

AMENDING THE HELP AMERICA VOTE ACT OF 2002 TO PROHIBIT STATE ELECTION OFFICIALS FROM ACCEPTING A CHALLENGE TO AN INDIVIDUAL'S ELIGIBILITY TO REGISTER TO VOTE IN AN ELECTION FOR FEDERAL OFFICE OR TO VOTE IN AN ELECTION FOR FEDERAL OFFICE IN A JURISDICTION ON THE GROUNDS THAT THE INDIVIDUAL RESIDES IN A HOUSEHOLD IN THE JURISDICTION WHICH IS SUBJECT TO FORECLOSURE PROCEEDINGS OR THAT THE JURISDICTION WAS ADVERSELY AFFECTED BY A HURRICANE OR OTHER MAJOR DISASTER, AND FOR OTHER PURPOSES

MARCH 25, 2010.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BRADY of Pennsylvania, from the Committee on House Administration, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 3489]

[Including cost estimate of the Congressional Budget Office]

The Committee on House Administration, to whom was referred the bill (H.R. 3489) to amend the Help America Vote Act of 2002 to prohibit State election officials from accepting a challenge to an individual's eligibility to register to vote in an election for Federal office or to vote in an election for Federal office in a jurisdiction on the grounds that the individual resides in a household in the jurisdiction which is subject to foreclosure proceedings or that the jurisdiction was adversely affected by a hurricane or other major disaster, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE LEGISLATION

H.R. 3489 would prohibit State election officials from accepting challenges to a voter's eligibility to register and vote on the grounds that the voter resides in a household subject to foreclosure

proceedings, or in an area which has been affected by a natural disaster.

Since voter registration is linked to residence, the present foreclosure crisis has the potential to do considerable damage to the integrity of our nation's elections. In the months leading up to the 2008 presidential election, national media widely reported that political operatives had planned to use lists of foreclosed properties in Michigan and Ohio to challenge voters at the polls. The plans were only disavowed after a federal court lawsuit was filed to protect voters' rights. Reports of these potential threats of disenfranchisement resulted in election officials around the country receiving numerous calls from foreclosed homeowners inquiring about their voting status.

The experience of the 2008 Presidential election teaches us that there is a real danger that displaced voters may be misled or intimidated into not casting ballots. However, it must be emphasized that there is no rational basis for using a foreclosure list to challenge voter eligibility. Eligible voters may be renting a foreclosed property or working with a bank to refinance. It is evident that challenges based on foreclosure proceedings at the polls may be used only to harass and embarrass those who are already in difficult situations, and no voter should have to face such harassment. Additionally, voters displaced by hurricanes or other natural disasters have the right to vote in communities to which they intend to return.

H.R. 3489 would *not* preclude a challenge to a person's eligibility to register and vote based on sound evidence that the person was committing fraud or was not a citizen or was otherwise ineligible to vote. Rather, H.R. 3489 will help to ensure the integrity of our elections by shielding eligible voters from challenges that were made in bad faith by partisan political operatives. It has been a long time since property-related requirements for voting were eliminated, and laws in many states do not disenfranchise voters facing foreclosure or displaced by natural disasters. H.R. 3489 will prevent such bad-faith challenges nationwide, and ensure that voters will not lose their civil right to vote because they have lost, or may lose, their homes.

SUMMARY OF THE LEGISLATION

H.R. 3489 would amend Title III of the Help America Vote Act of 2002 by inserting a new Section 303A which would prohibit State election officials from accepting a challenge to an individual's eligibility to register to vote in an election for Federal office or to vote in an election for Federal office on the grounds that the individual is residing in a household which is subject to foreclosure proceedings or if the individual resides in a jurisdiction which had been adversely affected by hurricanes or other natural disaster. The bill's provisions will be effective for the November 2010 general election, and for each subsequent election for Federal office.

COMMITTEE CONSIDERATION OF THE LEGISLATION

INTRODUCTION AND REFERRAL

On July 31, 2009, Rep. Jackson of Illinois introduced H.R. 3489, which was referred exclusively to the Committee on House Administration. Similar legislation was introduced during the second session of the 110th Congress.

MARKUP

On November 4, 2009, the Committee on House Administration met to mark up H.R. 3489. The Committee considered and rejected three amendments offered by the Ranking Minority Member, Rep. Daniel E. Lungren of California.

The first amendment would have stricken from the bill language prohibiting challenges that are “not based on good cause” and would have strictly limited the definition of “not based on good cause.” The amendment was not agreed to by voice vote.

The second amendment would have permitted residency challenges to resume 18 months following the Presidential declaration of a natural disaster, regardless of whether the area affected had recovered or not. The amendment was not agreed to by voice vote.

The final amendment would have permitted challengers to confront voters at the polls who had conclusively lost their homes in a foreclosure proceeding. The amendment was not agreed to by voice vote.

The Committee then voted, with a quorum present, to order H.R. 3489 reported favorably to the House, without amendment, by a record vote of 4 ayes to 2 noes.

MATTERS REQUIRED UNDER THE RULES OF THE HOUSE

COMMITTEE RECORD VOTES

Clause 3(b) of House rule XIII requires that the results of each record vote on an amendment or motion to report, together with the names of those voting for and against, be printed in the committee report. One record vote was taken on H.R. 3489, on the motion to order the bill reported favorably to the House:

Member	Ayes	Noes	Present
Ms. Lofgren			
Mr. Capuano	X		
Mr. Gonzalez			
Mrs. Davis (CA)	X		
Mr. Davis (AL)	X		
Mr. Lungren		X	
Mr. McCarthy			
Mr. Harper		X	
Mr. Brady	X		
Total	4	2	

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee states that the findings and recommendations of Committee, based on oversight activities

under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

GENERAL PERFORMANCE GOALS AND OBJECTIVES

The Committee states, with respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, that the goal and objective of H.R. 3489 is to protect eligible voters by prohibiting election officials from accepting challenges to a voter's eligibility to register and vote in Federal elections on the grounds that the voter is residing in a household subject to foreclosure proceedings or in an area which has been affected by natural disaster.

CONSTITUTIONAL AUTHORITY

In compliance with clause 3(d)(1) of rule XIII, the Committee states that Article I of the U.S. Constitution grants Congress the authority to make laws governing the time, place and manner of holding Federal elections.

FEDERAL MANDATES

Section 423 of the Congressional Budget Act requires a committee report on any public bill or joint resolution that includes a federal mandate to include specific information about such mandates. The Committee states that H.R. 3489 does not include federal mandates.

PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act requires a committee report on any public bill or joint resolution to include a statement on the extent to which the measure is intended to preempt state or local law. The Committee states that H.R. 3489 is intended to preempt any state or local law to the contrary.

EARMARK IDENTIFICATION

In response to the requirements of clause 9 of rule XXI, the Committee reports that H.R. 3489 does not include any congressional earmarks, limited tax benefits or limited tariff benefits as defined in clause 9(e), 9(f) or 9(g) of rule XXI.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
 CONGRESSIONAL BUDGET OFFICE,
 Washington, DC, November 20, 2009.

Hon. ROBERT A. BRADY,
 Chairman, Committee on House Administration,
 House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3489, a bill to amend the Help America Vote Act of 2002 to prohibit state election officials from accepting a challenge to an individual's eligibility to register to vote in an election for federal office in a jurisdiction on the grounds that the individual resides in a household in the jurisdiction which is subject to foreclosure proceedings or that the jurisdiction was adversely affected by a hurricane or other major disaster, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

DOUGLAS W. ELMENDORF,
 Director.

Enclosure.

H.R. 3489—A bill to amend the Help America Vote Act of 2002 to prohibit state election officials from accepting a challenge to an individual's eligibility to register to vote in an election for federal office or to vote in an election in a jurisdiction which is subject to foreclosure proceeding or that the jurisdiction was adversely affected by a hurricane or other major disaster, and for other purposes

H.R. 3489 would prohibit state election officials, beginning in November 2010, from challenging voters' eligibility to participate in federal elections on the grounds that they reside in a property that is subject to foreclosure proceedings or is located in an area damaged by a hurricane or other major disaster. CBO estimates that implementing H.R. 3489 would have no significant impact on the federal budget. Enacting the bill would not affect direct spending or revenues.

CBO has not reviewed H.R. 3489 for intergovernmental or private-sector mandates. Section 4 of the Unfunded Mandates Reform Act excludes from the application of that act any legislative provisions that would enforce the constitutional rights of individuals. CBO has determined the legislation falls within that exclusion because it would protect the voting rights of individuals.

The CBO staff contact for this estimate is Matthew Pickford. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

HELP AMERICA VOTE ACT OF 2002

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) * * *

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(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

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TITLE III—UNIFORM AND NONDISCRIMINATORY ELECTION TECHNOLOGY AND ADMINISTRATION REQUIREMENTS

Subtitle A—Requirements

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Sec. 303A. *Prohibiting acceptance of challenges to eligibility to register or eligibility to vote in Federal elections not based on good cause.*

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TITLE III—UNIFORM AND NONDISCRIMINATORY ELECTION TECHNOLOGY AND ADMINISTRATION REQUIREMENTS

Subtitle A—Requirements

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SEC. 303A. PROHIBITING ACCEPTANCE OF CHALLENGES TO ELIGIBILITY TO REGISTER OR ELIGIBILITY TO VOTE IN FEDERAL ELECTIONS NOT BASED ON GOOD CAUSE.

(a) *GENERAL.*—A State or local election official may not accept a challenge to an individual’s eligibility to register to vote in an election for Federal office in a jurisdiction or to vote in an election for Federal office in a jurisdiction which is not based on good cause.

(b) *CHALLENGES BASED ON CERTAIN GROUNDS NOT CONSIDERED GOOD CAUSE.*—For purposes of subsection (a), a challenge to an individual’s eligibility to register to vote in an election for Federal office in a jurisdiction or to vote in an election for Federal office in a jurisdiction is not based on good cause if the challenge is based on any of the following grounds:

(1) *The individual resides in a household in the jurisdiction which is subject to foreclosure proceedings.*

(2) *The jurisdiction is included in a geographic area which was adversely affected by a hurricane or other major disaster declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170).*

(c) *EFFECTIVE DATE.*—This section shall apply with respect to the regularly scheduled general election for Federal office held in November 2010 and each subsequent election for Federal office.

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TITLE IV—ENFORCEMENT

SEC. 401. ACTIONS BY THE ATTORNEY GENERAL FOR DECLARATORY AND INJUNCTIVE RELIEF.

The Attorney General may bring a civil action against any State or jurisdiction in an appropriate United States District Court for such declaratory and injunctive relief (including a temporary restraining order, a permanent or temporary injunction, or other order) as may be necessary to carry out the uniform and non-discriminatory election technology and administration requirements under sections 301, 302, [and 303] 303, and 303A.

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ADDITIONAL VIEWS

We believe that every lawfully eligible voter should be able to cast a ballot. This bill is not necessary to preserve that principle. Without the benefit of any hearings or testimony showing a need, it invokes the heavy hand of federal legislation. Worse, it does so in a way that reaches far beyond its stated purpose and undermines the ability of states to ensure that lawful votes are not diluted by ballots from ineligible voters.

Every state except Oklahoma has adopted laws allowing for challenges of voter eligibility before election day, at the polls, or when an absentee ballot is cast.¹ Of these, forty-six states allow challenges by private citizens; Alabama, Kansas, and Wyoming limit the opportunity to initiate a challenge to election officials.² Challenges serve the purpose of providing a final check against fraudulent or illegal votes before ballots are cast and tabulated. Exercising their authority under Article I, section 4 of the Constitution to prescribe the manner of elections, the states have overwhelmingly chosen to make challenges a part of the process—preserving accountability and integrity in the democratic system.

This legislation establishes a new, nationwide requirement for voter challenges—inserting the federal government into a process previously left to the states. It requires that all challenges be based on “good cause.” At first blush one might think that only challenges based on good cause would be sustained under current law, but without a definition and explanation “good cause” can mean anything at all. The bill does not define “good cause,” leaving it open to creative lawyers and disparate courts in jurisdictions around the country to apply this federal statute differently in different places. Because no hearings were held, it is impossible to determine whether the bill’s sponsor intends to apply a new standard to every challenge in every state, or whether this reflects a drafting error.

If the purpose of the bill is to impose a “good cause” standard on every challenge to a voter’s eligibility, that is a substantial intrusion into state authority that deserves at least to be considered in an open hearing. If, on the other hand, the bill’s purpose is limited to the narrower situations of challenges involving foreclosures or natural disasters, it should be re-written to reflect that intent.

Moreover, the bill as written restricts challenges “based on” two specific grounds—a foreclosure proceeding or a natural disaster. Again, the bill’s intent is unclear. It could mean to restrict any challenge in which those grounds are a factor—regardless of the other evidence available to support the challenge. In that case it is overly broad, unreasonably and unnecessarily restricting legiti-

¹See Peter K. Schalestock, *Monitoring of Election Processes by Private Actors*, 34 WM. MITCHELL L. REV. 577 (2008).

²See ALA. CODE § 17–8–7, KS. STAT. ANN. § 25–414, and WYO. STAT. ANN. § 22–15–108, –109 (b).

mate and necessary challenges. On the other hand, the bill might be intended to restrict only challenges based solely on the stated grounds. All of the documents introduced by the majority in support of the bill refer to challenges based solely on the existence of a foreclosure proceeding. If the bill is meant to prevent the hypothetical scenario described in these documents, it should be re-written to say so. And we emphasize that the scenario is purely hypothetical; there is no evidence before the committee or known to us that a single voter or ballot has been challenged because of a foreclosure proceeding. Moreover, the one instance where a political party official allegedly expressed an intent to do so, the person quoted denied having made the statement.

We offered an amendment to clarify that the bill would only restrict challenges based solely on grounds of foreclosure proceedings and declared natural disasters, not imposing a new and ill-defined standard on all challenges and not restricting challenges based on other evidence where the voter happens also to live in a home being foreclosed or in a disaster area. This amendment would have made the bill a focused effort to address the purposes advanced by the majority. The majority rejected the amendment.

We also offered an amendment to clarify that while a pending foreclosure is not grounds for a challenge standing alone, a completed foreclosure—where the voter has lost ownership of the residence in question—may be. The question of whether the challenge would be successful would still be up to state law, but the question would be allowed to be asked. The majority rejected this amendment.

Finally, we offered an amendment to place a limit on the duration of the challenge restrictions in a disaster area. As written, the bill applies indefinitely to any geographic area subject to a presidential disaster declaration. Such an open-ended restriction is overly broad and unnecessary. Our amendment would have limited the duration of the restriction to 18 months, the same time period that the Federal Emergency Management Agency provides housing assistance to disaster victims. Again, the majority rejected this amendment.

Based on comments by majority members of the Committee, we infer that the reason for including natural disaster language in the bill is to address perceived problems arising from Hurricane Katrina and its aftermath. While we have no other record on this issue, we do have two letters from election officials in affected states—the Secretary of State of Mississippi and the director of elections of Louisiana. Both tell us that their states have addressed hurricane-related voter registration problems and that there is no need for federal action.

There is no testimonial or documentary support before the Committee that would suggest natural disasters should be included in this legislation. As such, the Committee is asking the House to act on a bill without having held even one hearing or offering any evidence that a problem exists requiring the enactment of a federal statute.

The bill as approved by the Committee majority creates an intrusive national standard that is overbroad, unclear, and certain to create litigation. The practical effect will be that since any chal-

lenge is subject to litigation under the “good cause” standard, few challenges will be brought even where there is evidence to support them. In cases where a foreclosure or disaster declaration exists, challenges will face an extraordinary standard regardless of the evidence.

Under the guise of addressing specific problems, the majority is pushing a policy that will make it harder to prevent fraudulent or illegal votes—and therefore will make it easier to cast them. We hope that this is not the majority’s intent, but we are certain it will be their result.

DANIEL E. LUNGREN.
KEVIN MCCARTHY.
GREGG HARPER.

