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The Voting Rights Act of 1965, As Amended: Reauthorization Issues

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Summary

With the signature of President Bush on July 27, 2006, H.R. 9 was enacted into law — P.L. 109-246, the Fannie Lou Hamer, Rosa Parks, Coretta Scott King and Cesar Chavez Voting Rights Act Reauthorization and Amendments Act of 2006. Among other provisions, this act amends the Voting Rights Act of 1965 by reauthorizing the temporary provisions of the Act.

Congress enacted the original Voting Rights Act of 1965 ("VRA" or "the act") to protect the voting rights of all Americans. While the VRA is a permanent federal law, it contains some temporary provisions: the coverage formula and "preclearance" procedures (Sections 4 and 5), the assignment of federal examiners and observers (Sections 6 through 9), and the bilingual election assistance requirements (Section 203), all of which would have expired in 2007. Since 1965, Congress has amended the act to, among other purposes, expand the formula that determines which states and political subdivisions are covered by its provisions, prevent enforcement of any election law that would have a racially discriminatory effect, provide voting assistance for language minorities, and extend the expiration dates. This report discusses the temporary provisions of the VRA and analyzes legislation to reauthorize them.

Policy issues for the 109th Congress included whether to reauthorize and/or modify the VRA, particularly the temporary provisions, and the impact of two Supreme Court decisions, *Reno v. Bossier Parish ("Bossier II")* and *Georgia v. Ashcroft*, on Section 5. Two initially identical bills (H.R. 9 and S. 2703, "The Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006") were considered with provisions to reauthorize, to the year 2032, VRA's provisions regarding preclearance, the assignment of federal election observers, and bilingual election assistance requirements. The bills included provisions to terminate the federal examiner provisions. They also sought to clarify what is meant by denying or abridging the right to vote of covered individuals, and to allow the prevailing party in a VRA case to receive reasonable expert fees and other litigation expenses.

Other legislation introduced in the 109th Congress included H.R. 997, the English Language Unity Act of 2005 (Representative Steve King), and H.R. 4408, the National Language Act of 2005 (Representative Peter King). H.R. 997, in part, would have established English as the official language of the United States, and would have required the Secretary of Homeland Security to issue for public notice and comment a proposal to test the ability of candidates for naturalization to speak and understand English. H.R. 4408 would have provided for English to be the official language of the U.S. government, and would have repealed the bilingual election assistance provisions of the VRA. Both bills were referred to their appropriate committees, but saw no further action. This report will be updated as events warrant.

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Most Recent Developments

On July 27, 2006, President Bush signed into law the Fannie Lou Hamer, Rosa Parks, Coretta Scott King, and Cesar Chavez Voting Rights Act Reauthorization and Amendments Act of 2006 (H.R. 9; P.L. 109 — 246), which, among other provisions, reauthorizes the temporary provisions of the Act until 2032.

Background

In response to evidence that some states and counties had denied many citizens access to the ballot because of their race, ethnicity, and language-minority status, Congress enacted the Voting Rights Act of 1965 ("VRA" or "the act") to protect the voting rights of all Americans. Major provisions of the act prohibit enactment of any election law that would deny or abridge voting rights based on race, color, or membership in a language minority. The act creates a right of action for private citizens or the government to challenge discriminatory voting practices and procedures (Section 2). For jurisdictions covered under its provisions, the VRA prohibits the use of any test or device as a condition of voter registration, and includes protection for language minorities (Section 4), requires federal review of any change in law affecting elections *before* putting such a law into effect (Section 5), and enables the Department of Justice (DOJ) to send federal examiners to list eligible voters for registration (Section 6). The VRA also provides for the assignment of federal election observers to any jurisdiction where a federal examiner has been assigned (Section 8), and provides that, under certain conditions, a state or political subdivision must provide bilingual election materials and assistance to limited-English speaking residents (Section 203).

Although the Voting Rights Act of 1965 is permanent federal law, it contains some temporary provisions. In response to concerns regarding the constitutionality of some aspects of the act, Congress provided expiration dates for certain provisions. These temporary provisions include parts of Section 4 (42 U.S.C. § 1973b), Section 5 (42 U.S.C. § 1973c), Section 6 (42 U.S.C. § 1973d), Section 7 (42 U.S.C.§ 1973e), Section 8 (42 U.S.C.§ 1973f), Section 9 (42 U.S.C.§ 1973g), Section 13 (42 U.S.C. § 1973k), and Section 203 (42 U.S.C. § 1973aa-1a). Congress extended the expiration dates of the preclearance provisions in 1970, 1975, and 1982, and the bilingual election assistance provisions in 1982. The 1982 amendments also provided for Congress to "reconsider" the special administrative provisions of the act in 1997 (the preclearance of election law changes and the assignment of examiners and election observers), and provided that these provisions shall expire on August 6,

2007. In 1992, Congress amended the VRA to change the formula that determines when election officials must provide bilingual assistance to a selected language minority. It also extended provisions of Section 203 (bilingual election assistance provisions) to 2007, making the expiration date coextensive with the rest of the temporary provisions of the act.[1]

At present, jurisdictions in 16 states are covered by Section 4(b) of the VRA; in some cases, an entire state is covered. Although many southern states are covered, notably, Arkansas, Tennessee, and West Virginia are not covered. Furthermore, some jurisdictions in non-southern states — Arizona, Alaska, California, Michigan, New York, New Hampshire, and South Dakota — are covered by Section 4(b).[2]

Summary of P.L. 109-246 (H.R. 9), The Fannie Lou Hamer, Rosa Parks, Coretta Scott King and Cesar Chavez Voting Rights Act Reauthorization and Amendments Act of 2006

The 109th Congress considered whether to modify the VRA, extend and/or modify its temporary provisions, and address recent Supreme Court holdings in *Reno v. Bossier Parish ("Bossier II")*[3] and *Georgia v. Ashcroft*,[4] which had affected enforcement of Section 5 of the act. Some provisions of P.L. 109-246 amend the Voting Rights Act of 1965 by extending the expiration dates to 2032 of the preclearance provisions and bilingual election assistance. Other changes provided by the act include assignment of election observers, their duties, and their reports (Section 3(a)); the conditions under which the assignment of observers can be terminated (Section 3(b)); elimination of the use of federal examiners (Section3(c)); and allowance of reasonable expert fees and other litigation expenses (Section 6) Following is a summary of provisions of P.L. 109-246, which was enacted into law on July 27, 2006.

Title and Congressional Purpose and Findings. Section 1 sets forth the title, and Section 2 sets forth the congressional findings and purpose: to ensure, as guaranteed by the U.S. Constitution, that all citizens have the right to register to vote and to cast a meaningful vote.

Requirements for Use of Election Observers. Section 3(a) amends Section 8 of the Voting Rights Act of 1965 (42 U.S.C. § 1973f) (relating to the assignment of observers, their duties, and their reports). The Director of OPM is required to assign the necessary number of observers to a jurisdiction whenever (1) a court has authorized appointment of observers to a political subdivision, or (2) the

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[1] For further analysis of the VRA provisions, see CRS Report 95-896 GOV, *The Voting Rights Act of 1965, As Amended: Its History and Current Issues*, by Garrine P. Laney.

[2] Jurisdictions covered under Section 4(b) are listed in 28 C.F.R. Pt. 51.54, Appendix.

[3] 528 U.S. 320 (2000).

[4] 539 U.S. 461 (2003).

Attorney General certifies that residents, elected officials, or civil participation organizations of a political subdivision have submitted written meritorious complaints that a covered jurisdiction is likely to deny or abridge the right of voters covered by provisions of the VRA, or (3) in the Attorney General's judgment, the assignment of observers is necessary to enforce the 14th or 15th Amendment of the U.S. Constitution. Among other factors, the Attorney General can consider whether the ratio of nonwhite persons to white persons registered to vote within the subdivision appears to be reasonably attributable to violations of the 14th or 15th Amendment, or whether there is considerable evidence that the political subdivision is making bona fide efforts to comply with these amendments.

Section 3(a) further provides that such election observers must be assigned, compensated, and separated, without regard to any statute administered by the Director of OPM, and that their services must not be considered employment for the purposes of any statute administered by the Director of OPM, except the provisions of 5 U.S.C. § 7324, which prohibit partisan political activity. After consulting with the head of the appropriate department or agency, the Director of OPM is authorized to designate suitable persons in the official service of the United States who agree to serve as observers. Observers at elections are authorized to enter and attend any place an election is held in a political subdivision to observe whether persons who are entitled to vote are allowed to do so; and to enter and attend any place for counting votes cast at any election to observe if votes cast are being tabulated correctly. In addition, observers can investigate and report their findings to the Attorney General and, if a court authorized the appointment of observers, to the court.

Termination of the Use of Federal Observers. Section 3(b) amends Section 13 of the VRA (relating to termination of listing procedures, basis for termination, and survey or census by the Director of the Census Bureau). It provides for a political subdivision to petition the Attorney General to terminate the assignment of observers. Termination of the assignment of observers can occur under the following conditions:

- for observers appointed before enactment of the law or under provisions of the VRA, whenever the Attorney General notifies the Director of OPM or whenever the District Court for the District of Columbia determines in an action for declaratory judgment brought by a political subdivision[5] that there is no longer reasonable cause to believe that persons covered under provisions of the VRA will be deprived of or denied the right to vote; and

- for court-appointed observers, upon the order of the authorizing court.

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[5] This is a political subdivision for which the Director of the Census Bureau has determined that more than 50% of the nonwhite persons of voting age residing in it are registered to vote.

Elimination of the Use of Federal Examiners. Section 3(c) eliminates the use of federal examiners. Wherever "examiners" appears in Section 3(a) of the VRA (42 U.S.C. § 1973a(a)) — concerning authorization to appoint federal examiners — Section 3(c) inserts "observers." In Section 4(a)(1)(C) of the VRA (42 U.S.C. § 1973b(a)(1)(C)) — concerning suspension of the use of tests or devices in determining eligibility to vote — Section 3(d) inserts "or observers" after "examiners." Further, Section 3(d) amends Section 12(b) (42 U.S.C. § 1973j(b)) of the VRA, concerning civil and criminal sanctions for destroying, defacing, mutilating, or altering ballots or official voting records by striking "an examiner has been appointed" and inserting "an observer has been assigned." It also amends Section 12(e) of the VRA (42 U.S.C. § 1973j(e)) — relating to the Attorney General enforcing the counting of ballots or registered and eligible persons who are prevented from voting — by striking "examiners" or "examiner" from each place they appear and inserting "observers" or "observer."

Conforming Changes. Section 3(e) makes conforming changes to the VRA. It amends Section 4(b) of the VRA (42 U.S.C. § 1973b(b)) by striking "Section 6" and inserting "Section 8." Because P.L. 109-246 repeals Section 6 (concerning the appointment of federal examiners) in the original VRA, Section 3(e) amends Section 12(a) and (c) of the VRA (42 U.S.C. §§ 1973j(a)) and 1973j(c)) by striking Section 7 (which relates to federal examiners examining applicants for registration) from the act. Section 3(e) also amends Section 14(b) of the VRA, which states that no court, other than the District Court for the District of Columbia or a court of appeals in any proceeding under section 1973g (Section 9), shall have jurisdiction to issue any declaratory judgment pursuant to Sections 4(a) or (b) or any restraining order or temporary or permanent injunction. Section 3(e) strikes "a court of appeals in any proceeding under section 9."

Reconsideration of Section 4 by Congress. Section 4 amends Section 4(a) of the VRA (42 U.S.C. § 1973b(a)(7), (8)), to extend the expiring provisions of the law for an additional 25 years after the effective date of P.L. 109-246. It also requires Congress, 15 years after the effective date, to reconsider Section 4.

Criteria for Declaratory Judgments. Section 5 responds to two United States Supreme Court decisions, *Reno v. Bossier Parish ("Bossier II")*[6] and *Georgia v. Ashcroft*,[7] which had affected the enforcement of Section 5 of the VRA. According to the congressional findings provision in Section 2 of the law, the "effectiveness of the Voting Rights Act of 1965 has been significantly weakened" by the Court's two decisions, which had "misconstrued Congress' original intent" in enacting VRA, and had "narrowed the protections" under Section 5. As discussed above, Section 5 of the VRA is a statutory mechanism designed to eliminate possible future denials or abridgements of the right to vote based on racial discrimination. It is limited in scope, as it applies only to those states or political subdivisions that are considered "covered" under Section 4(b) of the act. In order to obtain preclearance of a proposed electoral change from the Department of Justice or the U.S. District

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[6] 528 U.S. 320 (2000).

[7] 539 U.S. 461 (2003).

Court for the District of Columbia, a covered jurisdiction must demonstrate that the proposal does not have "a discriminatory purpose or effect."[8]

In its 1976 decision, *Beer v. U.S.*, the U.S. Supreme Court interpreted the Section 5 preclearance standard to mean that a proposed electoral change cannot have the purpose or effect of leading to a "retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise."[9] In its 2000 decision, *Reno v. Bossier Parish ("Bossier II")*, the Court concluded that in light of the language of Section 5 and its holding in *Beer*, Section 5 does not prohibit preclearance of a redistricting plan that was enacted with a discriminatory, but nonretrogressive, purpose.[10] As the *Bossier II* Court noted, in *Beer*, it considered the question of whether a reapportionment plan that would have a discriminatory, but nonretrogressive, effect on the rights of black voters should be denied preclearance. In *Beer*, according to the Court, it reasoned that Section 5 must be read in view of its purpose of "insuring that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise," holding, therefore, that "a legislative reapportionment that enhances the position of racial minorities with respect to their effective exercise of the electoral franchise can hardly have the 'effect' of diluting or abridging the right to vote on account of race within the meaning of § 5."[11] According to the Court, it concluded in *Beer*, that "in the context of a § 5 challenge, the phrase 'denying or abridging the right to vote on account of race or color' — or more specifically, in the context of a vote-dilution claim, the phrase 'abridging the right to vote on account of race or color' — limited the term it qualified, 'effect,' to retrogressive effects."[12]

In *Georgia* v. *Ashcroft*,[13] the Supreme Court in 2003 had further construed the "nonretrogression" standard under the Section 5 preclearance provision in the context of redistricting, finding that a plan providing minority voters with an opportunity to elect candidates of their choice can comply with Section 5 requirements. According to the Court, in addition to the creation of "safe" districts where minority voters constitute well more than 50% of eligible voters (also referred to as "minority-majority" districts), the effective exercise of the franchise can also be achieved by spreading out minority voters over a greater number of districts, thereby creating more districts in which minority voters can have the *opportunity* — but not a near certainty — of electing candidates of their choice.[14] Section 5, the Court announced, affords the states the flexibility to choose one theory of representation over the other:

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[8] 42 U.S.C. § 1973c.

[9] 425 U.S. 130, 141 (1976).

[10] 528 U.S. at 341.

[11] *Id.* at 329 (quoting Beer v. U.S., 425 U.S. 130 (1976)).

[12] *Id.*

[13] 539 U.S. 461 (2003). For further discussion of *Georgia v. Ashcroft*, see CRS Report RS21593, *Redistricting and the Voting Rights Act: A Legal Analysis of Georgia v. Ashcroft*, by L. Paige Whitaker.

[14] *Id.* at 482 (emphasis added).

"[e]ither option 'will present the minority group with its own array of electoral risks and benefits' and presents 'hard choices about what would truly 'maximize' minority electoral success.'"[15] Hence, under *Georgia v. Ashcroft*, even if a proposed redistricting plan reduces the number of minority-majority districts, the plan can nonetheless satisfy the preclearance requirements of Section 5. In evaluating a proposed change under Section 5, a court should assess "the totality of the circumstances" and "not focus solely on the comparative ability of a minority group to elect a candidate of its choice," the Court held.[16] As commentators have observed, the Court in *Georgia* eased the burden on jurisdictions seeking preclearance under Section 5.[17]

In response to these Supreme Court rulings, it appears that Section 5 of the law was drafted to define and clarify congressional intent with regard to "denying or abridging the right to vote" of individuals in covered jurisdictions. Section 5 of the law amends Section 5 of the VRA (42 U.S.C. § 1973c) by dividing the section into four subsections. Section 5(a) of the law amends Section 5 of the VRA by striking "does not have the purpose and will not have the effect" and inserting "neither has the purpose nor will have the effect." Section 5(b) of the law amends Section 5 by providing that any voting qualification or prerequisite to voting, or standard, practice, or procedure concerning voting that has the "purpose of or will have the effect of diminishing the ability of any citizens of the United States" because of race, color or limited-English proficiency, "to elect their preferred candidates of choice, denies or abridges their right to vote." Section 5(c) of the law provides that the term "purpose" in subsections (a) and (b) must include "any discriminatory purpose." Section 5(d) of the law clarifies that the purpose of subsection (b) of this section is to protect the ability of citizens covered by the VRA "to elect their preferred candidates of choice."

Hence, it appears that the intent of Section 5(c) of the law is to reverse the *Bossier II* decision by requiring denial of preclearance of electoral changes with "any discriminatory purpose." Likewise, it appears that Section 5(d) of the law endeavors to reverse the Court's holding in *Georgia v. Ashcroft*, by denying preclearance of any voting change that has the purpose or would have the effect of denying minority voters the ability to "to elect their preferred candidates of choice."

Litigation Expenses. Section 6 amends Section 14(e) of the VRA, which presently allows, at the court's discretion, the prevailing party (other than the United States) to receive a reasonable attorney's fee as part of the costs of any action or

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[15] *Id.* at 480. Elaborating, the Court observed that, on the one hand, a smaller number of safe districts with a majority of minority voters may virtually guarantee the election of the minority group's preferred candidate, while on the other hand, spreading out minority voters over a greater number of districts may create greater opportunity to elect candidates of choice. *Id.*

[16] *Id.*

[17] *See* Richard L. Hasen, *Congressional Power to Renew the Preclearance Provisions of the Voting Rights Act After* Tennessee v. Lane, 66 OHIO ST. L.J. 177, 203 (2005). See also Pamela S. Karlan, Georgia v. Ashcroft *and the Retrogression of Retrogression,* 3 ELECTION L.J. 21, 30 (2004).

proceeding to enforce the voting guarantees of the 14th or 15th Amendment. The law adds provisions to also allow reasonable expert fees and other litigation expenses.

Extension of Bilingual Election Assistance Requirements. Section 7 amends Section 203(b)(1) of the VRA (42 U.S.C. § 1973aa-1a(b)(1)) to extend the bilingual election assistance requirements for limited-English speaking citizens for 25 years, until 2032.

Public policy concerns that were raised regarding extension of Section 203 included whether bilingual language assistance is needed and the costs for a covered jurisdiction to provide such assistance to voters. There are many jurisdictions that provide bilingual language assistance to voters that have kept the costs of such assistance to a minimum, and do not object to Section 203. Others have expressed concern about providing such assistance. At congressional hearings on the VRA, one witness had argued that requiring bilingual language assistance should not be necessary because "The United States is an English-speaking country in which virtually all of its citizens speak, read, and understand the English language." Further, he had stated that immigrants have to learn English in order to become naturalized citizens.[18]

Other witnesses, however, had testified that there are many limited-English speaking Americans who are native-born, such as Hispanics and some American Indians. Also, Puerto Ricans, whose primary language is Spanish, are U.S. citizens. Some limited-English speakers are persons who were born in this country when many ethnic communities were segregated. Living in barrios or on reservations, they had little need to leave their communities and enter the larger English-speaking one. As a consequence, while they understand some English, they are not fluent enough in the language to use it to vote. Other limited-English speakers include older naturalized citizens who have lived in this country for decades, but are not fluent in English. To become citizens, they can receive an exemption from taking the examination for naturalization in English.[19] These witnesses cited statistics indicating that substantial percentages of Hispanics speak a language other than English at home, and that a sizeable percentage of Asian Americans are limited-English speakers. Because the demand for classes that teach English far exceeds the availability of such classes and also for other reasons, they supported the extension of bilingual language assistance provisions of the VRA.[20]

Chris Norby, an elected official from Orange County, California, had expressed concerns about the costs of providing bilingual assistance to certain voters. He had argued that the method for determining which voters are non-English speaking needed to be amended. At present, the Census form offers the following selections

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[18] Testimony of K.C. McAlpin, Executive Director, ProEnglish, U.S. House Judiciary Committee, Subcommittee on the Constitution, November 9, 2005.

[19] 8 U.S.C. §1423(b)(2).

[20] Testimony of Juan Cartegena, General Counsel, Community Service, U.S. House Judiciary Committee, Subcommittee on the Constitution, November 9, 2005; and Karen K. Narasaki, President and Executive Director, Asian American Justice Center, U.S. House Judiciary Committee, Subcommittee on the Constitution, May 4, 2006.

to determine how well a person speaks English — "Very Well, Well, Not Well or Not At All." If a person indicates on the Census form that he or she speaks English "Well," then the person is deemed a limited-English speaker. Norby had proposed that a person who indicated "Well" be judged sufficient to vote without language assistance. According to Norby, Orange County, which he represents, currently must translate election materials into Spanish, Vietnamese, Chinese, and Korean. If the standard for determining who is a limited-English speaker were not changed, he anticipated having to provide language assistance in other languages as well (depending on future immigration patterns), which, according to him, could cost millions of dollars.[21]

Deborah Wright, Registrar-Recorder/County Clerk of neighboring Los Angeles County, California, however, had offered a different perspective on providing bilingual assistance to limited-English voters. Identifying Los Angeles County as "the largest and most diverse local election jurisdiction in the United States,"[22] she had testified that in addition to English, the county is required to assist voters in six other languages — Chinese, Japanese, Korean, Spanish, Tagalog (Filipino), and Vietnamese. Many of these limited-English voters cannot read or write in any language. According to Wright, in assisting limited-English voters, the county translates written materials, collaborates with key community-based organizations, and provides oral assistance at voting locations. Voters can gain access to translated election material by telephone or at a website. In collaboration with 104 community-based organizations, the county is able to identify those neighborhoods and voting precincts that require specific language assistance. Using this information, the county recruits and trains poll workers from neighborhoods with a heavy concentration of voters who speak languages other than English. The county also provides oral assistance to Armenian, Russian, and Khmer (Cambodian) voters (although the VRA does not require the county to do so) to enable voters who want to to participate in the electoral process. Wright had stated that the costs of providing English assistance to voters was slightly less than 10% of the county's annual election expenses. According to her, these costs were "reasonable in light of the challenges the county faces."[23]

Some supporters of extending Section 203 had stated that the costs of bilingual assistance were minimal, and that an implemented Section 203 responded to the needs of all U.S. citizens, including the unique needs of citizens from Puerto Rico, and makes for a healthy government.[24]

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[21] Testimony of Chris Norby, Supervisor of Elections, Orange County, California, "Multilingual Ballot Requirements Need Clarification," Testimony of Juan Cartegena, General Counsel, Community Service, U.S. House Judiciary Committee, Subcommittee on the Constitution, May 4, 2006.

[22] Testimony of Deborah Wright, Registrar-Recorder/County Clerk, County of Los Angeles, California, U.S. Senate Judiciary Committee, June 13, 2006.

[23] Ibid.

[24] Testimony of Juan Cartegena, General Counsel, Community Service, U.S. House Judiciary Committee, Subcommittee on the Constitution, November 9, 2005; Margaret Fung, Executive Director, Asian American Legal Defense and Education Fund, Senate Judiciary (continued...)

The Government Accountability Office mailed surveys on the types of bilingual voting assistance provided in the general election of 1996 to 422 jurisdictions that were covered under the VRA. Of 292 jurisdictions that responded to its survey, 272 of them provided bilingual voting assistance.[25] Of the respondents, 213 provided written and oral bilingual voting assistance; 45 provided only written; 14 provided only oral; and 20 did not provide any assistance. Explanations for why these jurisdictions did not provide assistance included the following:

- inability to identify individuals who need assistance;
- no one needed assistance or ever sought assistance; and
- the belief that they were exempted from providing assistance.

According to GAO, written assistance was provided by 258 jurisdictions in the form of bilingual or separate translated ballots, voting instructions and signs at polling places, and bilingual notices in newspapers. Those 227 jurisdictions that provided oral assistance used bilingual employees and volunteer assistant and, less often, hired special interpreters.[26]

For its survey, GAO requested that jurisdictions only provide actual costs of bilingual voting assistance, not cost estimates. Because the VRA does not require a covered jurisdiction to maintain data on the costs of providing bilingual voting assistance, most jurisdictions were unable to report the actual costs of language assistance. Of the 64 jurisdictions that were able to provide cost information, GAO reported that 34 provided the total costs of bilingual assistance and that the remaining 30 provided only partial costs. GAO found that these reported costs varied greatly. Several counties that provided oral assistance used bilingual workers at elections, and as a consequence reported no additional costs. On the other hand, Los Angeles County, California (which, according to Deborah Wright, Registrar-Recorder/County Clerk, has nearly 4 million registered voters)[27] provides (both to language groups that the VRA requires the county to assist and some that the act does not require them to assist) written and oral bilingual assistance at a cost of more than $1.1 million. Hawaii and Florida reported total costs in 1996 for bilingual voting assistance of slightly more than $23,000 and nearly $8,000, respectively.[28]

Data Used to Determine Jurisdictions Covered by Bilingual Election Assistance Requirements. Section 8 amends Section 203(b)(2)(A) of the VRA (42 U.S.C. § 1973aa-1a(b)(2)(A)), which relates to states and political subdivisions covered by the VRA. Formerly, the Director of the Census Bureau uses a formula that is based on *census data* to determine whether a state or political subdivision is

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[24] (...continued)
Committee, June 13, 2006.

[25] United States General Accounting Office, *Bilingual Voting Assistance, Assistance Provided and Costs*, GAO report GGD97-81 (Washington: May 1997), p. 2. (Hereafter, cited as GAO report.)

[26] Ibid., p. 3.

[27] Testimony before the Senate Judiciary Committee, June 13, 2006.

[28] GAO report, pp. 3-4.

covered by the bilingual election assistance requirements. The law, however, strikes "census data" and inserts "the 2010 American Community Survey census data and subsequent American Community Survey (ACS) data in 5-year increments, or comparable census data." The ACS is a new national survey that is designed to provide more recent data on demographic changes in communities.

Other Legislative Proposals Introduced in the 109th Congress

H.R. 997 (The English Language Unity Act of 2005) and H.R. 4408 (The National Language Act of 2005)

On March 1, 2005, Congressman Steve King introduced H.R. 997, the "English Language Unity Act of 2005." H.R. 997, in part, would have made English the official language of the United States. In addition, it would have provided for a uniform English language rule for naturalization, whereby all citizens would have to be able to read and understand in English the Declaration of Independence, the U.S. Constitution, and all laws of the United States.[29] The bill would have provided that only under extraordinary circumstances, such as asylum, would any exceptions to this provision be allowed.

On November 18, 2005, Congressman Peter King introduced a similar bill, H.R. 4408, the "National Language Act of 2005." Among other provisions, H.R. 4408 would have provided for English to be the official language of the U.S. government, and would have repealed the bilingual election requirements of the VRA. Both bills were referred to their appropriate committees, but saw no action.[30]

Congressional Activity

On July 20, 2006, the Senate passed H.R. 9, a bill to reauthorize the temporary provisions of the Voting Rights Act of 1965 for 25 years, without amendment (98 to 0). Earlier, on July 13, the House had passed H.R. 9 by a vote of 390 to 33. Four amendments to the bill were proposed and rejected. The House rejected H.Amdt. 1183 (the Norwood amendment) by a vote of 96 to 318; H.Amdt. 1184 (the Gohmert amendment) by a vote of 134 to 288; H.Amdt. 1185 (the King amendment) by a vote of 185 to 238; and H.Amdt. 1186 (the Westmoreland amendment) by a vote of 118 to 302.

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[29] The Immigration and Naturalization Act currently requires applicants for naturalization to demonstrate their English abilities, although certain waivers are allowed. See CRS Report RS20916, *Immigration and Naturalization Fundamentals*, by Ruth Ellen Wasem.

[30] For further discussion, see CRS Report RL33356, *English as the Official Language of the United States: Legal Background and Analysis of Legislation in the 109th Congress*, by Charles V. Dale.

Floor Action

Norwood Amendment. Congressman Norwood's amendment would have amended Sections 4 and 5 of the VRA. It would have changed the formula that determines which state or political subdivision is covered by the preclearance provisions of the VRA by basing it on voter registration and voter turnout statistics. The VRA's current formula, however, is based on a state or political subdivision's historical record of voting discrimination against minorities who are covered in the act. The Norwood amendment would have provided that the preclearance provisions would have applied to a state or political subdivision:

- where the Attorney General determines that a state or political subdivision maintains a test or device;
- or the Director of the Census determines that less than 50% of citizens of voting age who reside in a state or political subdivision were *registered* on November 1 of "a critical year;"
- or less than 50% of those citizens *voted* in the presidential election of a critical year.

The amendment would have defined a critical year as the three years in which the last preceding presidential elections took place. Also, once a preclearance determination had been made, the amendment would have prohibited any judicial review and would have allowed that determination to become effective upon publication in the Federal Register.

Proponents of the Norwood amendment argued that the current formula that determines which jurisdictions are covered under the preclearance provisions of the VRA is outdated. Reportedly, some southern Members of Congress objected to their states having to submit changes in electoral procedures to DOJ for approval, stating that despite their efforts to improve in this area, the south continues to be treated differently from the rest of the country.[31] A different view on this issue is that much of the progress that has occurred in addressing voting discrimination in covered jurisdictions is directly attributable to enforcement of Section 5 of the VRA. Supporters of this argument pointed to the number of objections from DOJ since 1982 to some covered jurisdictions' proposed electoral changes in procedure or law as evidence of the continued need for Section 5. Their view is that without Section 5 of the VRA, voting discrimination in covered jurisdictions would likely occur.[32]

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[31] Jonathan Allen, "In Senate, It's Deja Vu All Over Again on Voting Rights Act Extension," *The Hill*, June 28, 2006; Seth Stern, "Efforts to Curtail Voting Rights Act Persist," *CQ TODAY*, June 28, 2006; Lynn Westmoreland, "Voting Rights Act: Punitive Approach No Longer Needed," *The Atlanta Journal-Constitution*, May 29, 2006, p. A17.

[32] Tyrone Brooks and Charles Steele, "Voting Rights Act: Safeguards Should Not Be Eliminated," *The Atlanta Journal-Constitution*, May 29, 2006, p. A17; Testimony of Debo Adegbile, Associate Director of Litigation, NAACP Legal Defense and Educational Fund, Inc., U.S. Senate Judiciary Committee, June 21, 2006.

One reason for enactment of the original Voting Rights Act in 1965 was to respond to the creative, changing, and effective efforts of some states to deny African Americans access to the voting booth or to diminish their presence there. Prohibiting voters from registering to vote and intimidating voters who attempted to vote was quite effective then. Among tactics used today to accomplish that objective, however, are urban annexations and redistricting. The Norwood amendment, in relying on voter registration and voting turnout records for the past three presidential election years (1996, 2000, and 2004), did not appear to address voting discrimination in jurisdictions that were likely to use these tactics. Rather, in using the voter registration and voting turnout records for the past three presidential election years (1996, 2000, and 2004), the Norwood formula would have, for example, subjected a state — Hawaii — to the preclearance provisions of the VRA that had never been subjected to these provisions before.[33]

At present, 16 states are covered by Section 5 of the VRA — nine states in their entirety (Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas, and Virginia) and seven states with political subdivisions that are covered (California, Florida, Michigan, New Hampshire, New York, North Carolina, and South Dakota). According to U.S. Census Bureau data for the presidential elections of 1996 and 2000, for each of these years, Hawaii would have been covered by the VRA based on provisions of the Norwood amendment. In Hawaii, 47.4% of citizens of voting age population were registered in the presidential election of 1996, and 44.1% of citizens of voting age population voted in the election of 2000.[34] Data are not available that would determine if political subdivisions of a state would be covered under provisions of the Norwood amendment. In addition, it is hypothetically possible for the Attorney General to determine that a state or political subdivision has used a test or device and, thereby, would be covered by the Norwood amendment.

Gohmert Amendment. The Gohmert amendment would have reauthorized and extended the temporary provisions of the VRA (which will expire on August 6, 2007) to August 6, 2016, rather than 2032 as provided in H.R. 9. During debate on the amendment, Congressman Gohmert argued that earlier congressional authorizations were for five-, seven-, and 15-year periods. He stated that Congress needs to review provisions of the VRA more often since, according to him, the Supreme Court has established that it will "regularly change the playing field and regularly change the rules" concerning the VRA.[35] In response, Congressman Sensenbrenner stated that testimony and evidence presented at 12 hearings on the VRA support extension of the temporary provisions for 25 years. According to him, it would allow a "meaningful change" in the voting process to be measured and

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[33] Press release, Laughlin McDonald, "ACLU Challenges Lawmakers Who Aim to Gut Voting Rights Act, Says Proposals Would Eliminate Historic Federal Protections," American Civil Liberties Union, June 23, 2006 [http://www.aclu.org/votingrights/index.html].

[34] U.S. Census Bureau, Historical Time Series Tables, Table A5 — Reported Voting and Registration for Total and Citizen Voting Age Population, by State for Presidential Elections: 1972-2004.

[35] *Congressional Record*, July 13, 2006, p. H.5186.

would make "eradication of discrimination in the voting process an achievable goal."[36] Also, the 25-year period would meet the Supreme Court's requirement of a large set of data for analysis to justify reauthorizing the VRA. Further, Congressman Sensenbrenner stated that the Gohmert amendment, if adopted, would nullify the current incentive provided in the VRA to encourage covered jurisdictions to maintain a non-discriminatory voting record for 10 years in order to be eligible to bail out from coverage.

King Amendment. The King amendment would have deleted Sections 7 and 8 of H.R. 9, which relate to multilingual ballots and American Community Survey census data. Removing these sections from H.R. 9 would have allowed bilingual assistance provisions of the current Voting Rights Act to expire on August 6, 2007. Debate on the King amendment explored many of the same issues discussed earlier in this report on bilingual election assistance. (See "Extension of Bilingual Election Assistance Requirements, " pp. 12-15). In support of his amendment, Congressman King stated that local electoral jurisdictions, not the federal government, should make decisions on whether to provide foreign language ballots, which his amendment would allow. Further, those U.S. citizens who are not fluent in English can bring an interpreter of their choice into the voting booth to assist in interpreting the ballot.

Westmoreland Amendment. The Westmoreland amendment would have amended Section 5 of the VRA by requiring the Attorney General to annually determine whether each state and political subdivision covered by the preclearance provisions of the act can bail out of coverage. Further, it would have required the Attorney General to inform both the public and each state or political subdivision of whether it can bail out. Where a state or political subdivision seeks to bail out of coverage, the amendment would have allowed such bail-out if the Attorney General determined that a state or political subdivision met the requirements. The Westmoreland amendment would have retained the current criteria for bailing out of coverage. In requiring the Attorney General each year to determine every state or political subdivision that would be eligible for bail-out, however, the Westmoreland amendment would have shifted responsibility from the state or political subdivision to DOJ. To implement provisions of this amendment, it appears that DOJ might have needed to increase its staff to conduct the necessary research and analysis. It does not appear that the Westmoreland amendment would have addressed the issue of additional DOJ resources.

Debate on the Westmoreland amendment centered on the small number of jurisdictions that have bailed out of VRA coverage, the costs for DOJ to enforce provisions of the amendment, the amount of power the amendment would delegate to DOJ, and provisions of the amendment that would require DOJ to consent "to the entry of judgment" and perhaps, thereby, limit the ability of DOJ to act in a case based on newly discovered evidence.

Stearns Amendment. On June 28, 2006, Congressman Stearns offered H.Amdt. 1145 to H.R. 5672, the Science-State-Justice-Commerce Appropriations Act, FY2007. This amendment would have prohibited funding to enforce Section

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[36] *Congressional Record*, July 13, 2006, p. H.5187.

203, the bilingual assistance provisions of VRA. Debate on the amendment focused on assimilation of limited-English American citizens and the cost of providing bilingual assistance to them. By a vote of 167 to 254, the House rejected H.Amdt. 1145.

Committee Action

On July 19, 2006, the Senate Judiciary Committee marked up S. 2703, the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006. An amendment, offered by Representative Coburn, was defeated by voice vote that would have provided that persons who indicate that they speak English "well" in response to the Census Bureau's inquiry would not be considered limited-English proficient under Section 203 of the VRA. Senator Leahy, at the request of Senator Ken Salazar, offered an amendment to add the name of Cesar Chavez (another civil rights leader) to the title of S. 2703. The committee unanimously reported the bill, as amended. Instead of considering S. 2703, the Senate Majority Leader Bill Frist called up the House version, H.R. 9, for floor debate.

Prior to floor consideration of H.R. 9, the House Committee on Rules reported two special rules — H.Res. 878 and H.Res. 910 — providing for consideration of H.R. 9, as well as setting procedural parameters for its consideration. The first special rule, H.Res. 878, only allowed two specified amendments, the Norwood and Westmoreland amendments. On June 27, this rule was tabled because House Republicans were unable to agree on it. Subsequently, on July 13, the committee reported H.Res. 910, which in addition to the Norwood and Westmoreland amendments allowed for two more amendments — the Gohmert and King amendments. The King amendment had previously been rejected by the House Committee on the Judiciary (see amendment number 109 below). On July 13, the House adopted H.Res. 910.

On May 10, 2006, the House Judiciary Committee reported H.R. 9, to reauthorize the temporary provisions of the VRA for 25 more years. An amendment sponsored by Congressman Issa was adopted by voice vote to require that a study of the implementation and effectiveness of Section 203 be conducted within one year of enactment of the bill. Congressman Steven King offered two amendments relating to the bilingual assistance provisions of the VRA. One amendment (amendment 109) would have deleted Sections 7 and 8 of H.R. 9 that relate to bilingual language assistance and replacement of the decennial long-form census with the American Community Survey in determining the triggering of Section 203's bilingual language assistance requirements. This amendment was rejected by a vote of 9 to 26. The second amendment (amendment 110), which would have reauthorized the bilingual assistance provision for six years, was also rejected by a vote of 10 to 24.

Hearings. On July 13, 2006, the Senate Judiciary Committee held a hearing on "Renewing the Temporary Provisions of the Voting Rights Act: Legislative Options After LULAC v. Perry," a case concerning congressional redistricting in Texas that the Supreme Court recently ruled on. This was the eighth in the committee's continuing series of hearings on the temporary provisions of the Voting Rights Act. Other hearings held on June 21, 2006; April 27, 2006; May 9, 2006;

May 10, 2006; May 16, 2006; May 17, 2006; and June 13, 2006 addressed whether the temporary provisions of the VRA are needed, legal issues related to their reauthorization, and modern enforcement of the VRA.

From October 2005 to May 2006, the House Judiciary Committee, Subcommittee on the Constitution, has held 11 hearings to examine the impact and effectiveness of the Voting Rights Act of 1965, as amended, and to determine whether the act is still needed. The history, scope, and purpose of the VRA were reviewed. The subcommittee examined temporary provisions of the act, including those on federal examiners, the assignment of observers at elections, the coverage formula of Section 4, and bilingual assistance. The hearings also examined the preclearance provisions of Section 5 and the judicial evolution of the retrogression standard.

On May 2, 2006, Congressman Sensenbrenner introduced H.R. 9, and the following day, Senator Specter introduced an identical companion bill in the Senate, S. 2703. H.R. 9 was amended and approved by the House Judiciary Committee by a vote of 33 to 1. The bill, as amended, was reported (H.Rept. 109-478) from the committee on May 22, 2006, and passed by the House on July 13, by a vote of 390 to 33. The committee-approved amendment to H.R. 9 added a section requiring the Comptroller General to study and report to Congress on the implementation, effectiveness, and efficiency of Section 203 of the VRA. With the exceptions of this new section and the titles of the bills, the two bills, H.R. 9 (as amended) and S. 2703 (as reported, amended, by the Senate Judiciary Committee on July 19, 2006) contained the same provisions. For more information on congressional consideration of S. 2703 and H.R. 9, including four amendments that were defeated on the House floor, see "Congressional Activity," below.

Appendix

Temporary Provisions of the Voting Rights Act of 1965, As Amended, *Prior* to Passage of P.L. 109-246 (H.R. 9)

This appendix discusses the temporary provisions of the VRA before the 109th Congress amended the act.

Coverage Formula and "Bail Out" Provision — Section 4

With the enactment of Section 4(a), the framers of the Voting Rights Act sought to stop the practice of discouraging black registration and voting. Section 4(a) prohibits the use of all literacy tests and any other "device," such as a voucher requirement, as a condition for voter registration in states and political subdivisions of states that are subject to the coverage formula of the VRA (Section 4(b)).[37]

Coverage Formula. The coverage formula was adopted to determine which states and political subdivisions of states would be covered by the act. Low registration and voting statistics in jurisdictions requiring literacy tests and devices were attributed to the discriminatory application of those tests and devices. Section 4 provides that a state or political subdivision is considered covered under Section 4 if (1) it maintained a test or device as a condition for voter registration, on November 1, of 1964, 1968, or 1972, and (2) either less than 50% of citizens of legal voting age were registered to vote or less than 50% of citizens voted in the presidential election held in the year in which it used such a test or device.[38] A jurisdiction is considered to have used a test or device on November 1, 1972, if more than 5% of its citizens of legal voting age were of a single language minority and it conducted its elections with exclusively English language materials or assistance.[39] American Indians, Asian Americans, Alaskan natives, and persons of Spanish heritage are considered to be members of language minority groups.[40]

"Bail Out" Provision. Section 4 also contains a provision that permits a jurisdiction to be released or "bail out" from coverage if it can show a record of abiding by the VRA. Since 1965, these provisions have been amended to extend the expiration dates of the temporary provisions, and in 1970, 1975, and 1982, to change the triggering date in the coverage formula to November 1 of 1968, 1972, and 1980, respectively. With the change in the triggering date, more jurisdictions were covered under the VRA. In 1975, the term "test or device" was modified to cover a state or jurisdiction that provided registration or voting material in English-only where the Director of the Census Bureau determined that more than 5% of citizens of voting

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[37] 42 U.S.C. § 1973b.

[38] 42 U.S.C. § 1973b(b).

[39] 42 U.S.C. § 1973b(f).

[40] 28 C.F.R. Pt. 51, § 51.2.

age residing there were members of a single language minority.[41] Also that year, the term "language minorities" or "language minority group" was defined as American Indian, Asian American, Alaskan Natives, or of Spanish heritage.[42] To bail out, a state or political subdivision that would otherwise be covered by the bilingual assistance provisions had to obtain a declaratory judgment from the District Court of the District of Columbia that, during the past 10 years, the jurisdiction's English-only elections had not discriminated against limited-English speakers who are covered by the VRA.[43]

The 1982 amendments to the VRA extended the expiration date for bilingual assistance (which prohibits the use of voting materials in English only in certain jurisdictions) and limited coverage to determinations made by the Director of the Census Bureau that are based on 1980 and subsequent census data.[44] A jurisdiction seeking exemption from VRA coverage must seek a declaratory judgment in the U.S. District Court for the District of Columbia, demonstrating that during the previous 10 years, it

- did not use a test or device in the state or political subdivision;
- submitted all proposed voting changes to the Department of Justice or the U.S. District Court for the District of Columbia for review;
- had no rejections of a proposed change from DOJ or the U.S. District Court for the District of Columbia;
- had no adverse judgements in lawsuits claiming voting discrimination;
- had no consent decrees or agreements that stopped a discriminatory voting practice;
- has had no pending lawsuits claiming voting discrimination; and
- had no federal examiners assigned.[45]

The 1982 amendments also changed the bail out provision so that for the first time, counties, within otherwise covered states, could have the opportunity to bail out from coverage independently. By adding the phrase "or political subdivision," the statute currently provides that in order to be released from coverage, a covered jurisdiction would have to prove that "no such test or device has been used within such State *or political subdivision* for the purpose or with the effect of denying or abridging the right to vote on account of race or color."[46]

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[41] 42 U.S.C. §1973c.

[42] 42 U.S.C. §1973l.

[43] 42 U.S.C. §1973aa-1a.

[44] 42 U.S.C. §1973aa-1.

[45] The 1982 VRA Amendments included new requirements for bail-out of preclearance provisions that became effective August 6, 1984 (42 U.S.C. § 1973b(a)); the Voting Rights Act Amendments of 1982 (P.L. 97-205).

[46] 42 U.S.C. §1973b (emphasis added).

Under the 1984 standard,[47] eleven jurisdictions in Virginia have bailed out of coverage under Section 4(b) of the VRA. They are the counties of Augusta, Frederick, Greene, Pulaski, Roanoke, Rockingham, Shenandoah, and Warren, and the cities of Fairfax, Harrisonburg, and Winchester.[48]

Preclearance Procedures — Section 5

Congress also recognized that covered jurisdictions could limit the effectiveness of the black vote in ways other than by preventing a person from registering to vote. For instance, polling places could be located in white neighborhoods but not in black neighborhoods, and electoral districts could be gerrymandered in such a way that blacks would not comprise a majority in any electoral district. Section 5[49] of the act is intended to prevent enforcement of any election law with racially discriminatory effect that was enacted after November 1, 1964.[50]

Specifically, Section 5 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 declaratory judgment) in order for DOJ or the court to determine if such a law would deny or abridge the right to vote on account of race or color.[51] 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 the denial or abridgement of 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.

Federal Examiners and Observers — Sections 6 through 9

Sections 6 through 9 concern federal examiners and observers. Section 6[52] provides that if a covered jurisdiction is suspected of racially discriminating against

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[47] The "standard" is based on VRA provisions that existed at the time a jurisdiction sought bail-out from preclearance requirements. The 1984 standard is the effective date to bail out of preclearance requirements as provided in The Voting Rights Act Amendments of 1982 (P.L. 97-205).

[48] This information was provided by the Department of Justice on April 13, 2006.

[49] 42 U.S.C. § 1973c.

[50] 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, 91st Cong., 1st sess. (Washington: GPO, 1969), p. 3, (Statement of Representative Celler, Chairman of the House Judiciary Committee).

[51] 42 U.S.C. § 1973c.

[52] 42 U.S.C. § 1973d.

voters, the act authorizes the Attorney General to assign federal examiners to help register voters and to assign federal observers, provided by the Office of Personnel Management (OPM), to monitor voting on the day of the election. Section 7[53] provides for federal examiners to review an applicant's qualifications for registration, the placement of eligible voters on official lists, and the removal of the names of ineligible persons from registration lists. Section 8[54] provides for assignment of observers at elections, their duties, and reports. Observers are assigned to polling places simply to watch voting and vote counting procedures. If they observe discriminatory treatment of individuals covered by the VRA, they are not allowed to intervene, but must report their observations to OPM. Section 9[55] provides a process by which challenges can be made to an eligibility list prepared by an examiner.

Termination of Use of Federal Examiners — Section 13

Section 13[56] provides a process to terminate use of federal examiners in political subdivisions covered by the act. The use of federal examiners shall cease whenever the Attorney General notifies the Director of OPM, or whenever the District Court for the District of Columbia determines in an action for declaratory judgment (brought by any political subdivision where the Director of the Census Bureau has determined that more than 50% of the nonwhite residents of voting age are registered to vote) that all persons listed by an examiner for a political subdivision have been placed on the voting registration roll, and that there is no longer reasonable cause to believe that persons will be deprived of or denied the right to vote on account of race, color, or because of limited-English speaking ability.

Wherever a court has authorized the appointment of federal examiners in a covered political jurisdiction, a political subdivision may petition the Attorney General for termination of listing procedures and request the Director of the Census Bureau to take a survey or census of the political subdivision to determine whether there is a further need for federal examiners. The District Court for the District of Columbia is also authorized to require the Director of the Census Bureau to conduct a survey or census of the political subdivision. If the court deems the Attorney General's refusal to request such a survey or census to be arbitrary or unreasonable, it can require the Director of the Census Bureau to do so.

Bilingual Election Assistance Provisions — Section 203

In 1975, by adding Section 203,[57] the bilingual election assistance provisions, Congress sought to increase the participation of language minorities in elections, and established that language minorities are considered a protected class under Section 2. Specifically, Section 203 prohibits a covered state or political subdivision from

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[53] 42 U.S.C. § 1973e.

[54] 42 U.S.C. § 1973f.

[55] 42 U.S.C. § 1973g.

[56] 42 U.S.C. § 1973k.

[57] 42 U.S.C. § 1973aa-1a.

providing voting materials only in the English language. It provides that a state or political subdivision is covered under this subsection if the Director of the Census Bureau determines, based on census data, that

- more than 5% of the citizens of voting age of such state or political subdivision are members of a single language minority and are limited-English proficient;
- more than 10,000 of the citizens of voting age of such political subdivision are members of a single language minority and are limited-English proficient; or
- in the case of a political subdivision that contains all or any part of an Indian reservation, more than 5% of the American Indian or Alaska Native citizens of voting age within the Indian reservation are members of a single language minority and are limited-English proficient; and
- the illiteracy rate of the citizens in the language minority as a group is higher than the national illiteracy rate.[58]

[58] *Id.*