



December 14, 2022

Voting Rights Act: Brief Policy Overview

The Voting Rights Act (VRA) protects equal access to elections for all eligible Americans. In particular, in response to widespread disenfranchisement between the post-Civil War period and the 1960s, the VRA protects voters in racial and language minority groups. The U.S. Department of Justice (DOJ) enforces the act. The statute also provides a private right of action for individuals. This CRS In Focus provides a brief overview of the VRA and policy issues the statute addresses. Several other CRS products, some of which are listed at the end of this In Focus, provide additional information (including legal analysis not addressed in this product) about the VRA and related subjects.

Congressional Context

The VRA is the primary statute Congress has enacted to enforce the Fifteenth Amendment to the U.S. Constitution (prohibiting denial or abridgement of citizen voting rights based on “race, color, or previous condition of servitude”). Since enacting the VRA in 1965, Congress has regularly considered legislation to amend the act. Congress extended and amended VRA provisions five times after initial enactment—in 1970, 1975, 1982, 1992, and 2006. In each instance, amendments received wide bipartisan and bicameral support. President Lyndon Johnson signed the initial act; Presidents Ford, Reagan, George H. W. Bush, and George W. Bush signed amendments.

The House and Senate Judiciary Committees have primary jurisdiction over the VRA. In addition, the Committee on House Administration and the Senate Rules and Administration Committee have primary jurisdiction over federal elections issues and frequently hold oversight or legislative hearings that address the VRA or related issues.

Recent Congresses have appropriated VRA enforcement funds to DOJ through Commerce Justice Science (CJS) appropriations bills or omnibus measures. Report language (H.Rept. 117-395) accompanying FY2023 House CJS bill H.R. 8256 directed that a “significant amount” of DOJ Civil Rights Division increased funding go toward VRA enforcement.

Litigation, which is beyond the scope of this product, provides important context for some VRA policy issues and has spurred congressional oversight, legislation, or both. In 2021 (*Brnovich v. Democratic National Committee*), the U.S. Supreme Court identified “guideposts” that federal courts should consider when examining certain claims brought under §2 of the VRA. The Court’s 2013 *Shelby County v. Holder* ruling invalidated VRA provisions that established a coverage formula that triggered a process known as “preclearance.” In October 2022, the Court heard

oral arguments in an Alabama redistricting case (*Merrill v. Milligan*) brought under §2 of the VRA.

Much of the legislative activity concerning the VRA post-*Shelby County* has concerned whether or how to establish a new coverage formula to replace the current §4(b) preclearance language that the Court invalidated. The “Recent Legislative Activity” section below provides additional information.

Major VRA Provisions and Sections

The VRA and its amendments contain several sections, some of which are beyond the scope of this CRS product. Those highlighted below are particularly noteworthy. Legislative and policy discussions of the VRA typically refer to major section numbers of the act.

Section 2: Nationwide Prohibitions

Section 2 (52 U.S.C. §10301) prohibits states from using any “standard, practice, or procedure” to abridge or deny voting rights based on race, color, or membership in a language minority group. Section 2 is often the basis for enforcement claims against individual election jurisdictions (e.g., states or counties).

Discriminatory intent or effect can be sufficient to establish a Section 2 violation. In the 1982 VRA amendments, Congress specified that a Section 2 violation is “established if, based on the totality of the circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation” by voters protected under the act, and that members of the protected class (group) “have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice” (52 U.S.C. §10301(b)).

Traditionally, this statutory language has been particularly important in redistricting challenges, such as to boundaries that allegedly weaken racial or language minority political influence, or overwhelm those groups’ voting power through at-large elections. Such challenges are generally considered “vote dilution” claims. By contrast, more recent “vote denial” claims have concerned state election administration practices, voting laws, or both. In particular, the 2021 *Brnovich* decision concerned Arizona provisions regulating ballots cast outside of a voter’s precinct, and a state law regulating ballot collection. CRS products cited below contain additional detail.

Section 3: “Bail In” Provisions

Section 3 of the VRA (52 U.S.C. §10302) authorizes federal court intervention to ensure that election jurisdictions do not use a prohibited “test or device” to

abridge or deny voting rights. Judicial oversight may last as long as the court deems necessary.

Sections 4 and 5: Preclearance

Before *Shelby County*, Sections 4 and 5 of the VRA worked together to establish preclearance requirements and related prohibitions for specific jurisdictions. VRA preclearance provisions are currently inoperable, but remain relevant for historical reference and as Congress has considered potential future amendments.

Under the coverage formula in VRA Section 4(b) (52 U.S.C. §10303(b)), preclearance applied to jurisdictions that maintained prohibited tests or devices and in which, initially based on 1964 presidential election data: (1) less than 50% of the voting-age population (VAP) was registered to vote, or (2) less than 50% of the VAP voted. Prohibited tests or devices include “any requirement” for registration or voting demonstrating literacy, educational achievement, good moral character, or in which other voters had to vouch for the voter’s identity (52 U.S.C. §10303(c)). Practically speaking, this provision was aimed primarily at methods such as literacy tests that had been widely used to disenfranchise Black voters.

When initially enacted in 1965, the coverage formula applied to all of Alabama, Georgia, Louisiana, Mississippi, South Carolina, and Virginia, and much of North Carolina. Congress extended coverage, after initial enactment, to include 1968-1972 presidential election data. Under these amendments, preclearance extended beyond the South. For example, all of Alaska, Arizona, and Texas were covered by 1975. Other covered areas included parts of Hawaii, Idaho, and New York. Some of these jurisdictions later “bailed out” of preclearance under separate provisions in the act. In 2013, *Shelby County* invalidated preclearance still in effect for Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas, and Virginia, and parts of California, Florida, Michigan, New York, North Carolina, and South Dakota.

VRA Section 5 (52 U.S.C. §10304) required any jurisdiction that triggered the Section 4(b) coverage formula to receive approval from the U.S. Attorney General or the U.S. District Court for the District of Columbia before changing any voting standard, practice, procedure, or qualification. In practice, this preclearance process delayed or prohibited covered jurisdictions from instituting a wide range of election changes from, for example, altering polling place hours to implementing proposed redistricting plans.

Section 203: Language Minority Provisions

In 1975, Congress amended the VRA to include, among other provisions, voting protections for certain voters with limited English proficiency. Section 203 of the act requires some jurisdictions to provide voting materials and other language assistance to “persons who are American Indian, Asian American, Alaska Natives, or of Spanish heritage” (52 U.S.C. §10503(e)) and whose ability to speak or understand English limits electoral participation.

Section 203 applies to jurisdictions that have a single language-minority group whose members are of limited English proficiency and which meet certain statistical thresholds established under the act. Similar requirements apply to election jurisdictions that include American Indian or Alaska Native lands. The Census Bureau makes coverage determinations which, under the act, are not subject to judicial review. The bureau’s 2021 determinations applied to 331 election jurisdictions (mostly counties and municipalities) around the country.

Recent Legislative Activity

Most VRA legislative activity during the 117th Congress has involved four bills that are variations of the Freedom to Vote Act and the John R. Lewis Voting Rights Advancement Act (VRAA). Other bills not addressed here have also received some committee consideration.

- The House passed H.R. 4, the initial version of the VRAA, in August 2021. Among other provisions, the bill proposes what some have called a “rolling” coverage formula that could apply to jurisdictions around the country. The Senate did not invoke cloture on the motion to proceed to its companion bill, S. 4, in November 2021.
- Separately, also during fall 2021, the Senate considered, but did not invoke cloture on, the motion to proceed to the Freedom to Vote Act, S. 2747. That bill primarily concerns other elections, voting, and campaign finance matters, and also includes some amendments to the VRA language minority provisions.
- In January 2022, the House approved the Freedom to Vote: John R. Lewis Act and sent it to the Senate in the form of an amendment between the houses on unrelated bill H.R. 5746. The Senate did not agree to a cloture motion on the text. The legislation combines elements of some of the bills noted above and addresses aspects of campaign finance, election administration, and voting rights.

Related CRS Products

Several other CRS products address issues related to the VRA. Among others, these include the following:

CRS Report R45302, *Federal Role in U.S. Campaigns and Elections: An Overview*, by R. Sam Garrett;

CRS Insight IN11618, *Congressional Redistricting Criteria and Considerations*, by Sarah J. Eckman;

CRS Testimony TE10033, *History and Enforcement of the Voting Rights Act of 1965*, by L. Paige Whitaker;

CRS Legal Sidebar LSB10624, *Voting Rights Act: Supreme Court Provides “Guideposts” for Determining Violations of Section 2 in Brnovich v. DNC*, by L. Paige Whitaker; and

CRS Legal Sidebar LSB10771, *Voting Rights Act: Section 3(c) “Bail-In” Provision*, by L. Paige Whitaker.

R. Sam Garrett, Specialist in American National Government

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.