

# NCSL'S CAPITOL FORUM ELECTION POLICY

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# NCSL's Capitol Forum

## Election Policy

[The Voting Rights Act of 1965](#) is considered the most effective civil rights statute ever enacted by Congress.

"So long as I do not firmly and irrevocably possess the right to vote I do not possess myself. I cannot make up my mind — it is made up for me. I cannot live as a democratic citizen, observing the laws I have helped to enact — I can only submit to the edict of others."

Dr. Martin Luther King, Jr.



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Civil Rights Act of 1964 – Historic Law



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“But in Birmingham, when the Commissioner of Public Safety, Eugene (Bull) Connor, brought out the police dogs and fire hoses, and in Selma, when Sheriff Jim Clark socked a black minister, C. T. Vivian, in the face, reporters and cameramen were right there. Many white Americans who saw or read about the violence blamed the demonstrators, but the world blamed the American government. That got the attention of the White House.”

Menand – The New Yorker 7/8/13



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“[Governor] Wallace had ordered [Sheriffs] to take “whatever steps necessary” to stop the march. The troopers wore gas masks and carried nightsticks; Clark’s men were armed with clubs, whips, and cattle prods. One carried a rubber hose wrapped in barbed wire. A number of white Alabamans had come out to watch the sport. ... So had the press. It’s all on film....

Forty tear-gas canisters were fired that day. The marchers were chased for a mile back to Selma.”

Menand



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- “The Voting Rights Act, also known as the VRA, was enacted by Congress in 1965 (42 U.S.C. 1973 to 1973bb-1). Pursuant to the VRA, the Attorney General undertakes investigations and litigation throughout the United States and its territories, conducts administrative reviews of changes in voting practices and procedures and monitors elections.
- Section 2 of the VRA is a nationwide prohibition against voting practices and procedures (including redistricting plans and at-large election systems, poll worker hiring, and voter registration procedures) that discriminate on the basis of **race, color or membership in a language minority group**.
- Section 2 prohibits not only election-related practices and procedures and monitors elections that are intended to be racially discriminatory, but also those that are shown to have a racially discriminatory result.
- Section 208 of the VRA provides for voters who need assistance to vote by reason of blindness, disability, or inability to read or write. Any such voter may be given assistance by a person of the voter's choice, other than the voter's employer or agent of the employer or officer or agent of the voter's union. “

Source: USDOJ

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“As such, we conclude that the district court did not clearly err in determining that SB 14 has a discriminatory effect on minorities’ voting rights in violation of Section 2 of the Voting Rights Act. As discussed below, we remand for a consideration of the appropriate remedy in light of this finding in the event that the discriminatory purpose finding is different.”

Veasey v. Abbott, (5<sup>th</sup> Cir., 2015)



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“Plaintiffs here expected the Court to rely on the results of only a single election cycle to support a finding of vote dilution... [O]n the basis of the election data before this Court, the Court must conclude that Plaintiffs have not, at this time, satisfied their burden of proving that the current districting system of election to the City Court of Baton Rouge violates VRA Section 2, the Fourteenth Amendment, the Fifteenth Amendment, or 42 U.S.C. §§ 1983, 1986, as those provisions have been interpreted by the U.S. Supreme Court and the U.S. Court of Appeals for the Fifth Circuit.”

Hall v. State of Louisiana, (M.D. La., 2015)



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“The City of Yakima is permanently enjoined from administering, implementing, or conducting any future elections for the Yakima City Council in which members of the City Council are elected on an at-large basis, whether in a primary, general, or special election.”

## Montes v. City of Yakima, 2015

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON



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2006

VRA Section 203 Changes:

Use of ACS data

New Determinations Every 5 Years



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“A federal judge in Anchorage ruled that the state Elections Division violated the U.S. Voting Rights Act by failing to provide ballot and candidate information in Native languages to Yup'ik and Gwich'in speakers in three rural regions of Alaska. In a big victory for Native rights advocates, U.S. District Judge Sharon Gleason rejected the state's assertions that it had done enough in Southwest Alaska and the Interior by providing bilingual poll workers and “outreach” personnel. Gleason said the state's effort failed to provide “substantially similar” information in Native languages as it does in English, a requirement of the Voting Rights Act since 1975.”

Alaska Dispatch News – 9/3/14

# NCSL's Capitol Forum Election Policy 2013

“On June 25, 2013, the United States Supreme Court held that the coverage formula in Section 4(b) of the Voting Rights Act, 42 U.S.C. 1973b(b), as reauthorized by the Voting Rights Act Reauthorization and Amendments Act of 2006, is unconstitutional and can no longer be used as a basis for subjecting jurisdictions to preclearance under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. ***Shelby County v. Holder***, 570 U.S. \_\_\_\_, 2013 WL 3184629 (U.S. June 25, 2013) (No. 12-96). Accordingly, no determination will be made under Section 5 by the Attorney General on the specified change.”



Source: USDOJ



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VRA Section 3c requires proof of contemporary intentional discrimination

Not based on 1960s/1970s voting behavior.

Supreme Court's constitutional concerns in Shelby County about VRA Section 4b not being based on "current conditions."

Section 3c has nationwide coverage. Not limited to any states or regions of the country, as was VRA Section 4b's coverage formula.

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“The Department of Justice has expanded the scope of the Election Day monitoring conducted by Civil Rights Division staff to include assessments of the physical accessibility of polling places. For the 2012 general election, the Department’s Election Day monitors conducted accessibility surveys of approximately 240 polling places in 28 jurisdictions throughout the country.

In some circumstances, when a public entity is unable to identify or create an accessible polling place for a particular voting precinct or ward, election administrators may instead use an alternative method of voting at the polling place. While absentee balloting can be offered to voters with disabilities, it cannot take the place of in-person voting for those who prefer to vote at the polls on Election Day. “

**THE AMERICANS WITH DISABILITIES ACT AND OTHER FEDERAL LAWS**

**PROTECTING THE RIGHTS OF VOTERS WITH DISABILITIES**

**USDOJ – 2014**

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## What Does It All Mean?





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“Prior to Election Day or the beginning of early voting, election staff and volunteers should receive **training** so they can appropriately interact with people with disabilities. Staff and volunteers should understand the specific auxiliary aids and services that are available. They should be aware that service animals must be allowed to accompany voters inside the polling place, that accessibility features at the polling place need to be operational, that people with disabilities are allowed assistance from a person of their choice, and that other modifications may be needed to accommodate voters with disabilities.”

USDOJ 2014



# NCSL's Capitol Forum Election Policy

## Our Prescription for 2016

### Proactive, Preventive Exam - Analyze Your Risks

- Work With Your Jurisdictions - Training
- At-Large Election Vulnerability – Tied to Bail-In Potential
  - Historical Issues
    - When Did DOJ Last Visit You or Ask You For Information?
    - Don't Wait for The Call From DC, The Suit, The Complaint
- **ADA Assessment & Training – Increase Awareness!**

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