Committee of Civil Rights Under Law said that the action of state authorities was “a violation

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<sup>148</sup> *The Washington Post*, Pierre, Robert E. and Peter Slevin, “Fla. Vote Rife With Disparities, Study Says Rights Panel Finds Blacks Penalized,” June 5, 2001, p. A01.

<sup>149</sup> *Wall Street Journal*, Calmes, Jackie, “Rights Report on 2000 Vote Fuels Debate Clouded by Ambiguities,” June 11, 2001, p. A.24. See “Who Uses Inferior Voting Technology?” by Stephen Knack and Martha Kropf; *The Washington Post*, Pierre, Robert E., “Rights Panel Duo Fault Report; GOP Appointees Say Findings of Bias Are not Defensible,” June 6, 2001, p. A.07.

<sup>150</sup> *Ibid*; *The Washington Post*, Pierre, “Fla. Vote Rife With Disparities,” June 5, 2001, p. A01.

of the fundamental trust that we all give to state-elected officials to protect our right to vote.” Kweisi Mfume of the NAACP commented that the report “underscores officially what most of us have known all along.”<sup>151</sup>

## Media Review

One estimate of the number of votes undercounted (ballots where no vote for president was recorded) in Florida was between 40,000 and 60,000. The *Miami Herald* and its parent company, Knight Ridder, hired BDO Seidman, a national accounting firm, to conduct an in-depth review of ballots in all of Florida’s 67 counties. The *Palm Beach Post* contributed to the cost of reviewing ballots in Miami-Dade and Palm Beach counties and conducted an independent review of ballots in Martin and St. Lucie counties. The Assistant Managing Editor of the *Herald*, Mark Seibel, said the purpose of the effort was “to provide an answer to people who are wondering what would have happened if the U.S. Supreme Court had not stepped into the Florida election.” The *Herald* permitted reporters to observe the count in all counties. Only the results of BDO Seidman’s observations were reported. While there was no deadline for completing its project, the paper hoped to finish before the Florida legislature met in March 2001.

A group of news organizations and Florida newspapers contracted with the National Opinion Research Center (NORC), a University of Chicago survey research organization, to conduct an “inventory” of Florida’s 180,000 uncounted ballots “to better understand what went wrong” and “document history.” These ballots included both undervotes and overvotes, i.e., two or more votes for president.<sup>152</sup> This consortium was composed of the Associated Press, Tribune Publishing newspapers including the *Sun-Sentinel* and the *Orlando Sentinel*, the *New York Times*, the *Wall Street Journal*, the *Washington Post*, CNN, the *St. Petersburg Times*, and the *Palm Beach Post*. The estimated cost of this study was at least \$500,000.<sup>153</sup>

As a result of the terrorist attacks of September 11, 2001, initially, the consortium of print and television media postponed the scheduled analysis of disputed ballots from the presidential election because it was believed that the disclosure might cause political partisanship at a time of national crisis.<sup>154</sup> As reported in *The New York Times* on November 12, 2001, the findings of the consortium study, which examined many hypothetical ways of recounting Florida ballots, differed depending on the method employed. Two examples of methods used follow. If the recount of disputed ballots were carried out as the Florida Supreme Court ordered, which the U.S. Supreme Court halted, then Mr. Bush would have won by 493 votes. An examination of undervotes and overvotes that voting machines rejected revealed that 24,619 ballots could have been interpreted as legal votes. Had

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<sup>151</sup> *The Guardian*, (Manchester,UK), Borger, Julian, “Jeb Bush Blamed for Unfair Florida Election,” June 6, 2001, p. 1.10.

<sup>152</sup> Brinkley-Rogers, Paul, “News Units Hire Researcher for Second Study of Ballot,” *Miami Herald*, Jan. 10, 2001.

<sup>153</sup> *Ibid.*

<sup>154</sup> See [<http://dir.salon.com/news/feature/2001/09/29/democracy/index.html>].

a statewide-recount been conducted (which Mr. Gore rejected as impractical), then Mr. Gore would have been declared the victor. The consortium study, in providing a comprehensive review of uncounted ballots in Florida, hoped to contribute to the creation of more accurate and reliable voting systems.

## Lawsuits

Lawsuits were filed by various civil rights groups in state and federal courts challenging voting policies and practices in some states' electoral processes. On January 10, 2001, the NAACP and other civil rights organizations filed a class action lawsuit (*NAACP v. Katherine Harris, et al.*), in the U.S. District Court Southern District, (Miami) against Katherine Harris, Clayton Roberts, elections supervisors from seven counties, and Choicepoint, Inc.<sup>155</sup> Plaintiffs maintained that electoral practices in Florida violated the 14th Amendment and both federal and state voting rights statutes. They contended that in predominantly black precincts names were wrongfully purged from registration lists, voter registrations were improperly processed, foreign-language assistance was not provided for voters who requested it, and antiquated voting equipment was used. According to NAACP, all of these practices violated the Voting Rights Act of 1965, as amended. Plaintiffs were not seeking to overturn the election results; rather, they said that they wanted to restore integrity to the electoral process in the state. Improvements in the electoral process that they wanted included eliminating unreliable voting equipment and replacing it with reliable and uniformly administered voting systems and procedures, maintaining a list of inactive voters at polling places, providing an alternative method for individuals whose names do not appear on the registration list, informing individuals at polling places of their rights to assistance, and appointing federal examiners (pursuant to provisions of the Voting Rights Act) in each of the defendant counties for the next 10 years.<sup>156</sup>

Lawsuits filed in Illinois<sup>157</sup> and Georgia<sup>158</sup> by the American Civil Liberties Union and others charged that both the equal protection clause of the 14<sup>th</sup> Amendment and the Voting Rights Act were violated during the recent election. The suits focused on the quality of counting devices used in elections in the states and the high rate of disqualification of ballots that occurred in precincts with large black populations.<sup>159</sup>

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<sup>155</sup> Choicepoint, Inc. is the firm that provided the Secretary of State of Florida a database of persons identified as ineligible to vote because they were felons. The use of this list is alleged to have resulted in the erroneous removal of thousands of individuals from voter registration lists in the state.

<sup>156</sup> Yee, Ivette M., "Civil-rights Suit Seeks Voting Overhaul," *Miami Herald*, Jan. 11, 2001.

<sup>157</sup> U.S. District Court for the Northern District of Illinois, *Black v. McGuffage* (01C 0796); U.S. District Court, Eastern Division (*del Valle v. McGuffage*); and Circuit Court of Cook County, Illinois, County Department, Chancery Division, *Tully v. Orr* (01 CH 00959)

<sup>158</sup> State of Georgia, Superior Court of Fulton County, *Andrews v. Cox et al.* (2001CV 32490).

<sup>159</sup> *Election Administration Reports*, vol. 31, no. 2, Jan. 22, 2001, pp. 1-3.

The Douglass Institute of Government (DIG), however, challenged the constitutionality of Florida's presidential electors. According to DIG, the disparate impact on African American voters in not having their votes counted in the presidential election violated their due process rights and the right to equal protection under the law — rights that Sections 1 and 2 of the 14<sup>th</sup> Amendment protect. DIG asserted that redress is provided in Section 2 of the 14<sup>th</sup> Amendment. That is, the slate of Florida's presidential electors should have been reduced in proportion to the protected class of disfranchised voters' population of the state.

On December 29, 2000, Asa Gordon and Lawrence D. Jamison, members of DIG and residents of the District of Columbia, filed suit (*Gordon v. Albert Gore, Jr.,-President of the U.S. Senate* (1:00CV03112)) in the U.S. District Court for the District of Columbia to enjoin Albert Gore, Jr., President of the Senate, from counting the full slate of Florida's presidential electoral votes in Congress on January 6, 2001. DIG claimed that to allow Florida's full slate of presidential electors to be counted would have diluted and diminished the rights of presidential electors from states that conformed with the 14<sup>th</sup> Amendment. On January 4, 2001, Judge Royce C. Lamberth, the presiding judge, ruled that the plaintiffs lacked standing to maintain the action and therefore were unlikely to have success based on the merits of the case. Further, he questioned whether the ultimate relief that plaintiffs sought was a political question because Congress would have to provide the relief.

## Policy Questions

**Have provisions of the Voting Rights Act of 1965, as amended been violated?** Several groups investigated the presidential election process in Florida and came to different conclusions on what had transpired. Some civil rights organizations held hearings in Florida and concluded that provisions of VRA had been violated. Their investigations of Florida's election process found flaws in the registration process and in election procedures and equipment, inadequate training for election staff, and discriminatory practices at polling precincts. In examining the presidential election process, the Florida Task Force recommended changes to correct weaknesses in the voting system technology, and registration and absentee voting procedures. While the CCR did not find "conclusive evidence" that Florida officials conspired to disenfranchise voters, it identified the major feature of the presidential election in that state as the disenfranchisement of thousands of black voters. According to the Department of Justice, after reviewing allegations of voting irregularities in the presidential election of 2000, it has authorized five lawsuits including three in Florida. It has closed 10 investigations in Florida.

**Was the response to allegations of voting irregularities and minority vote dilution timely?** Some critics of the federal response to allegations of minorities being discriminated against by election personnel charge that too much time elapsed before the Department of Justice initiated its review. Some suggest that there should be time frames within which DOJ must begin its investigation of voting irregularities and respond to allegations of violations of VRA. Another proposal is that DOJ should be required to intervene when the U.S. Attorney General receives a designated number of written complaints from residents of a voting jurisdiction who believe that they were denied the right to vote.

### **Are additional penalties needed to discourage future violations of VRA?**

It is argued that present penalties for violations of the act are insufficient to prevent future incidents as alleged to have occurred in the presidential election of 2000. Proponents of this argument believe measures are needed to reduce or prevent the likelihood of such incidents recurring. They suggest that Section 2 of the 14<sup>th</sup> amendment be made a federal statute. That is, a state's slate of presidential electors would be reduced in proportion to the protected class of disfranchised voters' population of the state. Opponents of this action state that the VRA worked during the election. They claim that problems with voting were not because of fraud directed specifically at minority voters covered by provisions of VRA; rather, mechanical problems, lack of funding, and insufficient training of personnel caused the voting irregularities. They point out that many states have established commissions, have considered proposals, and, in some cases, have passed legislation to address voting difficulties that were experienced during the presidential election of 2000. Therefore, they conclude that federal intervention of this kind is unnecessary.

## **107<sup>th</sup> Congress**

Many legislative proposals that would address electoral reforms have been introduced in the 107<sup>th</sup> Congress.<sup>160</sup> Bills, however, that would change provisions of the Voting Rights Act include H.R. 280 (King), H.Res. 139 (Cummings), and S. 738 (Smith, Bob).

On January 30, 2001, Congressman King introduced H.R. 280, the National Language Act of 2001. This bill would have provided that English be the official language of the government of the United States, i.e., that the federal government conduct its official business in English, including publications, income tax forms, and informational materials. The bill would have repealed the bilingual voting requirements of the Voting Rights Act of 1965, as amended. It would also have terminated bilingual educational programs. Provisions of H.R. 280 would not have required that English be used for religious purposes, for training in foreign languages for international communication, for school programs designed to teach foreign languages, or by persons over 62 years of age. The bill would not have prevented the federal government from providing interpreters for persons over 62 years of age. H.R. 280 was referred to the Committees on the Judiciary and on Education and the Workforce.

H.Res. 139, Expressing the Sense of Congress Regarding Commitment to the Voting Rights Act of 1965, was introduced by Representative Elijah E. Cummings on May 9, 2001. The bill would have expressed the sense of Congress that it: would condemn election procedures that dilute and disfranchise the minority vote and any

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<sup>160</sup> For a detailed account of the issue of electoral reform, see CRS Report RL30804, *The Electoral College: An Overview and Analysis of Reform*, by L. Paige Whitaker; CRS Report RL30747, *Congressional Authority to Standardize National Election Procedures*, by Kenneth R. Thomas; and CRS Report RL30773, *Voting Technologies in the United States*, by Eric A. Fischer.

person acting under color of law or intimidating, or denying eligible persons the right to vote; would recognize the importance of the 15<sup>th</sup> amendment; and would reaffirm its commitment to the Voting Rights Act of 1965. Further, the bill would have expressed the sense of Congress that the U.S. Commission on Civil Rights should compile data on and investigate allegations of voting irregularities during the November 7, 2000 presidential election and report on them to Congress and the Department of Justice. H.Res. 139 would have expressed the sense of Congress that a top priority of the President Attorney General, and the Department of Justice should be: to eliminate minority vote dilution and disfranchisement; investigate thoroughly all charges of election irregularities, minority vote dilution, and disfranchisement; under provisions of the Voting Rights Act of 1965 bring suit in federal court against racially discriminatory practices, and federal criminal charges for voting fraud or intimidation involving racial bias in local or state elections; and explore options to prevent disfranchisement of voters in future elections. House Resolution 139 was referred to the House Committee on the Judiciary.

Senator Bob Smith introduced S. 738, Armed Forces Voting Rights Protection Act of 2001, on April 6, 2001. This bill would have amended the Voting Rights Act of 1965. It would have required that every vote cast by an absentee or overseas member of the military be counted. S. 738 would have prohibited the disqualification of such an absentee ballot for failure beyond the voter's control (i.e., absence of a postmark, lack of a witness signature, address, or other identifying information) if the ballot otherwise met timely submission requirements. The bill would have provided for a fine of not more than \$5000 and a maximum imprisonment of five years or both for a person who disqualifies, refuses to count, or otherwise negates the absentee or overseas vote of a member of the U.S. military who is qualified to vote in a state. S. 738 was referred to the Senate Committee on Rules and Administration.

## 108<sup>th</sup> Congress

On February 26, 2003, Representative King introduced H.R. 931, The National Language Act of 2003. H.R. 931 would repeal bilingual voting requirements of the Voting Rights Act of 1965, as amended. The bill would also terminate bilingual educational programs. H.R. 931 would provide that English be the official language of the U.S. government. It would not prevent, however, the federal government from providing interpreters for persons over 62 years of age. H.R. 931 has been referred to the Committee on Energy and Natural Resources.