

THE VOTING RIGHTS ACT & SHELBY COUNTY V. HOLDER

Frequently Asked Questions

WHAT IS THE VOTING RIGHTS ACT OF 1965?

The Voting Rights Act of 1965 (VRA) is one of the most important, effective pieces of civil rights legislation ever passed. Since 1965, the VRA has helped to secure the right to vote for millions of Americans. There are two main components of the VRA: Section 2 and Section 5. Section 2 prohibits voting practices or procedures that discriminate on the basis of race, color, or membership in a language minority group. It applies to all states.

Section 5 applies only to states and places with a history of discriminatory voting practices, such as literacy tests and poll taxes. The law requires those places to clear any changes they want to make to voting rights with the Department of Justice (DOJ) or a federal court. This is called “preclearance.”

WHY IS PRECLEARANCE IMPORTANT IF SECTION 2 FORBIDS DISCRIMINATION IN VOTING?

Section 2 allows DOJ and people who have been discriminated against to file a lawsuit and try to block the law, but only after it has already been enacted. In requiring places to preclear their laws before they go into effect, Section 5 provides a shield from discrimination before it happens. Under Section 5, the federal government can make sure that the law will not discriminate against minority voters before it goes into effect. The concern is that, without Section 5, laws that discriminate against minority voters will go into effect and prevent people from voting before the courts can even address the problem.

WHICH STATES AND TOWNS HAD TO PRECLEAR THEIR LAWS?

Nine states (Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas, and Virginia), and some places in seven other states (California, Florida, New York, North Carolina, South Dakota, Michigan and New Hampshire) had to preclear their laws.

WHY WERE THOSE PLACES REQUIRED TO PRECLEAR THEIR LAWS?

Congress created a formula to decide which places would have to preclear their laws. According to that formula (known as Section 4), places that had a “test or device” in place for voting in 1964 and where fewer than half of eligible voters either registered or voted in 1964, 1968 or 1972 would have to preclear their laws. Congress created this formula to protect African American voters in places that used things like literacy tests and poll taxes to bar them from voting.

Recognizing that the formula was not perfect, Congress added in some flexibility. Places that could show that they had not passed any discriminatory voting laws for 10 years could “bail out” of the law and stop preclearing their laws with the federal government. Similarly, courts could require other places not covered by the formula to preclear their laws if the courts found that they were discriminating against minority voters. This is known as Section 3.

WHAT DID THE SUPREME COURT DECIDE IN *SHELBY COUNTY V. HOLDER*?

In *Shelby County v. Holder* the Supreme Court struck down the formula used to decide which places would have to preclear their laws. They held that the concept of preclearance was constitutional, but that the formula was outdated. The Court left open the possibility for Congress to create a new formula.

HOW HAS THE *SHELBY COUNTY* DECISION IMPACTED VOTING LAWS?

Almost immediately after the Supreme Court's decision, states that had been required to preclear their voting laws began enacting laws that threaten to disenfranchise minority voters. Texas, for example, enacted a redistricting plan that the federal courts had refused to preclear the previous year, finding that there was "more evidence of discriminatory intent than we have space, or need, to address here." Texas also enacted a voter identification law that the courts had blocked, finding that "simply put, many Hispanics and African Americans who voted in the last elections will, because of the burdens imposed by SB 14, likely be unable to vote." In addition, North Carolina passed one of the harshest, most restrictive voting laws in the country.

WHAT IS THE DEPARTMENT OF JUSTICE DOING ABOUT THESE DISCRIMINATORY VOTING LAWS?

Although the Supreme Court struck down the formula for preclearance, under Section 3 of the VRA courts can still order places that try to pass discriminatory voting laws to preclear their laws with the federal government. The Department of Justice has asked the courts to require Texas to preclear its voting laws. It may ask the courts to require other places to preclear their laws too.

WHAT IS CONGRESS DOING ABOUT THE VOTING RIGHTS ACT NOW?

Congress has started holding hearings about the future of the VRA. ADL has [submitted testimony](#) urging Congress to act swiftly and decisively to protect voting rights for all Americans. We are hopeful that Congress will create a new formula and restore the protections of Section 5.