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Legal Sidebar

The Voting Rights Act of 1965 at 60 Years: Key Supreme Court Decisions Shaping the Law Today

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The Voting Rights Act of 1965 (VRA) turned 60 this year. On August 6, 1965, President Lyndon B. Johnson signed the VRA into law "[t]o enforce the fifteenth amendment to the Constitution." Since its enactment and subsequent amendments, key Supreme Court rulings have affected the scope and validity of three sections of the VRA—Sections 2, 4, and 5.

This Legal Sidebar begins with an overview of Section 2 of the VRA and assesses some key Supreme Court rulings that have interpreted Section 2 in the context of redistricting and state voting rules. Next, it discusses the VRA's Section 4 coverage formula and Section 5 preclearance requirements. Then, it sketches a pivotal Court decision that invalidated the Section 4 coverage formula, thereby rendering the Section 5 preclearance requirements inoperable. The Sidebar concludes by addressing emerging legal issues and offering considerations for Congress.

Section 2 of the VRA

Section 2 of the VRA prohibits discriminatory voting practices or procedures, including those alleged to diminish or weaken minority voting power, known as minority vote dilution. Specifically, Section 2 prohibits any voting qualification or practice applied or imposed by any state or political subdivision (e.g., a city or county) that results in the "denial or abridgement" of the right to vote based on race, color, or membership in a language minority. The statute further provides that a violation is established if, "based on the totality of circumstances," electoral processes "are not equally open to participation by members of" a racial or language minority group" in that its members have less opportunity than other members of the electorate to elect representatives of their choice.

Section 2 has been invoked primarily to challenge congressional and state legislative redistricting maps, also known as "vote dilution" cases. As discussed below, the Supreme Court has interpreted Section 2, under certain circumstances, to require the creation of one or more "majority-minority" districts in a redistricting map. A majority-minority district is one in which a racial or language minority group comprises a voting majority. The Court has determined that the creation of such districts can avoid

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minority vote dilution by helping ensure that racial or language minority groups are not submerged into the majority and, thereby, denied an equal opportunity to elect candidates of choice.

Thornburg v. Gingles (1986)

In the landmark voting rights decision *Thornburg v. Gingles*, the Supreme Court established a three-part test for proving vote dilution under Section 2. Under this test, (1) "the minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district," (2) "the minority group must be able to show that it is politically cohesive," and (3) the minority group must be able to prove that the majority group "votes sufficiently as a bloc to enable it ... usually to defeat the minority's preferred candidate." The *Gingles* Court also opined that a violation of Section 2 is established if, based on the "totality of the circumstances" and "as a result of the challenged practice or structure[,] plaintiffs do not have an equal opportunity to participate in the political processes and to elect candidates of their choice." As discussed below, in the 2023 decision *Allen v. Milligan*, the Court reaffirmed the constitutionality of Section 2 of the VRA as construed by its decision in *Thornburg v. Gingles*.

Brnovich v. DNC (2021)

In *Brnovich v. Democratic National Committee*, the Supreme Court interpreted Section 2 for the first time in the context of state voting rules, also known as a "vote denial" case. (In contrast to vote dilution cases, vote denial cases involve challenges to generally applicable time, place, or manner state voting rules under Section 2.) In *Brnovich*, the Court held that two Arizona voting rules—restrictions on out-of-precinct voting and third-party ballot collection—do not violate Section 2. Interpreting the language of Section 2, the Court held that voting must be "'equally open' to minority and non-minority groups alike" and that courts should apply a broad totality-of-circumstances test to determine whether state voting rules violate Section 2.

While the Court in *Brnovich* did not establish a standard to govern all Section 2 challenges to voting rules, it identified "certain guideposts," including five specific circumstances for courts to consider: (1) the "size of the burden" placed by the challenged voting rule such that "[m]ere inconvenience" is insufficient to prove a violation; (2) the "degree to which a voting rule departs" from voting practices that were in effect in 1982, when Section 2 was last amended, because it is unlikely that Congress meant to displace long-standing, "facially neutral time, place, and manner regulations"; (3) the "size of any disparities" in a voting rule's effect on "members of different racial or ethnic groups," although "some disparity in impact does not necessarily" constitute a violation; (4) the opportunities afforded by "a State's entire system of voting"; and (5) the "strength of the state interests" served by the challenged voting rule, including prevention of electoral fraud, which is a "strong and entirely legitimate state interest."

Allen v. Milligan (2023)

In a vote dilution case, *Allen v. Milligan*, the Supreme Court affirmed two lower court rulings that preliminarily enjoined the State of Alabama from holding elections under its congressional redistricting map and reaffirmed the constitutionality of Section 2 as construed by its decision in *Thornburg v. Gingles*. According to the Court, Section 2, as interpreted by *Gingles*, "is an appropriate method of promoting the purposes of the Fifteenth Amendment." In rejecting the state's argument that Section 2 as construed by *Gingles* exceeds Congress's authority under the Fifteenth Amendment, the Court observed that, "for the last four decades, this Court and the lower federal courts have repeatedly applied the effects test of §2 as interpreted in *Gingles* and, under certain circumstances, have authorized race-based redistricting as a remedy for state districting maps that violate §2."

Alexander v. South Carolina State Conference of the NAACP (2024)

In *Alexander v. South Carolina State Conference of the NAACP*, the Supreme Court addressed the interplay between the requirements of Section 2 to avoid vote dilution and the standards of equal protection under the Fourteenth Amendment to the Constitution. In a line of cases preceding *Alexander*, the Court held that if race is the predominant factor in the drawing of a district, then reviewing courts must apply a "strict scrutiny" standard of review. To withstand strict scrutiny in this context, the state must demonstrate that it had a compelling governmental interest in creating a district and that the design of the district was narrowly tailored to further that compelling interest. These cases are often referred to as "racial gerrymandering" claims. Case law in this area has revealed that there can be tension between complying with the VRA and conforming with standards prescribed under the Equal Protection Clause.

In *Alexander*, the Court partially reversed a lower court decision that invalidated portions of a South Carolina congressional redistricting map as an unconstitutional racial gerrymander. The Court held that the lower court's determination that racial considerations predominated in the design of a congressional district in violation of the Equal Protection Clause was clearly erroneous, as was the lower court's finding of racial vote dilution. The Supreme Court in *Alexander* also clarified how reviewing courts should evaluate claims of unconstitutional racial gerrymandering, particularly when race and partisan preference are closely correlated. In sum, the Court held that a challenger asserting racial gerrymandering must, as a threshold matter, "disentangle race and politics" to prove that a legislature was primarily motivated by race rather than politics and that a reviewing court must "start with a presumption that the legislature acted in good faith."

Louisiana v. Callais (Pending)

During its October 2025 term, in *Louisiana v. Callais*, the Supreme Court is considering whether a state's "intentional creation of a second majority-minority congressional district" to comply with Section 2 violates the Fourteenth or Fifteenth Amendments to the Constitution. The dispute in Louisiana began when the state legislature redrew its congressional map following the 2020 census and created one majority-minority district out of the six congressional districts apportioned to the state. Voters in the state sued in federal district court, arguing that Section 2 required the creation of two majority-minority districts. Following litigation, the Louisiana legislature redrew the congressional redistricting map, creating a second majority-minority district. In response, self-described "non-Black voters" in Louisiana sued, arguing that the newly redrawn map was an unconstitutional racial gerrymander. Applying strict scrutiny, a divided three-judge federal district court panel held that the newly redrawn map violated the Fourteenth Amendment's Equal Protection Clause because the state government failed to show that the use of race in drawing the redistricting map was "narrowly tailored" to further a "compelling state interest."

The State of Louisiana appealed to the Supreme Court under a provision of federal law permitting direct appeals from three-judge courts, and in November 2024, the Court noted probable jurisdiction, consolidating *Louisiana v. Callais* with a related case, *Robinson v. Callais*. Oral argument took place on March 24, 2025. On June 27, 2025, the Court ordered that the consolidated cases be reargued and subsequently directed the parties to file briefs addressing the question of "whether the State's intentional creation of a second majority-minority congressional district violates the Fourteenth or Fifteenth Amendments." The Court heard reargument in this case on October 15, 2025.

Sections 4 and 5 of the VRA

Section 4(b) of the VRA set forth a coverage formula that identified certain jurisdictions in the country that were required under Section 5 to get preapproval or "preclearance" for any proposed change to a

voting law. If preclearance was not granted, the proposed change to the election law could not go into effect. The Section 4(b) coverage formula was based on voter turnout and registration data from the 1960s and early 1970s. In 2013, when the Supreme Court decided *Shelby County v. Holder*, discussed below, nine states, and jurisdictions within six additional states, were covered. The covered states were Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas, and Virginia. The six states containing covered jurisdictions were California, Florida, Michigan, New York, North Carolina, and South Dakota.

Section 5 of the VRA required that to be granted preclearance, the covered state or jurisdiction had the burden of proving that the proposed change to a voting law would have neither the purpose nor the effect of denying or abridging the right to vote on account of race or color or membership in a language minority group. A proposed change to a voting law would be considered to have a discriminatory effect if it would have led to *retrogression*—that is, members of a racial or language minority group would have been "worse off than they had been before the change." The covered states and jurisdictions were required to obtain preclearance from either the Department of Justice or a three-judge panel of the U.S. District Court for the District of Columbia. Under Section 4(a) of the VRA, a jurisdiction would remain subject to the Section 5 preclearance requirements until it instituted a successful lawsuit known as *bailout*. To prevail in a bailout suit, a covered jurisdiction needed to show that it met certain criteria demonstrating that voting discrimination had not occurred in the jurisdiction within the 10 years prior to when the lawsuit was filed and while the suit was pending.

Shelby County v. Holder (2013)

In *Shelby County v. Holder*, the Supreme Court invalidated the coverage formula in Section 4(b) of the VRA, thereby rendering the preclearance requirements in Section 5 inoperable. The Court held that the application of the coverage formula to the covered states and jurisdictions departed from the "fundamental principle of equal sovereignty" among the states without justification "in light of current conditions." Further, the Court ruled that any "departure from the fundamental principle of equal sovereignty requires a showing that a statute's disparate geographic coverage is sufficiently related to the problem that it targets." In a concurrence, Justice Thomas observed that the Court's ruling "in no way affects the permanent, nationwide ban on racial discrimination in voting found in §2."

Although the Court in *Shelby County* addressed the constitutionality of the Section 4(b) coverage formula, by extension, Section 5 was rendered inoperable. As a result, only those jurisdictions that have been ordered by a court under Section 3(c) of the VRA, known as the "bail in" provision, are required to obtain preclearance.

Emerging Legal Issues and Considerations for Congress

As discussed, the Supreme Court's case law has shaped both the scope and the constitutionality of the 60-year-old VRA. In recent decades, the Court has arguably construed the effect of the VRA more narrowly. Looking ahead, the Court's decision in the pending case of *Louisiana v. Callais* will likely affect how Section 2 of the VRA is applied in the context of redistricting maps. As one legal commentator has opined, the Court in *Callais* may even be poised to evaluate the constitutionality of Section 2.

Other issues relating to the VRA are percolating in the lower courts and might ultimately reach the Supreme Court. For example, the federal circuit courts recently considered whether private litigants or only the Department of Justice can bring enforcement suits under Section 2. In July 2025, the Supreme Court issued an administrative stay on a U.S. Court of Appeals for the Eighth Circuit decision that private litigants cannot invoke 42 U.S.C. § 1983 to bring suit under Section 2. The Court issued the stay pending the filing and disposition of a petition for writ of certiorari, indicating that the stay would terminate if the

writ is denied. Justices Thomas, Alito, and Gorsuch would have denied the stay. In September, the petitioners filed a writ of certiorari, which the Court distributed for conference discussion in November.

There is also a long-standing split in the federal circuit courts of appeals over whether Section 2 permits multiple racial and language minority groups to bring forth vote dilution claims to redistricting maps. Some federal courts, including the U.S. Courts of Appeals for the Fifth Circuit (Fifth Circuit) in 1988 and the U.S. Court of Appeals for the Eleventh Circuit in 1990, interpreted Section 2 to permit claims brought forth by both a single minority group and by multiple minority groups, also known as minority coalition claims. In a 1996 case, the U.S. Court of Appeals for the Sixth Circuit (Sixth Circuit), sitting en banc, held that Section 2 does *not* authorize minority coalition claims, thereby creating a split in the circuit courts. In 2024, the Fifth Circuit, sitting en banc, joined the Sixth Circuit and reached the same conclusion in *Petteway v. Galveston County* and, in so doing, overruled its 1988 ruling that took the opposite position in the circuit split. It remains to be seen whether the Supreme Court will rule on these issues.

Any congressional legislation proposing to amend the VRA would need to comport with the Constitution as interpreted by the Supreme Court. For instance, based on the Court's ruling in *Shelby County*, legislation proposing a new coverage formula for reinstituting Section 5 preclearance would need to be based on present-day justifications. Furthermore, the Court's decision counsels that any legislation subjecting only certain jurisdictions in the country to preclearance would require Congress to show that such dissimilar geographic requirements are "sufficiently related" to the issue that the law seeks to address.

In the current Congress, legislation has been introduced that would amend the VRA in response to Supreme Court rulings. For example, H.R. 14 (119th Congress), the John R. Lewis Voting Rights Advancement Act of 2025, among other things, would amend Section 2 of the VRA to codify the *Gingles* three-pronged test for Section 2 vote dilution claims. In response to the *Shelby County v. Holder* ruling, H.R. 14 would also establish a new coverage formula for identifying jurisdictions throughout the country that would be subject to the VRA's Section 5 preclearance requirements.

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