

THE VOTING RIGHTS ACT OF 1965: WHAT EXPIRES IN 2007 AND WHAT DOES NOT

WHAT DOES EXPIRE

1. Section 4 Coverage Formula, 42 U.S.C. ' 1973b

Section 4(b) of the Act, 42 U.S.C. ' 1973b(b), contains a formula defining jurisdictions subject to, or "covered" by, special remedial provisions of the Act. The special provisions are discussed below. Jurisdictions are covered if they used a "test or device" for voting and less than half of voting age residents were registered or voted in the 1964, 1968, or 1972 presidential elections. Coverage is determined by the attorney general and the director of the census, and is not judicially reviewable. Coverage, and with it the application of the special provisions, is set to expire in August 2007.

2. Section 5 Preclearance, 42 U.S.C. ' 1973c

Section 5, 42 U.S.C. ' 1973c, know as the "preclearance" requirement, is one of the special provisions of Act whose application is triggered by the coverage formula in Section 4(b). Section 5 requires covered jurisdictions to get approval, or preclearance, from federal authorities (either the attorney general or the federal court for the District of Columbia) prior to implementing any changes in their voting laws or procedures. The jurisdiction has the burden of proving that a proposed change does not have the purpose and would not have the effect of denying or abridging the right to vote on account of race or color or membership in a language minority. Jurisdictions covered by Section 5 are: Alabama, Alaska, Arizona, California (5 counties), Florida (5 counties), Georgia, Louisiana, Michigan (2 towns), Mississippi, New Hampshire (10 towns), New York (3 counties), North Carolina (40 counties), South Carolina, South Dakota (2 counties), Texas, Virginia. U.S. Department of Justice, Section 5 Covered Jurisdictions (Jan. 28, 2002). Section 5, unless extended, will expire in August 2007.

3. Assignment of Federal Examiners and Poll Watchers by the Attorney General, 42 U.S.C. ' ' 1973d, e, f & k

The attorney general can assign federal examiners to covered jurisdictions pursuant to Sections 6(b), 7, 9, and 13(a) of the Act, 42 U.S.C. c ' 1973d, e, and k, to list qualified applicants who are thereafter entitled to vote in all elections. The attorney general is also authorized by Section 8 of the Act, 42 U.S.C. ' 1973f, to appoint federal poll-watchers in places to which federal examiners have been assigned. These provisions are set to expire in August 2007.

4. Bilingual Voting Materials Requirement, 42 U.S.C. ' 1973aa-1a

Certain states and political subdivisions are required by 42 U.S.C. ' 1973aa-1a to provide voting materials in languages other than English. While there are several tests for "coverage,"

the requirement is imposed upon jurisdictions with significant language minority populations who are limited-English proficient and where the illiteracy rate of the language minority is higher than the national rate. Covered jurisdictions are required to furnish voting materials in the language of the applicable minority group as well as in English. Jurisdictions required to provide bilingual election procedures for one or more language minorities include the entire states of California, New Mexico, and Texas, and several hundred counties and townships in Alaska, Arizona, Colorado, Connecticut, Florida, Hawaii, Idaho, Illinois, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, and Washington. 67 Fed. Reg. 48872 (July 26, 2002). The bilingual voting materials requirement is scheduled to expire in August 2007.

WHAT DOES NOT EXPIRE

1. The Ban on "Tests or Devices," 42 U.S.C. ' 1973aa

The Voting Rights Act, 42 U.S.C. ' 1973aa, bans the use of any "test or device" for registering or voting in any federal, state, or local election. A "test or device" includes literacy, understanding, or interpretation tests, educational or knowledge requirements, good character tests, proof of qualifications by "vouchers" from third parties, or registration procedures or elections conducted solely in English where a single language minority comprises more than 5% of the voting age population of the jurisdiction. 42 U.S.C. ' 1973b(c) and (f)(3). "Language minorities" are defined as American Indians, Asian Americans, Alaskan Natives, and those of Spanish heritage. 42 U.S.C. ' 1973aa-1a(e). The ban on tests or devices is nationwide and permanent.

2. The "Results" Standard of Section 2, 42 U.S.C. ' 1973

Section 2 of the Voting Rights Act, 42 U.S.C. ' 1973, prohibits the use of any voting procedure or practice which "results" in a denial or abridgement of the right to vote on account of race or color or membership in a language minority. Section 2 applies nationwide and is permanent.

3. Voter Assistance, 42 U.S.C. ' 1973aa-6

By amendment in 1982, the Voting Rights Act, 42 U.S.C. ' 1973aa-6, provides that any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice, other than the voter's employer or union. The voter assistance provision is nationwide and permanent.

4. Court Appointment of Federal Examiners, 42 U.S.C. ' 1973a

In any action to enforce the voting guarantees of the fourteenth or fifteenth amendments a court may, pursuant to Section 3(a) of the Act, 42 U.S.C. ' 1973a, appoint federal examiners to

register voters. The federal examiner provision is nationwide and permanent, although it is rarely, if ever, used today.

5. Civil and Criminal Penalties, 42 U.S.C. ' ' 1973i and 1973j

Sections 11 and 12 of the Act, 42 U.S.C. ' ' 1973i and 1973j, authorize the imposition of civil and criminal sanctions on those who interfere with the right to vote, fail to comply with the Act, or commit voter fraud. These provisions are permanent and nationwide.

6. Pocket Trigger, 42 U.S.C. ' 1973a(c)

Section 3(c) of the Act, 42 U.S.C. ' 1973a(c), the so-called "pocket trigger," requires a court which has found a violation of voting rights protected by the fourteenth or fifteenth amendments as part of any equitable relief to require a jurisdiction for an "appropriate" period of time to preclear its proposed new voting practices or procedures. The preclearance process provided for in ' 1973a(c) is similar to that described in the discussion below of Section 5 of the Act, 42 U.S.C. ' 1973c. There is no expiration date for the pocket trigger.

7. Presidential Elections, 42 U.S.C. ' 1973aa-1

By amendments in 1970, Section 202, 42 U.S.C. ' 1973aa-1, the Act abolished durational residency requirements and established uniform standards for absentee voting in presidential elections. These provisions are permanent and nationwide.