

John Lewis Voting Rights Advancement Act (VRAA) Bill Explainer

The VRAA is a strong legislative vehicle to protect voting rights and advance racial justice across the United States. The primary purpose of the VRAA is to ensure that discriminatory voting laws are blocked *before* they go into effect. It does this in two principal ways:

First, in states and counties with the worst records of discrimination in voting, the VRAA restores strong federal protections for voting rights that have largely been immobilized by a 2013 Supreme Court decision—the system known as “preclearance,” which requires these states and counties to obtain federal approval *before* making changes to their voting laws and practices, to ensure that those changes do not have the purpose or effect of discriminating against voters of color.

Second, the VRAA establishes another set of interlocking protections throughout the country that empower federal courts, the Department of Justice, and voting rights advocates to prevent discriminatory voting laws from taking effect, including: facilitating judicial oversight of states found guilty of voting rights violations; enabling the Department of Justice to send federal elections observers to a wider range of locations; requiring states and localities to provide prompt notice of any last-minute changes to elections rules; and revising the standard for voting rights litigants to obtain court rulings to temporarily freeze the status quo before a discriminatory voting law can taint an election.

This document covers the following information on the bill:

- Bill’s Background (VRA to the VRAA)
- History of Preclearance (the VRA’s most effective voting rights enforcement tool)
- VRAA Bill Summary
- FAQ’s regarding the bill

Background

The Voting Rights Act of 1965 (VRA) is broadly viewed as one of the most effective civil rights laws ever enacted by Congress. For nearly 50 years since its initial enactment, the Voting Rights Act provided both impacted voters and the Justice Department with the legal tools necessary to root out racially discriminatory voting practices advanced by local officials. But in the landmark 2013 Supreme Court decision *Shelby County v. Holder*, the Supreme Court effectively ended a key protection of the Voting Rights Act known as “preclearance.” Without this critical protection, official acts of voting discrimination rapidly proliferated and minority voters have been left without effective legal tools to block official efforts to suppress their votes. The Voting Rights Advancement Act (VRAA) would restore and update the VRA by reinstating preclearance and instituting new protections, including public notice requirements for voting changes and authorization for neutral federal observers to monitor elections, that are responsive to current conditions of voting discrimination that have arisen since *Shelby County* was decided.

History of Preclearance

Congress enacted the VRA in 1965 after trying and failing for almost a century to remedy the affliction of racial discrimination in the voting process and the failure to dismantle state-sanctioned disenfranchisement of African Americans in particular. There was no mechanism in place to block discriminatory laws before they went into effect, so troubling racial disparities in voter registration and turnout persisted. Southern states averaged a roughly 50 percentage point gap between white and black voter registration rates in 1965 despite federal enforcement laws being in place since 1957.

The most powerful enforcement tool in the VRA was Section 5, federal preclearance, which required states and local jurisdictions with the worst records of voting discrimination to get federal approval of any proposed changes to voting rules or procedures before the change could be enforced. By requiring jurisdictions to show that proposed voting changes were nondiscriminatory on the front end, problematic voting changes could be rooted out *before* they could impact voters. What made Section 5 so impactful was its prophylactic effect. It was crafted with the recognition that the harms of voting discrimination can never be truly redressed. Once an election is held, there is no do-over. Section 5 guaranteed that proposed voting changes were public, transparent, analyzed, and evaluated before they were implemented, ensuring they would not discriminate against voters on the basis of race or language.

Two provisions of the VRA worked in tandem to establish the preclearance system:

Section 5 of the VRA established the preclearance process itself, setting the requirement that jurisdictions with the worst records of voting discrimination must federally preclear voting changes, either administratively with the Justice Department or through a declaratory judgment action in federal court.

Section 4(b) established the criteria to determine which jurisdictions would be subject to preclearance. The jurisdictions subject to preclearance were initially brought under the coverage formula because of their use of discriminatory “tests or devices,” such as literacy tests or poll taxes, as well as statistical evidence of disproportionately low voter registration and turnout. These jurisdictions remained covered because of documented evidence of continuing voting discrimination.

While Section 5 was in effect, nine states and dozens of counties and townships in seven more states were required to obtain this federal approval before making changes to local voting procedures, such as reducing the number of polling places, setting new voter registration requirements, implementing restrictive voter ID laws, or changing election boundaries.

Since its enactment in 1965, Section 5 has had the greatest impact in dismantling voting discrimination of any federal action, successfully blocking more than 1,000 instances of discriminatory election rules advanced by state and local officials that would have weakened minority voting power or blocked minority voters from casting a ballot altogether. Importantly, Section 5 also served as a strong deterrent against countless discriminatory voting changes from being introduced at the local level. Although Section 5 of the VRA was originally scheduled to expire in 1970, Congress has amended and reauthorized the bill five times: in 1970, 1975, 1982, 1992, and 2006. Each time, it was reauthorized with overwhelming, bipartisan support and

signed into law by a Republican president. The last reauthorization in 2006 passed the House by a 390-33 vote, and the Senate by a unanimous vote of 98-0.

Bill Summary

The public currently lacks effective tools to enforce their rights under the Constitution and federal law. The John Lewis Voting Rights Advancement Act (VRAA) updates the VRA by providing a framework of legal tools to block official acts of discrimination from infecting elections at the federal, state, and local levels. The VRAA establishes a series of remedies and protections for voters who are at risk of racial discrimination by helping to root out unconstitutional voting procedures *before* they impede the voting process. The bill does **not** seek to displace state or local voting procedures, so long as the procedures do not unconstitutionally infringe on the electorate's right to vote free from discriminatory conditions. The preventative method adopted by this legislation is modeled after the original Voting Rights Act of 1965, which is broadly viewed as one of the most successful pieces of civil rights legislation precisely because it prevented unlawful voting procedures from going into effect in the first place.

The following is a summary of the VRAA's provisions:

1. Restores preclearance

Establishes new criteria to determine the conditions under which voting changes must be precleared, so that changes to voting practices in these areas would have to be preapproved by the Department of Justice or a D.C. federal court before they can be enforced.

The VRAA adopts **two** coverage formulas:

Geographic coverage: A state or political subdivision will be subject to preclearance for a 10-year period if –

- ✓ 15 or more voting rights violations occurred in the state during the previous 25 years; or
- ✓ 10 or more violations occurred in the state during the previous 25 years, at least one of which was committed by the state itself.
- ✓ Three or more violations occur within a political subdivision of a state during the previous 25 years.

Practice-based coverage: Requires a defined set of voting practices known to be racially discriminatory to be precleared if the practice is adopted in a jurisdiction with a significant minority population or growth in population

- ✓ Changes to methods of electing representatives, such as switching to at-large elections
- ✓ Changes to jurisdiction boundaries
- ✓ Changes to election boundaries through redistricting
- ✓ Changes the documentation or qualifications to register or vote;
- ✓ Reductions in language assistance

- ✓ Reductions in polling locations or voting opportunities, including reductions to early voting or voting by mail

A state or political subdivision that obtains a declaratory judgment from a DC federal court that it has not used a voting practice to deny or abridge the right to vote shall be exempt from preclearance.

Take-away: Why preclearance protects voters: Preclearance has the benefit of requiring jurisdictions to demonstrate a voting change does not discriminate on the basis of race *BEFORE* the voting change goes into effect. By blocking discriminatory changes on the front end, voters are much better protected from discriminatory voting conditions because once an election is held, there is no do-over. The record of preclearance under the Voting Rights Act also shows that the prospect of federal review serves as a *strong deterrent* for jurisdictions to adopt discriminatory measures in the first place.

2. Empowers federal courts to retain jurisdiction over a state or political subdivision that commits a voting rights violation

Expands the kinds of federal voting rights violations that would allow a federal court to “bail-in” a jurisdiction into preclearance. This is another way for a jurisdiction to become subject to preclearance.

3. Empowers federal courts and the Department of Justice to assign federal observers to monitor voting conditions to ensure compliance with the Constitution and federal voting rights laws

Expands the circumstances under which federal courts and the Justice Department are authorized to assign neutral federal observers to monitor elections and help enforce the voting rights guarantees under the Constitution and federal voting rights laws.

Take-away: Why federal observers protect voters: Neutral federal observers can serve as an extension of the court or the Justice Department to provide enhanced federal oversight over the voting process to ensure voters are not being discriminated against and officials are complying with federal law. Observer reports can serve as the basis for evidence of violations, enforcement actions, as well as to measure progress in curing violations.

4. Requires state and local governments to notify public of important election information changes to voting practices.

Requires notice and disclosure of voting changes for three voting-related matters:

- ✓ Late breaking voting changes involving federal elections (*e.g.*, changes in voting rules or procedures adopted within 180 days before a federal election);
- ✓ Polling place information involving federal elections (*e.g.*, information concerning precincts/polling places, dates/hours of operation, voting age

- population and registered voters assigned, and the number of voting machines and poll workers); and
- ✓ Demographic and electoral data for voting districts involving federal, state and local elections.

Take-away: Why notice of voting changes protects voters: Currently, there are no means to effectively monitor voting changes occurring at the local level since preclearance was rendered inoperative. By guaranteeing public notice of voting changes, minority voters are much better equipped to defend their right to vote against sudden, arbitrary, or discriminatory elections changes. On a basic level, notice of proposed election changes and their impact is critical for community awareness of changes in voting procedure so they can comply and cast an effective ballot, or provide feedback to officials as to how the change will impact voters' ability to exercise the franchise. Notice requirements pose an exceedingly low burden on jurisdictions and come with an important benefit to the public and to voters.

5. Establishes a revised preliminary injunction (PI) standard to block potentially problematic voting changes

The bill revises the traditional legal standard by which a court can grant preliminary injunctive (PI) relief in a challenge to voting practices. The provision makes it easier for challengers to a potentially discriminatory voting change to temporarily “freeze” the status quo, while litigation on the legality of the voting change proceeds.

Take-away: Why the revised PI standard protects voters: The revised PI standard provides another important safeguard against voting discrimination in jurisdictions that would not be covered by preclearance. This provision revises the common law standard for obtaining and sustaining a preliminary injunction in federal voting rights litigation, giving plaintiffs the ability to temporarily block potentially discriminatory voting laws before they can taint an election while the merits of litigation proceed.

Additional FAQ's:

- **What specific impacts might the VRAA have on state policies (adopted since 2013)?**
 - The VRAA does not alter state or local voting rules outright, but provides a series of legal tools and protections to help root out discriminatory changes before they can be enforced and impact voters. The remedies of this bill are modeled after the success of the original VRA of 1965, which was effective precisely because it prevented bad voting changes from being adopted in the first place by ensuring “front end” review and also served as a strong deterrent from official acts of discrimination.
- **Would the VRAA have ability to retroactively overturn state policies?**
 - No, but to the extent that states are proceeding now to adopt changes that violate peoples voting rights under federal law, violations determined to have taken place by a court would count against the state for purposes of determining whether they will be brought under preclearance.

- Additionally, the revised preliminary injunction standard provides a means for plaintiffs to temporarily halt the implementation of a problematic new voting rule until the voting change can be fully litigated in court to determine whether it unlawfully discriminates against minority voters.
- **How would Department of Justice (DOJ) work with state election authorities?**
 - DOJ has a record of working very cooperatively and seamlessly with state and local election authorities during preclearance review. The vast majority of election changes submitted for review are precleared. The administrative burden on states to preclear voting changes with DOJ has shown to be relatively low.
- **Could the Supreme Court decision on *Bronovich* affect the VRAA?**
 - Yes, but the availability and scope of a potential legislative remedy can only be determined based on the decision when it becomes available. One reason that the timing for the timing of the VRAA's introduction is being pushed to this summer or Fall is in case the bill needs to address the *Bronovich* decision.
- **How does the bill address the issue of 'election security' and fraud?**
 - It doesn't address these issues directly. State and local officials would be free to continue to adopt measures to enhance election security, so long as those measures do not unconstitutionally harm minority voting rights.

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