UPDATE SECTION FIVE OF THE VOTING RIGHTS ACT

Section five of the Voting Rights Act of 1965 (VRA) was designed as a temporary provision to effectively freeze election laws in certain states until federal officials could review them for discriminatory purpose or effect.[1] In *Shelby County v. Holder,*[2] the Supreme Court held the coverage formula in section four[3] to be unconstitutional, rendering section five's "preclearance" unenforceable until Congress acts to update the formula.

Quick Take

The Supreme Court in Shelby County v. Holder rendered section five's "preclearance" unenforceable until Congress updates the formula.

Congress should either expand the VRA to all states or repeal section five.

BACKGROUND

The heart of the VRA is section two, which prohibits every state and local government from imposing any voting law that results in racial discrimination, including literacy tests and poll taxes.[4] Section four contains the coverage formula that determines which states and local governments may be subject to the other provisions of the act. Section five requires nine states to obtain preapproval, or "preclearance," from the U.S. Attorney General or the U.S. District Court for the District of Columbia before making any change with respect to voting.[5] This section was intended to be temporary, but since its initial five-year authorization, it has been extended four times, with the most recent extension being in 2006 for 25 years.

In 2009, Chief Justice John Roberts wrote for the majority in *Northwest Austin Municipal Utility District Number One v. Holder:*[6]

> The historic accomplishments of the Voting Rights Act are undeniable...Things have changed in the South. Voter turnout and registration rates now approach parity. Blatantly discriminatory evasions of federal decrees are rare. And minority candidates hold office at unprecedented levels…The statute's coverage formula is based on data that is now more than 35 years old and there is considerable evidence that it fails to account for current political conditions.

In *Shelby County v. Holder,*[7] the Supreme Court struck down the coverage formula in section four of the Voting Rights Act, which determines the states subject to section five's preclearance requirement. The Court did not rule on the constitutionality of section five itself. However, without the formula, covered jurisdictions under section five are effectively no longer subject to federal oversight.

CONSTITUTIONAL AUTHORITY AND REPUBLICAN PRINCIPLES

The Fifteenth Amendment states that the "right of citizens of the United States to vote shall not be denied or abridged … on account of race, color, or previous condition of servitude."[8] Section two of this amendment empowers Congress to enforce this article by appropriate legislation.[9]

As a matter of principle, all states enjoy equal sovereignty and should be treated equally under the law.

POLICY SOLUTIONS

Congress should pass legislation which either repeals section five of the VRA or expands the preclearance to all 50 states.

Please contact Cameron Smith or Kelsey Wall with the Republican Policy Committee at (202) 225-4921 with any questions.

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[1] 52 U.S.C. § 10304 (2012).
[2] *Shelby County v. Holder,* 570 U.S. 529 (2013).
[3] 52 U.S.C. § 10304(b) (2012).
[4] 52 U.S.C. § 10302 (2012).
[5] Section five most recently applied to Texas, South Carolina, Arizona, Georgia, Louisiana, Mississippi, Alabama, Virginia and Alaska. It also applies to parts of Florida, California, New York, North Carolina, South Dakota, Michigan and New Hampshire.
[6] *Northwest Austin Municipal Util. Dist. No. One v. Holder,* 557 U.S. 193 (2009).
[7] *Shelby County v. Holder,* 570 U.S. 529 (2013).
[8] U.S. Const. amend. XV.
[9] *Id.*, § 2.