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John Lewis Voting Rights Advancement Act of 2024 (S. 4) Puts Partisan Bureaucrats in Control of Elections

March 2024 – The John Lewis Voting Rights Advancement Act (S. 4) will, once again, allow partisan bureaucrats in Washington to micromanage changes to polling places, hours, voter ID, and registration requirements and every single imaginable scenario for state and local elections.

The Bill Marks a Return to Partisan Voting Rights Enforcement

In 2013, the decision by the U.S. Supreme Court in *Shelby County v. Holder* struck down the coverage formula for Section 5 of the Voting Rights Act (VRA). Section 5 of the VRA required certain states and jurisdictions to submit any change in their election laws to either the D.C. District Court or the DOJ for approval. That approval requirement is known as preclearance.

The formula originated in 1965 and was largely based upon low turnout rates at the time. Section 5 was intended to be a temporary provision and needed to be reauthorized every 25 years. With each renewal, Congress failed to account for the changing times. In the *Shelby* decision, the Supreme Court found the archaic formula did not represent the current conditions and stated that for Congress to impose a preclearance requirement on states, there would need to be voting discrimination on a rampant and pervasive scale.

<u>The John Lewis Voting Rights Advancement Act of 2024 (S. 4) is almost certainly unconstitutional because it does not satisfy the clear requirements the Supreme Court laid out for preclearance to be imposed on states.</u>

We do not have rampant discrimination in voting in 2024. To the contrary, it has never been easier to vote in a federal election as it is today. Registration and turnout rates of minority voters are at an all-time high.

According to the U.S. Census Bureau, black voter turnout is on par with or exceeds that of whites in many of the states formerly under preclearance.

Permanent Provisions of the VRA Already Protect Voter Rights

Section 2 of the VRA is still in full force and effect, and is a permanent, nationwide ban on discrimination in voting based upon race, color, or membership in a language minority group.[i] It prohibits intentional discrimination and discriminatory results based upon a court's review of the totality of the circumstances under which it occurred.

Section 3 of the VRA (commonly known as the "bail-in" provision) also allows for court-imposed preclearance requirements when a court determines that there was intentional discrimination to ensure future compliance with the guarantees of the 14th and 15th Amendments.

107 S. West Street, Suite 700, Alexandria, Virginia 22314
Telephone: 703.745.5870 Fax: 888.815.5641 PublicInterestLegal.org

Section 11(b) prohibits voter intimidation and coercion for the sake of all voters. Section 208 protects your right to secure physical assistance in casting a ballot.

Voting Rights Violations Redefined
S. 4 would change Section 3 (the bail-in) from requiring a showing of intentional discrimination to allow for a violation with a finding or a statistical disparity in a change effecting minority voters. The Department has been known to use a statistical disparity of less than 2% to object to the proposed voter ID requirements in South Carolina.

Under the new coverage formula, a state government and all of its political subdivisions would be placed under Section 5 preclearance for 10 years if the DOJ determines that 15 "voting rights violations" by local jurisdictions occurred during the "previous 25 calendar years," even though there were no violations by the State or by the majority of local governments.

Alternatively, entire states would be placed under Section 5 preclearance for 10 years if the DOJ determines that 10 "voting rights violations" occurred during the "previous 25 calendar years" if one of those violations was by the state government.

"Voting rights violations" include not just final court judgments that a jurisdiction has violated the VRA or the 14th and 15th Amendments, but also settlement agreements, consent decrees, and any preclearance objections made by the Attorney General. Such objections do not require any finding of intentional discrimination; a discriminatory effect based on statistical disparity is sufficient. Settlement agreements with private plaintiffs also count toward the "violations" under this scheme.

The bill would add the "retrogression standard" to Section 2, despite the lack of need and the blatant federal overreach. The current attempts to use the retrogression standard disguised as a claim under Section 2 were rejected by the Supreme Court in the *Brnovich* decision.[ii]

The Partisan DOJ
The DOJ Voting Section's Staff and leadership have a troubling symbiotic relationship with liberal advocacy groups such as the Southern Poverty Law Center, the ACLU, Brennan Center, and more. The alliance and influence on DOJ by these groups was highlighted by a Georgia federal judge in a scathing opinion that included "the considerable influence of ACLU advocacy on the voting rights decisions of the United States Attorney General is an embarrassment" and expressing the court's "surprise[]" that the DOJ was "so blind to this impropriety".[iii]

This bias has not changed. A 2013 report from the DOJ Inspector General criticized the Voting Section of the Civil Rights Division for hiring a majority of its lawyers from only five advocacy organizations: the American Civil Liberties Union (ACLU); National Council of La Raza; NAACP; the Lawyers' Committee for Civil Rights Under Law (LCCR); and Mexican American Legal Defense, and Education Fund (MALDEF).[iv]

S. 4's 'Practice-Based Preclearance' Targets Voter ID and More – Everywhere
Unlike the previous coverage formula which geographically limited preclearance, S. 4 vastly expands the power of the DOJ. The Act creates "practice-based preclearance" that will apply to every single political jurisdiction in the country, regardless of the coverage formula at the time.

Changes to Legal Standards that Favor the DOJ

Previously, Section 5 could only be enforced by the U.S. Attorney General. But under S. 4 "any aggrieved citizen" can file for a Section 5 enforcement action. The courts will be drowning in litigation on behalf of left-wing advocacy groups.

S. 4 creates a new legal standard for injunctive relief that has never been used before in our courts. Under S. 4, a plaintiff will be granted an injunction if it raises "a serious question" about a voting change, and the "hardship" imposed on the state is less than the one experienced by the plaintiff. The new standard is clearly pro-plaintiff and dramatically increases the chances that an injunction will be granted against state and local governments.

Furthermore, S. 4 restricts the ability of courts of appeal, including the U.S. Supreme Court, to issue stays of these injunctions, stating that a state's inability to move forward with a voting change due to an injunction "does not constitute harm to the public interest".

S. 4 would expand the Attorney General's power to challenge "any act prohibited by the 14th or 15th Amendment". Currently, the Attorney General may only bring civil rights claims under specific federal statutes. Only private plaintiffs can file lawsuits alleging violations of the 14th and 15th Amendments. This would allow the Attorney General to get involved in any constitutional cases that are unrelated to race discrimination, like the highly partisan election disputes.

Maureen Riordan, PILF Litigation Counsel, spent 20 years as a Justice Department senior attorney in the Voting Section, working on hundreds of election, voting, and redistricting submissions over that time. She has litigated NVRA and other Voting Rights matters.

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[i] 52 U.S.C. § 10301.

[ii] See (J. Christian Adams, *Transformation: Turning Section 2 of the Voting Rights Act into Something It Is Not*, Volume 31, Touro Law Review 2015).

[iii] *Johnson v. Miller*, 864 F. Supp. 1354 (S.D. Ga. 1994), affirmed, 515 U.S. 900 (1995)

[iv] U.S. Department of Justice, Office of the Inspector General, Oversight and Review Division, A Review of the Operations of the Voting Section of the Civil Rights Division, March 2013, p. 209, https://oig.justice.gov/reports/2013/s1303.pdf (accessed May 24, 2021).