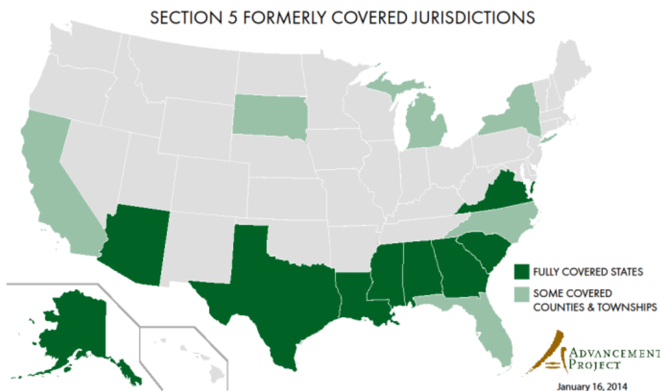
Summary of the Voting Rights Amendment Act of 2014, Introduced January 16, 2014

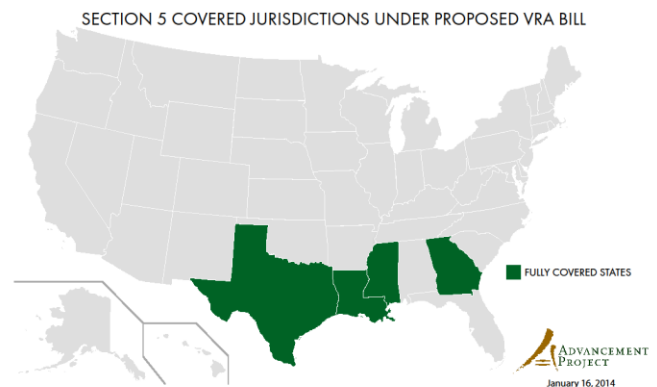
A bipartisan bill introduced by Reps. Sensenbrenner and Conyers, titled the Voting Rights Amendment Act of 2014 ("VRA Bill"), would update the Voting Rights Act (VRA) in the wake of the Supreme Court's controversial *Shelby County v. Holder* decision, which gutted the vital preclearance portion of the VRA.

While this new bill has features that help undo the damage of the *Shelby* decision, there are still many areas of concern that Congress should address as the bill moves forward.

BACKGROUND: In the VRA, Section 5 once froze potentially discriminatory voting changes before they could disenfranchise voters of color, specifically targeting states with the worst records on voting discrimination. Those states were required to obtain federal pre-approval for all changes in their voting practices. The Supreme Court held the Section 5 coverage formula unconstitutional in its June 25, 2013 *Shelby* decision, thus ending these preclearance requirements unless and until Congress updates the VRA.

As shown below, the former Section 5 preclearance provisions covered most states across the South and Southwest, and in a few jurisdictions in the North, as well as the state of Alaska. The new formula would cover only four states immediately and would omit key states with an egregious history of voting discrimination.





POSITIVE ELEMENTS IN THE PROPOSED BILL

- The new Section 5 preclearance coverage formula (five VRA violations in 15 years for statewide coverage; three violations in 15 years or one violation and persistent low minority turnout for local coverage) will never expire and could cover more jurisdictions in the future. However, consent decrees and settlements do not count towards VRA violations. We believe that they should, as there have been numerous consent decrees and settlements regarding discriminatory treatment of voters of color, and the new formula puts too much emphasis on going to trial. We believe other improvements to the formula could result in covering omitted states such as North Carolina, South Carolina, Virginia and Florida

- It requires the public to be widely notified of voting changes made within 180 days of an election.

- It enhances the ability of groups to freeze potentially discriminatory voting changes via obtaining a court-issued preliminary injunction.

- The bill would restore the Department of Justice's ability to send federal observers to monitor inside the polls in the new Section 5 jurisdictions. It also would expand the ability of the DOJ to send observers nationwide.

- The bill makes it easier to add (bail in) jurisdictions to preclearance coverage through litigation, by removing the requirement to prove that the voting violations were intentional.

SERIOUS CONCERNS THAT CONGRESS MUST ADDRESS

- **Most of the above improvements require litigation.**

  Instead of more protections being embedded in the bill, groups are expected to independently take legal action.

- **The new Section 5 formula only looks at recent history and covers only four states immediately.**

  Although there are new mechanisms in the proposed bill to bring more jurisdictions under preclearance through litigation, for now it will likely only cover the following states for preclearance:

  - Texas
  - Mississippi
  - Georgia
  - Louisiana

  The new formula looks at only the last 15 years when examining any jurisdiction's record of discrimination. Consent decrees, settlements and state court voting rights findings are not counted. A finding that several different practices violate voting rights would count as only one violation if these practices are all challenged in the same lawsuit, thus encouraging an inefficient multiplicity of lawsuits. The formula should be expanded to count consent decrees, settlements, state court judgments and each separate violation.

- **There is a limited carve-out of voter ID laws.**

  While other types of discriminatory voting procedures are fully counted towards what determines why a jurisdiction should fall under preclearance, voter ID laws are partially excluded.

  Saying discriminatory voter ID laws do not count as much as other types of voting discrimination is arbitrary and political. We are also concerned that these carve-outs could be expanded during the debate and amendment process. However, the bill reaffirms that voter ID can be successfully challenged under the Voting Rights Act without the necessity of proving intent.

- **The co-sponsors did not agree to a national preclearance mechanism or "known practices coverage."**

  This proposal would automatically require preclearance of the most common voting practices found to be discriminatory in places with significant or rapidly growing minority population. But the proposal was rejected by the bill's sponsors, so the only way these practices can be challenged is through litigation. These common practices, or "known practices," include:

  - Reducing available non-English voting materials
  - Reducing polling place resources
  - Changes in polling place locations
  - Altering voting district lines in ways that are likely to dilute the power of voters of color.