

FACT SHEET

The John Lewis Voting Rights Advancement Act

The bill would modernize and revitalize the Voting Rights Act of 1965, strengthening legal protections against discriminatory voting policies and practices.

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The John Lewis Voting Rights Advancement Act, or VRAA (S. 4), would modernize and revitalize the Voting Rights Act of 1965. The Supreme Court has hampered the civil rights 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

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 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 In *Shelby County*, the Supreme Court struck down the Voting Rights Act's preclearance formula, saying it was outdated.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 in 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 is 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 jurisdiction may also exit coverage if it has no violations within 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 jurisdictional boundaries to remove minorities from the jurisdiction in places with sufficiently large minority populations
- Changing 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 file an action in federal court showing they meet certain conditions. The VRAA adds an even faster process by authorizing DOJ to consent to the jurisdiction's request.

Vote Dilution and Vote Denial

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 standard articulated by the Supreme Court in *Thornburg v. Gingles*, which has long been used by federal courts to evaluate vote dilution cases.

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

- The VRAA would codify the Senate Factors, nine factors enumerated in the 1982 Senate report accompanying that year's Voting Rights Act Amendments. From the *Gingles* case until *Brnovich*, these factors were used by federal courts to evaluate vote denial claims
- Under these factors, courts look at, for example, the history of discrimination in a jurisdiction, the lasting effects it has on minority voters, and whether the restriction actually serves a legitimate state purpose
- 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 vote
- Claims of "voter fraud" are not enough to justify a discriminatory rule. Instead, a state will have to provide evidence that fraud is occurring
- 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: The VRAA creates a wholly new basis on which voters can sue states or localities for repressive changes to voting laws. Any voting change that results in a voting rule that is more discriminatory against minorities than the rule it replaces violates the VRAA.

Native American Voting Rights Act

The VRAA also includes the Native American Voting Rights Act (NAVRA), which protects the right of Native Americans to vote in the face of distinct barriers experienced by voters living on tribal lands. Key provisions in NAVRA include:

- In each precinct where there are voters living on tribal lands, states must put at least one polling place and at least one registration site on tribal lands
- When considering whether to add polling places on tribal lands, states must look to specified factors such as the distance tribal voters must travel to vote
- States with early voting must place an early polling place on tribal lands
- The bill provides for prepayment of postage for absentee ballots cast from tribal lands
- States with a voter ID requirement must accept tribal or federally issued ID
- States must translate voting materials into native languages or allow for language access to be given orally where written translation is unavailable
- Tribes may designate a communal building as a place that members without a residential address may use to register
- The bill expands who may deliver voting materials and ballots on tribal lands
- The bill creates a Native American voting task force to address the unique voting challenges faced by Native Americans