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Conditioning Federal Funding on Elections Policies: Options and Considerations for Congress

Congress has broad authority to regulate many aspects of the administration of federal elections. Members might sometimes wish to influence state or local policy on aspects of election administration for which Congress's authority to set requirements is more limited, however, or to encourage states or localities to adopt a certain policy instead of (or in addition to) requiring them to do so.

An alternative approach to informing elections policy that Members might choose to consider in such cases is using federal funding. Perhaps the most direct way to use federal funding to influence state and local elections policy is by establishing or funding grant programs to facilitate or incentivize certain elections activities. Legislation has been introduced in recent Congresses to create grant programs to help states conduct post-election audits, for example, or encourage them to implement automatic voter registration.

Another option that Members have increasingly explored in recent legislation, including in a bill that would codify a March 2025 executive order, is conditioning federal funding on use of certain elections policies. That type of proposal would withhold access to certain federal funds from states or localities that did not adopt a given policy.

This In Focus provides an overview of recent legislative proposals to condition federal funding on use of certain elections policies and introduces some considerations that might be relevant to Members who are weighing similar proposals. It does not address legal issues. For more on proposals to establish or fund elections grant programs, see CRS In Focus IF11962, *Establishing and Funding Elections Grant Programs: Policy Options*, by Karen L. Shanton.

Recent Legislative Proposals

Proposals to condition federal funding on use of specified elections policies have varied in at least three ways. First, they have varied in the particular elections policies they aim to encourage states or localities to use. Congress's textual authority to regulate the administration of state and local elections is more limited than its authority to set requirements for federal elections, and some recent proposals would instead condition access to federal funding on policies specific to state or local races. The Protecting Our Local Elections (POLE) Act (H.R. 1467, 119th Congress) would withhold certain funding from states that do not permit localities to hold odd-year elections, for example, and the Let America Vote Act (H.R. 155, 119th Congress) and Citizen Legislature Anti-Corruption Reform of Elections (CLEAN Elections) Act (H.R. 158, 119th Congress) would condition use of certain funds on allowing unaffiliated voters to participate in primary elections for

state and local offices and using nonpartisan independent commissions for state legislative redistricting, respectively. Multiple bills, including the Let America Vote Act and the 118th Congress's American Confidence in Elections (ACE) Act (H.R. 4563), have proposed conditioning access to funding on extending the existing prohibition on noncitizen voting in federal elections to state and local contests.

Other recent proposals would apply to federal elections or elections in general. Such proposals include bills aimed at encouraging states or localities to notify eligible voters of their right to vote on release from incarceration; require voters to provide photo identification or proof of citizenship; use signature verification to confirm mail voter eligibility; follow specified procedures for maintaining voter registration lists; permit campaign representatives to observe voting and ballot counting; count mail ballots on receipt; count ballots continuously after the polls close until all ballots have been counted; provide for round-the-clock video surveillance of ballot drop boxes; post specified information about preparations for upcoming elections; and conduct post-election audits of voting systems.

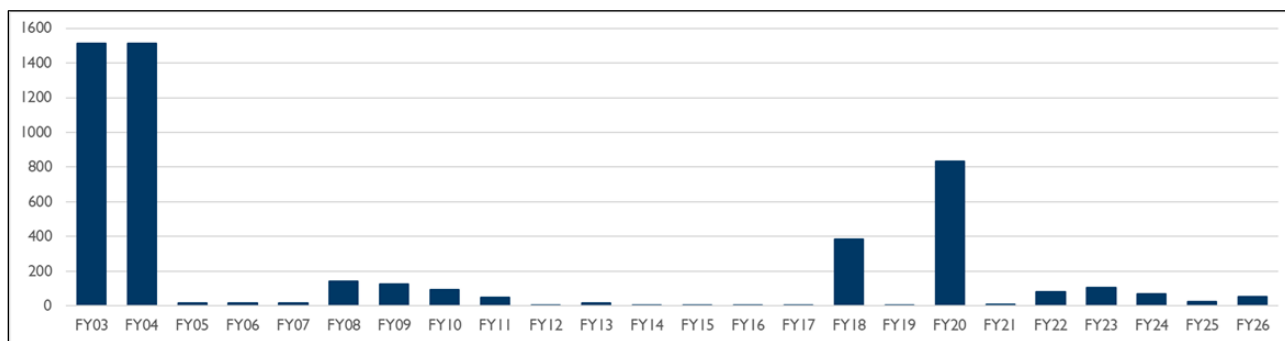
They also include bills aimed at discouraging the following activities: providing ballots in languages other than English; accepting mail ballots received after Election Day; disqualifying otherwise eligible candidates from the ballot under the Insurrection Clause of the Constitution; denying or abridging the right to vote to individuals with criminal convictions who are not currently incarcerated for a felony; permitting certain third parties to collect mail ballots; providing ballot drop boxes at locations other than elections offices; sending voters mail ballots except on request; and permitting first-time voters to use same-day registration.

Second, proposals to condition federal funding on use of specified elections policies have varied in the types of federal funding on which they would set conditions. Many of the bills described above would link use of the specified elections policies to access to elections-specific funding, defined in one of the following ways:

- **Funding administered by the U.S. Election Assistance Commission (EAC).** The EAC is the only federal agency dedicated to helping improve the general administration of elections. It has been charged with overseeing most of the elections-specific grant funding Congress has authorized and appropriated to date, including funding provided in response to foreign efforts to interfere in the 2016 elections and the onset of the COVID-19 pandemic in the 2020 election cycle.

Figure 1. Federal Funding for Elections-Specific Grant Programs

(\$, in millions)



Source: CRS, based on review of appropriations measures and reporting by the U.S. Department of Defense (DOD) and the U.S. Department of Health and Human Services (HHS).

Notes: This figure presents funding for elections-specific grant programs administered by the U.S. Election Assistance Commission, the U.S. General Services Administration, DOD, and HHS, as appropriated or as allocated by the administering agency.

- **Funding provided under grant programs authorized by the Help America Vote Act of 2002 (HAVA).** Most of the elections-specific grant programs created to date were established by HAVA. In addition to creating most of the grant programs administered by the EAC, the act authorized two U.S. Department of Health and Human Services (HHS) grant programs to help ensure electoral access for voters with disabilities.
- **Funding used (or available or provided for use) in administering elections.** Depending on the wording of the legislative provision, funds in this category could include most or all of the EAC and HAVA funding described above. They might also include other funds, such as grants provided by the U.S. Department of Defense for developing voting technology for military and overseas voters or the share of funding the U.S. Department of Homeland Security has required recipients of recent rounds of some of its homeland security grants to allocate to election security.

For more on elections grant funding, see CRS Report R46646, *Election Administration: Federal Grant Programs for States and Localities*, by Karen L. Shanton.

Other bills would link the specified elections policies to access to other types of funding or to federal funding in general. For example, the Democracy Restoration Act of 2023 (H.R. 4987/S. 1677) would have set conditions on funding for constructing or otherwise improving incarceration facilities, and the You Must Be Alive to Vote Act of 2021 (H.R. 860) would have conditioned funding from the U.S. Departments of Education and Transportation. The 117th Congress's Eliminating Foreign Intervention in Elections Act (H.R. 93) and the 118th Congress's Protecting Our Democracy by Preventing Foreign Citizens from Voting Act (H.R. 149/S. 194) proposed limiting access to all federal funding.

Third, proposals to condition federal funding on use of specified elections policies have varied in the extent to which they would limit access to such funding by states or localities that did not adopt the specified policies. The most common approach the proposals discussed in this In Focus have taken to limiting access to funding is prohibition; most

of the proposals would prohibit states or localities that did not adopt a given elections policy from accessing any of the specified funding. However, some bills would instead reduce the amount of funding available to such states or localities. For example, the ACE Act would have reduced HAVA payments to states and localities that permit noncitizens to vote in state or local elections by 30%.

Potential Considerations for Congress

Congress's ability to incentivize policy changes through conditions on elections-specific funding may be limited by the relatively limited role the federal government plays in funding election administration. Congress has consistently funded one or both of the HAVA grant programs administered by HHS, but funding for other elections-specific grant programs has been more intermittent. For example, Congress last appropriated funding for HAVA's requirements payments program in FY2010. For an overview of federal funding for elections-specific grant programs to date, see **Figure 1**.

The limited federal role in funding elections might prompt Members who are interested in encouraging states or localities to adopt certain elections policies to look to other types of funding. Congress generally has broad authority to set conditions on federal funding, but its authority is subject to constitutional limits. Some of those limits may be particularly relevant if an election condition is attached to non-elections-specific funding. For example, funding conditions typically must be related to the underlying purpose of the funding and may not be unduly coercive. Some proposals, such as proposals to withhold all federal funding from states or localities that do not adopt a particular elections policy, might raise questions about whether the proposed condition is germane to every funding source or impermissibly coercive. For more on the limits on Congress's authority to set conditions on federal funding, see CRS Report R46827, *Funding Conditions: Constitutional Limits on Congress's Spending Power*, by Victoria L. Killion.

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