

FACT SHEET

The John Lewis Voting Rights Advancement Act

The bill would strengthen legal protections against discriminatory voting policies and practices.

The John Lewis Voting Rights Advancement Act, or VRAA (H.R. 4), would modernize and revitalize the Voting Rights Act of 1965. The Supreme Court has hampered the law by gutting its preclearance provisions in *Shelby County v. Holder* (2013) and by making it harder to sue to stop discriminatory practices in *Brnovich v. DNC* (2021). The VRAA would strengthen the law, moving us closer to ending discrimination in voting and guaranteeing equal access to the ballot.

Key Provisions

Preclearance (Section 5)

Geographic coverage: The VRAA creates a new formula to determine which states and localities will be subject to preclearance. Under the requirement, jurisdictions with a history of voting discrimination must get approval from the Department of Justice (DOJ) or a federal court in Washington, DC, before changing their voting laws or practices to ensure that the changes are not discriminatory. In *Shelby County*, the Supreme Court struck down the Voting Rights Act's preclearance formula, saying it was outdated. The VRAA updates the formula.

- States will be covered by preclearance if, within the past 25 years, they or their localities committed at least 10 voting rights violations and at least one violation was by the state, or localities within the state committed at least 15 voting rights violations.
- Subdivisions of noncovered states will be covered if they committed at least three voting rights violations in the previous 25 years.
- Voting rights violations are determined on the basis of (1) court judgments under the Constitution or the Voting Rights Act; (2) preclearance denials; and (3) consent decrees, settlements, or agreements undoing voting changes in which the jurisdiction admitted liability.
- DOJ decides whether a matter counts as a violation and whether a jurisdiction will be covered.
- A covered jurisdiction will be subject to preclearance for 10 years, after which it will exit coverage as long as it no longer has qualifying violations during the preceding 25 years (the review period is rolling).
- A covered jurisdiction may also exit coverage if it has no violations during the prior 10 years.

Practice-based coverage: The VRAA makes some types of voting changes subject to preclearance nationwide, if certain conditions are met, because those changes are so often discriminatory. The following practices are covered:

- Creating at-large districts in places with sufficiently large minority populations.
- Changing jurisdiction boundaries to remove minorities from the jurisdiction in places with sufficiently large minority populations.
- Changing the boundaries of a district where a minority group is sufficiently large and has had a large population increase.
- Imposing stricter requirements for documentation or proof of identity to vote.
- Reducing the availability of or altering multilingual voting materials.
- Reducing, consolidating, or relocating polling places, early and Election Day voting opportunities, or absentee voting opportunities in places with sufficiently large minority populations.
- Making it easier to remove voters from registration lists in places with sufficiently large minority populations.

Bailout: The Voting Rights Act currently allows jurisdictions to easily bail out, or be released from preclearance coverage, if they successfully file an action in federal court showing they meet certain conditions. The VRAA adds an even faster process that does not require a lawsuit.

- A jurisdiction is eligible for an administrative bailout if during the previous 10 years (1) it has had no voting rights violations; (2) it has not qualified for the assignment of federal examiners; and (3) it has worked to eliminate barriers and increase access to voting.
- DOJ must publish yearly a list of political subdivisions that it believes are eligible for bailout.
- Jurisdictions can apply to DOJ for bailout, and DOJ must grant it if they meet the criteria.
- During a review period, members of the public may oppose bailout applications. If DOJ denies jurisdictions bailout, they may appeal by filing a federal lawsuit.

Vote Dilution and Vote Denial (Section 2)

Section 2 of the Voting Rights Act allows voters to sue to block voting laws and practices that are intentionally discriminatory or will yield discriminatory results. The recent *Brnovich* decision makes it harder to win those lawsuits. The VRAA would strengthen protections against discrimination and codify prior standards for Section 2 cases.

Vote dilution: A voter may bring a federal action for vote dilution when practices such as gerrymandered districts make it harder for candidates preferred by minority voters to win.

- The VRAA would codify the Senate Factors, nine considerations enumerated in the 1982 Senate report accompanying Voting Rights Act amendments, which were adopted by the Supreme Court in *Thornburg v. Gingles* (1986) and have long been used by federal courts to evaluate vote dilution cases.
- Under these factors, courts look at, for example, the history of official discrimination, the extent of racially polarized voting, and the extent to which minority candidates have won elections in the jurisdiction.

Vote denial: A voter may bring a federal action for vote denial when restrictions result in minority voters having more difficulty casting a ballot than nonminority voters.

- The VRAA looks to whether a rule puts greater burdens in front of minority voters by applying the considerations drawn from the Senate Factors.
- The VRAA makes clear that it is not relevant that (1) a voting rule has been used for a long time; (2) similar rules are used in other places; and (3) there are other ways impacted voters can cast their ballot.
- Claims of “voter fraud” are not enough to justify a discriminatory rule. Instead, a state will have to provide evidence that fraud is occurring and that the law or practice will stop it.
- A voting rule that intends to benefit a political party still violates Section 2 if it also intends to cause vote dilution or vote denial for minority voters.

Retrogression (Section 3)

The VRAA creates a new cause of action for voters to sue states or localities that implement a voting rule that is more discriminatory against minorities than the rule it replaces.