

# CLOSE UP IN CLASS: MONTHLY POLICY DISCUSSION

*Monthly Policy Discussions* examine current bills in Congress, Supreme Court cases, and relevant controversial issues in the news. For more information on our resources, please email us at [currentissues@closeup.org](mailto:currentissues@closeup.org) or visit us at [www.currentissues.org](http://www.currentissues.org)!

## THE VOTING RIGHTS ACT

### CENTRAL QUESTION

Should Congress amend the Voting Rights Act to require states to receive federal permission to change their voting laws?

### INTRODUCTION

On August 6, 1965, President Lyndon Johnson signed the Voting Rights Act into law. This act, considered one of the most important victories of the Civil Rights Movement, was drafted in response to nearly a century of voter discrimination against minorities and sought to guarantee that all Americans are able to vote in local, state, and national elections. Among its provisions, the Voting Rights Act made it illegal for states to administer literacy tests and to impose other barriers to voting. The law also contained special enforcement provisions in regions where Congress believed the potential for discrimination to be the greatest, including large areas of the south where Jim Crow laws were most prevalent. Under Section Five of the Voting Rights Act, these targeted jurisdictions—which could be as large as a state or as small as a district—could not implement any change to voting procedures until the attorney general of the United States determined that the change was not discriminatory.<sup>1</sup>



#### Which regions were targeted by the Voting Rights Act?

But in 2012, Shelby County in Alabama challenged parts of the Voting Rights Act, asserting that the preclearance requirement for voting procedural changes was unconstitutional and no longer necessary. The Supreme Court agreed, ruling in a 5–4 decision that the sections of the Voting Rights Act requiring certain jurisdictions to obtain preclearance were unconstitutional. The majority, led by Chief Justice John Roberts, argued that although these protections may have been necessary in the 1960s and 1970s, they were no longer needed. The justices also argued that the formula used to determine which jurisdictions required preclearance was outdated and inappropriate for continued use.<sup>2</sup>

#### The Supreme Court strikes down a section of the Voting Rights Act

In the immediate aftermath of *Shelby County v. Holder*, many states that had been subjected to preclearance requirements—such as Alabama, Arizona, Mississippi, North Carolina, and Texas—began working to pass laws that had previously been blocked by the Department of Justice. In Texas, for example, the legislature announced in 2013 that it would move forward with a law requiring all voters to show a government-issued form of identification. This law was previously blocked after a federal court and state election officials concluded that it would disproportionately affect poor people and minorities.<sup>3</sup>

## THE VOTING RIGHTS ACT: BACKGROUND

In response to these new state laws, some members of Congress began rewriting the sections of the Voting Rights Act that were deemed to be outdated, specifically the formula used to decide when and if a jurisdiction would be required to obtain preclearance to change its voting laws. In February 2015, Representative Jim Sensenbrenner, R-Wis., introduced the Voting Rights Amendment Act, which would require any state to obtain preclearance if it had committed five violations—actions that denied or abridged the right to vote—in the last 15 years. Under the bill, states would also need preclearance if they had persistent low levels of turnout among minority voters.

Supporters of the Voting Rights Amendment Act argue that preclearance is necessary to protect the sacred right to vote. By requiring some states and districts to obtain permission to change voting laws, the federal government can both deter states from passing discriminatory laws and block laws that disproportionately affect certain groups of voters. Supporters also note that the wave of restrictive state laws passed after *Shelby County v. Holder* perfectly demonstrates what can happen when the federal government is removed from the process.

Yet opponents of the Voting Rights Amendment Act argue that preclearance is unconstitutional and unfair to the citizens and lawmakers of certain states. They argue that recent trends suggest that minorities are voting in increasingly larger numbers, making these additional protections unnecessary. Critics also believe this bill would allow the expanding federal government to continue what they perceive to be its vast overreach into matters that should be left to states.



**Senator Charles Grassley, R-Iowa, argues against amending the Voting Rights Act**



**Representative John Lewis, D-Ga., argues for updating the Voting Rights Act**

# THE VOTING RIGHTS ACT: DEBATE

## Should Congress amend the Voting Rights Act to require states to receive federal permission to change their voting laws?

**YES: This amendment is necessary to prevent voter discrimination.**

“Free, fair, and accessible elections are sacrosanct, and the right of every legal voter to cast their ballot must be unassailable,” said Representative Sensenbrenner, the sponsor of the Voting Rights Amendment Act. “We are again called to restore the critical protections of the act by crafting a new formula that will cover jurisdictions with recent evidence of discrimination. I reintroduced this important legislation because I believe voter discrimination still exists, and our progress toward equality should not be mistaken for a final victory.”<sup>4</sup>

The United States has indeed come a long way since the era of Jim Crow. But unfortunately, voter discrimination has not yet been eradicated completely, and the Voting Rights Amendment Act is essential for that task. “The bill seeks to go beyond a static, geographically based statute and instead is flexible and forward-looking, capturing jurisdictions that have most recently engaged in acts of discrimination, while also providing new nationwide tools to ensure an effective response to race discrimination wherever it occurs in the country,” the American Civil Liberties Union (ACLU) noted.<sup>5</sup>

Ever since key portions of the Voting Rights Act were invalidated by the Supreme Court in 2013, Americans have witnessed the dangerous consequences. State after state passed discriminatory laws under the guise of voter identification requirements—unjust measures that have limited early voting access and discriminated against minorities, the poor, and the elderly.<sup>6</sup>

“Research shows, for example, that more than 21 million Americans do not have government-issued photo identification,” the ACLU pointed out. “Requiring voters to obtain an ID in order to vote is tantamount to a poll tax. Although some states issue IDs for free, the birth certificates, passports, or other documents required to obtain a government-issued ID cost money, and many Americans simply cannot afford to pay for them.”<sup>7</sup>

By passing the Voting Rights Amendment Act and requiring states with recent voting offenses to obtain preclearance when making new laws, Americans would deter these states from passing discriminatory measures and ensure that all voters are treated equally. The new preclearance formula ensures that no state is targeted unjustly, as *any state* that has a recent history of voter discrimination would be targeted. In the end, this bill would help the federal government affirm that all voters have equal and fair access to the voting booth.

**NO: The Voting Rights Act still protects voters and a new amendment is not necessary.**

“The fact of the matter is we have a Voting Rights Act; it is very strong,” said Representative Bob Goodlatte, R-Va., the chairman of the House Committee on the Judiciary. “We are certainly willing to look at any new evidence of discrimination if there is a need to take any measures. But at this point in time, we have not seen that, and therefore no changes have been made since the Supreme Court decision.”<sup>8</sup>

Representative Goodlatte makes a strong and important point. The Voting Rights Act remains in place today, and the federal government still has the power to intervene when violations are committed by the states. “There are still strong protections under the Voting Rights Act, including the ability of a judge to order that a community or even a whole state be placed under the preclearance requirements if there are new evidences of discrimination,” Representative Goodlatte said.<sup>9</sup>

The Voting Rights Act preclearance provisions were created to combat the rampant discrimination under Jim Crow and were originally intended to last for only five years. And in the past half century, Americans have experienced sustained progress in ending racial inequality.<sup>10</sup> The 2008 presidential election, for example, saw African Americans vote in record numbers across the country.<sup>11</sup> Therefore, preclearance provisions are no longer necessary.

Furthermore, the new voter identification laws passed by the states are not unjust; they merely exercise common sense to protect the most sacred of American rights. States have a responsibility to their citizens to ensure that elections are conducted honestly and fairly. If Americans stop trusting in the electoral system, voter turnout may decline even more than it already has.<sup>12</sup>

“Across America, Republican and Democratic legislatures have put forth voter identification laws this year to protect the constitutional values of equal protection and one person one vote, and for good reason,” Republican National Committee Chairman Reince Priebus wrote. “Election fraud is a real and persistent threat to our electoral system, with allegations cropping up in every election cycle.”<sup>13</sup>

Requiring certain states to obtain preclearance to change their election laws is nothing more than an arbitrary decision by the federal government. This is just one more example of an out-of-control government—one that is too involved in issues that should be left to the states or to citizens to decide for themselves.

# THE VOTING RIGHTS ACT: A BILL

**HR 885**

**Voting Rights Amendment Act of 2015**

**11 February 2015**

## **A bill to amend the Voting Rights Act of 1965**

A state (and all of its political subdivisions) must receive preclearance to change a voting law if during a calendar year five or more voting rights violations occurred in the state during the previous 15 years, at least one of which was committed by the state itself (as opposed to a political subdivision within it).

The bill specifies application of such new coverage requirements to any specific political subdivision if

1. Three or more voting rights violations occurred in it during the previous 15 calendar years; or
2. One or more voting rights violations occurred in it during the previous 15 calendar years and the subdivision had persistent, extremely low minority turnout during that period.

The bill prescribes transparency requirements, including reasonable public notice, regarding any changes to

1. Voting prerequisites, standards, or procedures; or
2. Polling place resources.

**Committee Assignment: House Committee on the Judiciary**

The bill was introduced by Representative Jim Sensenbrenner, R-Wis. It has 65 Democrat cosponsors and 11 Republican cosponsors.

# THE VOTING RIGHTS ACT: QUESTIONS TO CONSIDER

**What is your position on the Voting Rights Amendment Act?**

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**What are the strongest points raised by each side of the argument?**

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**Consider the problem that the Voting Rights Amendment Act is attempting to address. Do you think this is the best possible solution? If not, what other policies would you propose?**

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## THE VOTING RIGHTS ACT: ENDNOTES

- <sup>1</sup> “History of the Federal Voting Rights Law.” U.S. Department of Justice. Web. 1 Sep. 2015. <http://www.justice.gov/crt/history-federal-voting-rights-laws>.
- <sup>2</sup> “Shelby County v. Holder.” The Oyez Project. Web. 31 Aug. 2015. [http://www.oyez.org/cases/2010-2019/2012/2012\\_12\\_96](http://www.oyez.org/cases/2010-2019/2012/2012_12_96).
- <sup>3</sup> Lopez, Tomas. “Shelby County: One Year Later.” Brennan Center for Justice. 24 Jun. 2014. Web. 1 Sep. 2015. <http://www.brennancenter.org/analysis/shelby-county-one-year-later>.
- <sup>4</sup> “Sensenbrenner Addresses Misconceptions about the VRAA.” Official Website of Representative Jim Sensenbrenner. 5 Mar. 2014. Web. 31 Aug. 2015. <http://sensenbrenner.house.gov/news/documentsingle.aspx?DocumentID=371848>.
- <sup>5</sup> “The Voting Rights Amendment Act of 2015 (H.R. 885) 114th Congress.” American Civil Liberties Union. Web. 1 Sep. 2015. [https://www.aclu.org/sites/default/files/assets/aclu\\_factsheet\\_on\\_the\\_vraa\\_3\\_2015-house.pdf](https://www.aclu.org/sites/default/files/assets/aclu_factsheet_on_the_vraa_3_2015-house.pdf).
- <sup>6</sup> Childress, Sarah. “Why Voter ID Laws Aren’t Really about Fraud.” PBS Frontline. 20 Oct. 2014. Web. 31 Aug. 2015. <http://www.pbs.org/wgbh/pages/frontline/government-elections-politics/why-voter-id-laws-arent-really-about-fraud/>.
- <sup>7</sup> “Oppose Voter ID Legislation—Fact Sheet.” American Civil Liberties Union. Web. 30 Sep. 2015.
- <sup>8</sup> Petska, Alicia, and Tiffany Holland. “Goodlatte: Voting Rights Act Remains Strong Without Amendment.” *Roanoke Times*. 22 Jun. 2015. Web. 29 Sep. 2015.
- <sup>9</sup> Ibid.
- <sup>10</sup> Von Spakovsky, Hans A. “Voting Rights Act’s ‘Preclearance’ Was Meant to be Temporary.” *U.S. News & World Report*. 26 Feb. 2013. Web. 1 Sep. 2015. <http://www.usnews.com/debate-club/should-the-supreme-court-strike-down-the-preclearance-provision-of-the-voting-rights-act/voting-rights-acts-preclearance-was-meant-to-be-temporary-2>.
- <sup>11</sup> Lopez, Mark Hugo, and Paul Taylor. “Dissecting the 2008 Election: Most Diverse in U.S. History.” Pew Research Center. 30 Apr. 2009. Web. 1 Sep. 2015. <http://www.pewhispanic.org/2009/04/30/dissecting-the-2008-electorate-most-diverse-in-us-history/>.
- <sup>12</sup> Von Spakovsky, Hans A. “Voting Rights Act’s ‘Preclearance’ Was Meant to be Temporary.” *U.S. News & World Report*. 26 Feb. 2013. Web. 1 Sep. 2015. <http://www.usnews.com/debate-club/should-the-supreme-court-strike-down-the-preclearance-provision-of-the-voting-rights-act/voting-rights-acts-preclearance-was-meant-to-be-temporary-2>.
- <sup>13</sup> Priebus, Reince. “Voter ID Laws are Common Sense.” CNN. 31 Dec. 2011. Web. 30 Sep. 2015.
- <sup>14</sup> “H.R. 885 – Voting Rights Amendment Act of 2015 114 Congress (2015-2016).” Congress.gov. Web. 1 Sep. 2015. <https://www.congress.gov/bill/114th-congress/house-bill/885/all-info>.