AMERICAN CIVIL LIBERTIES UNION

WASHINGTON LEGISLATIVE OFFICE
915 15th Street, NW Washington, D.C. 20005

THE VOTING RIGHTS AMENDMENT ACT OF 2015 (H.R. 885)
114th Congress

As we mark the 50th Anniversary of the Voting Rights Act and the Bloody Sunday March for voting rights in Selma, Alabama, now is the time for Congress to work together to restore and strengthen the Voting Rights Act.

Background on *Shelby County v. Holder* & ACLU Involvement

The Voting Rights Act of 1965 has proven to be one of the most effective civil rights statutes in eliminating racial discrimination in voting. For almost half a century, the Act has been utilized to ensure equal access to the ballot box by blocking and preventing numerous forms of voting discrimination. On June 26, 2013, in *Shelby County v. Holder*,[1] the Supreme Court struck down Section 4(b) of the Voting Rights Act. With the loss of Section 4(b), Section 5 has been rendered virtually obsolete, resulting in the loss of the most innovative and incisive tools against racial discrimination in voting.

For decades prior to the *Shelby* decision, pursuant to Section 5 of the Voting Rights Act, certain states and localities had to submit all of their voting changes to the federal government (either the DOJ or the D.C. District Court) for approval before they could be implemented, a process known as "preclearance." The coverage formula – Section 4(b) of the Act – determined which jurisdictions fell under Section 5's requirements that voting changes be pre-approved by the federal government and the public be given notice about voting changes in certain jurisdictions with a history of voting discrimination.

In *Shelby*, the Court declared unconstitutional this coverage formula, but left in place the preclearance process itself, meaning that it was left up to Congress to draw a new formula and other mechanisms that continue to protect the rights of minority voters.

Discrimination in Voting Still Exists

In *Shelby*, Chief Justice Roberts declared that "no one doubts" that race discrimination in voting still exists. Although significant progress has been made as a result of the passage of the Voting Rights Act, equal opportunity in voting still does not exist in many places. Discrimination on the basis of race and language still deny many Americans their basic democratic rights. Although such discrimination today is often more subtle than it used to be, it is still current and must still be remedied. Pre-*Shelby*, Section 5 prevented hundreds of discriminatory voting practices from taking effect and deterred countless others, such as the elimination of precincts changes in polling locations, methods of electing school board or city council members, moving to at-large districts, annexations, and other changes that have the purpose or effect of denying or abridging the right to vote on the basis of race or membership in a language minority group. Without the protection of Section 5, these discriminatory practices will continue across the country.

[1] The ACLU intervened in *Shelby* on behalf of the Alabama State Conference of the NAACP and several African-American residents of Shelby County whose voting rights were directly impacted by the county's challenge.

What Remains of the Current Voting Rights Act is Not Enough to Prevent Discrimination

While there have been some legal successes brought under the other provisions of the Voting Rights Act, what remains of our legal avenues after *Shelby* are not enough to fully protect American citizens from discrimination in voting. For example, the requirement to provide notice of voting changes and or a mechanism to "freeze" discriminatory changes made before elections, were fundamental elements of the Voting Rights Act that do not exist elsewhere in the Act or other federal voting laws. Only when the powerful tools of Section 5 and updated provisions of the Voting Rights Act can operate under a new regime, can discrimination in voting be adequately prevented.

A Legislative Solution: The Voting Rights Amendment Act of 2014

On February 11, 2015, Representatives Jim Sensenbrenner (R-WI) and John Conyers (D-MI) introduced the Voting Rights Amendment Act of 2015 (H.R. 885). The ACLU supports this bill, as it successfully answers Chief Justice Roberts' invitation to Congress in *Shelby* to modernize the Voting Rights Act. 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. In light of the new modest coverage formula, these other nationwide protections are critical in fulfilling the Voting Rights Act mandate of eradicating race discrimination in voting for all citizens. To achieve those goals, the bill includes:

- **A new "rolling" preclearance formula** that will cover jurisdictions with recent, egregious voting records, requiring their voting changes to be preapproved. The provision will update every year with the ability to capture new jurisdictions with ongoing discrimination. This does not require Congressional reauthorization for new states to be covered.

- **An expanded judicial bail-in provision** allowing courts to order preclearance as a remedy when a violation of the Voting Rights Act or any federal voting rights law that prohibits discrimination is found. Under this expanded standard, either intentional discrimination or most discriminatory results can be used as the basis for bail-in. This expanded bail-in provision is available nationwide.

- **Notice and disclosure requirements for all jurisdictions** to provide public notice of proposed voting changes. These notice requirements would not just apply to the states covered by the new preclearance formula, but would apply nationwide to all voting changes within a certain time period of enactment or an election.

- **An expansion of the availability of preliminary relief** in federal courts to prevent discriminatory voting changes from taking effect. This provides a mechanism to "freeze" voting changes before they take effect in non-covered jurisdictions. This new preliminary injunction standard would also be available in all jurisdictions.

- **Additional ability of DOJ to deploy federal observers** in places where there is evidence of possible race or language minority discrimination that would interfere with the right to vote. DOJ's authority would apply in all jurisdictions subject to preclearance, and where determined necessary to enforce the language minority provisions of Section 203.

For more information, please contact Deborah J. Vagins, ACLU Senior Legislative Counsel, at dvagins@aclu.org.