

STATE OF NEW YORK

1046--C

2021-2022 Regular Sessions

IN SENATE

January 6, 2021

Introduced by Sens. MYRIE, BAILEY, BIAGGI, BRESLIN, BRISPORT, BROUK, CLEARE, COMRIE, COONEY, FELDER, GAUGHRAN, GIANARIS, GOUNARDES, HINCHEY, HOYLMAN, JACKSON, KAPLAN, KAVANAGH, KENNEDY, KRUEGER, LIU, MANNION, MAY, MAYER, PARKER, RAMOS, REICHLIN-MELNICK, RIVERA, SALAZAR, SANDERS, SEPULVEDA, SERRANO, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Elections -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Elections in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the election law, in relation to establishing the John R. Lewis Voting Rights Act of New York, establishing rights of action for denying or abridging of the right of any member of a protected class to vote, providing assistance to language-minority groups, requiring certain political subdivisions to receive preclearance for potential violations of the NYVRA, and creating civil liability for voter intimidation

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. This act shall be known and may be cited as the "John R.
2 Lewis Voting Rights Act of New York (NYVRA)".

3 § 2. Sections 17-100 through 17-170 of article 17 of the election law
4 are designated title 1 and a new title heading is added to read as
5 follows:

6 VIOLATIONS OF THE ELECTIVE FRANCHISE

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD02423-17-2

§ 3. The article heading of article 17 of the election law is amended to read as follows:

~~[VIOLATIONS OF]~~ PROTECTING THE ELECTIVE FRANCHISE

§ 4. Article 17 of the election law is amended by adding a new title 2 to read as follows:

TITLE 2

JOHN R. LEWIS VOTING RIGHTS ACT OF NEW YORK

Section 17-200. Legislative purpose and statement of public policy.

17-202. Interpretation of laws related to elective franchise.

17-204. Definitions.

17-206. Rights of action.

17-208. Assistance for language-minority groups.

17-210. Preclearance commission.

17-212. Preclearance.

17-214. Right of action against voter intimidation, deception or obstruction.

17-216. Authority to issue subpoenas.

17-218. Expedited judicial proceedings and preliminary relief.

17-220. Attorneys' fees.

17-222. Applicability.

17-224. Severability.

§ 17-200. Legislative purpose and statement of public policy. In recognition of the protections for the right to vote provided by the constitution of the state of New York, which substantially exceed the protections for the right to vote provided by the constitution of the United States, and in conjunction with the constitutional guarantees of equal protection, freedom of expression, and freedom of association under the law and against the denial or abridgement of the voting rights of members of a race, color, or language-minority group, it is the public policy of the state of New York to:

1. Encourage participation in the elective franchise by all eligible voters to the maximum extent; and

2. Ensure that eligible voters who are members of racial, color, and language-minority groups shall have an equal opportunity to participate in the political processes of the state of New York, and especially to exercise the elective franchise.

§ 17-202. Interpretation of laws related to elective franchise. In further recognition of the protections for the right to vote provided by the constitution of the state of New York, statutes, rules and regulations, and local laws or ordinances related to the elective franchise shall be construed liberally in favor of (a) protecting the right to cast an effective ballot; (b) ensuring that eligible voters are not impaired in registering to vote or voting including having their votes counted, and (c) ensuring equitable access with regard to race, color, and language-minority groups to opportunities to register to vote and to vote. The authority to prescribe or maintain voting or elections policies and practices cannot be so exercised as to unnecessarily deny or abridge the right to vote. Policies and practices that burden the right to vote must be narrowly tailored to promote a compelling policy justification that must be supported by substantial evidence.

§ 17-204. Definitions. For the purposes of this title:

1. "At-large" method of election means a method of electing members to the governing body of a political subdivision: (a) in which all of the voters of the entire political subdivision elect each of the members to

1 the governing body; (b) in which the candidates are required to reside
2 within given areas of the political subdivision and all of the voters of
3 the entire political subdivision elect each of the members to the
4 governing body; or (c) that combines at-large elections with district-
5 based elections, unless the only member of the governing body of a poli-
6 tical subdivision elected at-large holds exclusively executive responsi-
7 bilities. At-large method of election does not include ranked-choice
8 voting, cumulative voting, and limited voting.

9 2. "District-based" method of election means a method of electing
10 members to the governing body of a political subdivision using a
11 districting or redistricting plan in which each member of the governing
12 body resides within a district or ward that is a divisible part of the
13 political subdivision and is elected only by voters residing within that
14 district or ward, except for a member of the governing body that holds
15 exclusively executive responsibilities.

16 3. "Alternative" method of election means a method of electing members
17 to the governing body of a political subdivision using a method other
18 than at-large or district-based, including, but not limited to, ranked-
19 choice voting, cumulative voting, and limited voting.

20 4. "Political subdivision" means a geographic area of representation
21 created for the provision of government services, including, but not
22 limited to, a county, city, town, village, school district, or any other
23 district organized pursuant to state or local law.

24 5. "Protected class" means a class of eligible voters who are members
25 of a race, color, or language-minority group, as referenced and defined
26 in the federal voting rights act.

27 6. "Racially polarized voting" means voting in which there is a
28 difference in the candidate or electoral choice preferred by members in
29 a protected class, and the candidate or electoral choice preferred by
30 the rest of the electorate. The methodologies for estimating group
31 voting behavior as approved in applicable federal cases to enforce the
32 federal voting rights act to establish racially polarized voting may be
33 used for purposes of this subdivision to prove that elections are char-
34 acterized by racially polarized voting, but those methodologies shall
35 not be the exclusive means of proving racially polarized voting.

36 7. "Federal voting rights act" means the federal Voting Rights Act of
37 1965, 52 U.S.C. § 10301 et seq.

38 8. The "civil rights bureau" means the civil rights bureau of the
39 office of the attorney general.

40 9. "Government enforcement action" means a denial of administrative or
41 judicial preclearance by the state or federal government, pending liti-
42 gation filed by a federal or state entity, a final judgment or adjudi-
43 cation, a consent decree, or similar formal action.

44 10. "Preclearance commission" means the commission formed by this
45 title to make determinations as to preclearance, informed by the recom-
46 mendations of the civil rights bureau.

47 11. "Deceptive or fraudulent device, contrivance, or communication"
48 means one that contains false information pertaining to: (a) the time,
49 place, and manner of any election; (b) the qualifications or
50 restrictions on voter eligibility for such election; or (c) a statement
51 of endorsement by any specifically named person, political party, or
52 organization.

53 § 17-206. Rights of action. 1. Right of action against voter
54 suppression. (a) No voting qualification, prerequisite to voting, law,
55 ordinance, standard, practice, procedure, regulation, or policy shall be
56 enacted or implemented by any board of elections or political subdivi-

1 sion in a manner that results in a denial or abridgement of the right of
2 any member of a protected class to vote.

3 (b) A violation is established if, based on the totality of the
4 circumstances, the ability of members of the protected class to elect
5 candidates of their choice or influence the outcome of elections is
6 impaired.

7 (c) For political subdivisions where either the primary or general
8 election is held on a date that is not concurrent with the primary or
9 general election dates for state, county, or city office as established
10 in section eight of article three or section eight of article thirteen
11 of the constitution, and in state law, there shall be a presumption that
12 the date of election results in the denial or abridgement of the right
13 to vote where for three consecutive general elections in which there is
14 at least one contested race for an office, the number of actual voters
15 in each contested election is less than twenty-five percent of the total
16 number of votes cast in the most recent general election for the presi-
17 dency of the United States by voters in the political subdivision, or in
18 which, for any protected class consisting of at least twenty-five thou-
19 sand citizens of voting age or whose members comprise at least ten
20 percent of the citizen voting age population, the percent of members of
21 that protected class that are actual voters is at least twenty-five
22 percent lower than the percent of citizens of voting age that are not
23 members of that protected class that are actual voters.

24 2. Right of action against vote dilution. (a) A method of election,
25 including at-large, district-based, or alternative, shall not have the
26 effect of impairing the ability of members of a protected class to elect
27 candidates of their choice or influence the outcome of elections, as a
28 result of the dilution or the abridgment of the rights of members of the
29 protected class.

30 (b) A violation of this subdivision shall be:

31 (i) established if a political subdivision uses an at-large method of
32 election and it is shown that either: (A) voting patterns of members of
33 the protected class within the political subdivision are racially polar-
34 ized; or (B) under the totality of the circumstances, the ability of
35 members of the protected class to elect candidates of their choice or
36 influence the outcome of elections is impaired; or

37 (ii) established if a political subdivision uses a district-based or
38 alternative method of election and it is shown that candidates or elec-
39 toral choices preferred by members of the protected class would usually
40 be defeated, and either: (A) voting patterns of members of the protected
41 class within the political subdivision are racially polarized; or (B)
42 under the totality of the circumstances, the ability of members of the
43 protected class to elect candidates of their choice or influence the
44 outcome of elections is impaired; or

45 (c) In assessing whether voting patterns of members of the protected
46 class within the political subdivision are racially polarized or whether
47 candidates or electoral choices preferred by members of the protected
48 class would usually be defeated: (i) elections conducted prior to the
49 filing of an action pursuant to this subdivision are more probative than
50 elections conducted after the filing of the action; (ii) evidence
51 concerning elections for members of the governing body of the political
52 subdivision are more probative than evidence concerning other elections;
53 (iii) statistical evidence is more probative than non-statistical
54 evidence; (iv) where there is evidence that more than one protected
55 class of eligible voters are politically cohesive in the political
56 subdivision, members of each of those protected classes may be combined;

1 (v) evidence concerning the intent on the part of the voters, elected
2 officials, or the political subdivision to discriminate against a
3 protected class is not required; (vi) evidence that voting patterns and
4 election outcomes could be explained by factors other than racially
5 polarized voting, including but not limited to partisanship, shall not
6 be considered; (vii) evidence that sub-groups within a protected class
7 have different voting patterns shall not be considered; (viii) evidence
8 concerning whether members of a protected class are geographically
9 compact or concentrated shall not be considered, but may be a factor in
10 determining an appropriate remedy; and (ix) evidence concerning project-
11 ed changes in population or demographics shall not be considered, but
12 may be a factor, in determining an appropriate remedy.

13 3. Evaluation of totality of the circumstances. In assessing whether,
14 under the totality of the circumstances, the ability of members of the
15 protected class to elect candidates of their choice or influence the
16 outcome of elections is impaired without a compelling policy justifica-
17 tion, factors that may be considered shall include, but not be limited
18 to: (a) the history of discrimination in the political subdivision,
19 geographic region, or the state; (b) the extent to which members of the
20 protected class have been elected to office in the political subdivi-
21 sion; (c) the use of any voting qualification, prerequisite to voting,
22 law, ordinance, standard, practice, procedure, regulation, or policy
23 that may enhance the dilutive effects of the election scheme; (d) denial
24 of access of either eligible voters or candidates who are members of the
25 protected class to those processes determining which groups of candi-
26 dates will receive access to the ballot, financial support, or other
27 support in a given election; (e) the extent to which members of the
28 protected class contribute to political campaigns at lower rates; (f)
29 the extent to which members of a protected class in the state or poli-
30 tical subdivision vote at lower rates than other members of the elector-
31 ate; (g) the extent to which members of the protected class are disad-
32 vantaged in areas including but not limited to education, employment,
33 health, criminal justice, housing, land use, or environmental
34 protection; (h) the extent to which members of the protected class are
35 disadvantaged in other areas which may hinder their ability to partic-
36 ipate effectively in the political process; (i) the use of overt or
37 subtle racial appeals in political campaigns; (j) a significant lack of
38 responsiveness on the part of elected officials to the particularized
39 needs of members of the protected class; and (k) whether the political
40 subdivision has a compelling policy justification that is substantiated
41 and supported by evidence for adopting or maintaining the method of
42 election or the voting qualification, prerequisite to voting, law, ordi-
43 nance, standard, practice, procedure, regulation, or policy. No factor
44 is dispositive or necessary to establish the existence of racially
45 polarized voting. Evidence of these factors concerning the state,
46 private actors, or other political subdivisions in the geographic region
47 may be considered but is less probative than evidence concerning the
48 political subdivision itself.

49 4. Standing. Any aggrieved person, organization whose membership
50 includes or is likely to include aggrieved persons, organization whose
51 mission would be frustrated by a violation of this section, organization
52 that would expend resources in order to fulfill its mission as a result
53 of a violation of this section, or the attorney general may file an
54 action pursuant to this section in the supreme court of the county in
55 which the political subdivision is located.

1 5. Remedies. (a) Upon a finding of a violation of any provision of
2 this section, the court shall implement appropriate remedies that are
3 tailored to remedy the violation. Remedies may include, but shall not be
4 limited to:

5 (i) a district-based method of election;
6 (ii) an alternative method of election;
7 (iii) new or revised districting or redistricting plans;
8 (iv) elimination of staggered elections so that all members of the
9 governing body are elected on the same date;
10 (v) reasonably increasing the size of the governing body;
11 (vi) moving the dates of elections to be concurrent with the primary
12 or general election dates for state, county, or city office as estab-
13 lished in section eight of article three or section eight of article
14 thirteen of the constitution;
15 (vii) transferring authority for conducting the political subdivi-
16 sion's elections to the board of elections for the county in which the
17 political subdivision is located;
18 (viii) additional voting hours or days;
19 (ix) additional polling locations;
20 (x) additional means of voting such as voting by mail;
21 (xi) ordering of special elections;
22 (xii) requiring expanded opportunities for voter registration;
23 (xiii) requiring additional voter education;
24 (xiv) modifying the election calendar;
25 (xv) the restoration or addition of persons to registration lists; or
26 (xvi) retaining jurisdiction for such period of time on a given matter
27 as the court may deem appropriate, during which no redistricting plan
28 shall be enforced unless and until the court finds that such plan does
29 not have the purpose of diluting the right to vote on the basis of
30 protected class membership, or in contravention of the voting guarantees
31 set forth in this title, except that the court's finding shall not bar a
32 subsequent action to enjoin enforcement of such redistricting plan.

33 (b) The court shall only adopt a remedy that will not diminish the
34 ability of protected class members to participate in the political proc-
35 ess and to elect their preferred candidates to office. The court shall
36 consider proposed remedies by any parties and interested non-parties,
37 and shall not provide deference or priority to a proposed remedy because
38 it is proposed by the political subdivision. This title gives the court
39 authority to implement remedies notwithstanding any other provision of
40 law, including any other state or local law.

41 6. Procedures for implementing new or revised districting or redis-
42 tricting plans. The governing body of a political subdivision with the
43 authority under this title and all applicable state and local laws to
44 enact and implement a new method of election that will replace the poli-
45 tical subdivision's at-large method of election with a district-based or
46 alternative method of election, or enact and implement a new districting
47 or redistricting plan, shall undertake each of the steps enumerated in
48 this subdivision, if proposed subsequent to receipt of a NYVRA notifica-
49 tion letter, as defined in subdivision seven of this section, or the
50 filing of a claim pursuant to this title or the federal voting rights
51 act.

52 (a) Before drawing a draft districting or redistricting plan or plans
53 of the proposed boundaries of the districts, the political subdivision
54 shall hold at least two public hearings over a period of no more than
55 thirty days, at which the public is invited to provide input regarding
56 the composition of the districts. Before these hearings, the political

1 subdivision may conduct outreach to the public, including to non-Engl-
2 ish-speaking communities, to explain the districting or redistricting
3 process and to encourage public participation.

4 (b) After all draft districting or redistricting plans are drawn, the
5 political subdivision shall publish and make available for release at
6 least one draft districting or redistricting plan and, if members of the
7 governing body of the political subdivision will be elected in their
8 districts at different times to provide for staggered terms of office,
9 the potential sequence of the elections. The political subdivision shall
10 also hold at least two additional hearings over a period of no more than
11 forty-five days, at which the public is invited to provide input regard-
12 ing the content of the draft districting or redistricting plan or plans
13 and the proposed sequence of elections, if applicable. The draft
14 districting or redistricting plan or plans shall be published at least
15 seven days before consideration at a hearing. If the draft districting
16 or redistricting plan or plans are revised at or following a hearing,
17 the revised versions shall be published and made available to the public
18 for at least seven days before being adopted.

19 (c) In determining the final sequence of the district elections
20 conducted in a political subdivision in which members of the governing
21 body will be elected at different times to provide for staggered terms
22 of office, the governing body shall give special consideration to the
23 purposes of this title, and it shall take into account the preferences
24 expressed by members of the districts.

25 7. Notification requirement and safe harbor for judicial actions.
26 Before commencing a judicial action against a political subdivision
27 under this section, a prospective plaintiff shall send by certified mail
28 a written notice to the clerk of the political subdivision, or, if the
29 political subdivision does not have a clerk, the governing body of the
30 political subdivision, against which the action would be brought,
31 asserting that the political subdivision may be in violation of this
32 title. This written notice shall be referred to as a "NYVRA notification
33 letter" in this title. For actions against a school district or any
34 other political subdivision that holds elections governed by the educa-
35 tion law, the prospective plaintiff shall also send by certified mail a
36 copy of the NYVRA notification letter to the commissioner of education.

37 (a) A prospective plaintiff shall not commence a judicial action
38 against a political subdivision under this section within fifty days of
39 sending to the political subdivision a NYVRA notification letter.

40 (b) Before receiving a NYVRA notification letter, or within fifty days
41 of mailing of a NYVRA notification letter, the governing body of a poli-
42 tical subdivision may pass a resolution affirming: (i) the political
43 subdivision's intention to enact and implement a remedy for a potential
44 violation of this title; (ii) specific steps it will undertake to facil-
45 itate approval and implementation of such a remedy; and (iii) a schedule
46 for enacting and implementing such a remedy. Such a resolution shall be
47 referred to as a "NYVRA resolution" in this title. If a political subdi-
48 vision passes a NYVRA resolution, a prospective plaintiff shall not
49 commence an action to enforce this section against the political subdi-
50 vision within ninety days of the resolution's passage. For actions
51 against a school district, the commissioner of education may order the
52 enactment of an NYVRA resolution pursuant to the commissioner's authori-
53 ty under section three hundred five of the education law.

54 (c) If the governing body of a political subdivision lacks the author-
55 ity under this title or applicable state law or local laws to enact or
56 implement a remedy identified in a NYVRA resolution within ninety days

1 after the passage of the NYVRA resolution, or if the political subdivi-
2 sion is a covered entity as defined under section 17-212 of this title,
3 the governing body of the political subdivision may undertake the steps
4 enumerated in the following provisions upon passage of a NYVRA resol-
5 ution:

6 (i) The governing body of the political subdivision may approve a
7 proposed remedy that complies with this title and submit such a proposed
8 remedy to the preclearance commission. Such a submission shall be
9 referred to as a "NYVRA proposal" in this title.

10 (ii) Prior to passing a NYVRA proposal, the political subdivision
11 shall hold at least one public hearing, at which the public is invited
12 to provide input regarding the NYVRA proposal. Before this hearing, the
13 political subdivision may conduct outreach to the public, including to
14 non-English-speaking communities, to encourage public participation.

15 (iii) Within forty-five days of receipt of a NYVRA proposal, the civil
16 rights bureau shall submit a report and recommendation to the preclear-
17 ance commission as to whether the preclearance commission should grant
18 or deny approval of the NYVRA proposal.

19 (iv) Within sixty days of receipt of a NYVRA proposal, the preclear-
20 ance commission shall either grant or deny approval of the NYVRA
21 proposal.

22 (v) The preclearance commission shall only grant approval to the NYVRA
23 proposal if it concludes that: (A) the political subdivision may be in
24 violation of this title; (B) the NYVRA proposal would remedy any poten-
25 tial violation of this title; (C) the NYVRA proposal is unlikely to
26 violate the constitution or any federal law; (D) the NYVRA proposal will
27 not diminish the ability of protected class members to participate in
28 the political process and to elect their preferred candidates to office;
29 and (E) implementation of the NYVRA proposal is feasible. The preclear-
30 ance commission may grant approval to the NYVRA proposal notwithstanding
31 any other provision of law, including any other state or local law.

32 (vi) If the preclearance commission grants approval, the NYVRA
33 proposal shall be enacted and implemented immediately, notwithstanding
34 any other provision of law, including any other state or local law. If
35 the political subdivision is a covered entity as defined under section
36 17-212 of this title, there shall be no need for the political subdivi-
37 sion to also obtain preclearance for the NYVRA proposal pursuant to such
38 section.

39 (vii) If the preclearance commission denies approval, the NYVRA
40 proposal shall not be enacted or implemented. The preclearance commis-
41 sion shall interpose objections explaining its basis and may, in its
42 discretion, indicate another NYVRA proposal for which it would grant
43 approval.

44 (viii) If the preclearance commission does not respond, the NYVRA
45 proposal shall not be enacted or implemented.

46 (d) A political subdivision that has passed a NYVRA resolution may
47 enter into an agreement with a prospective plaintiff who sends a NYVRA
48 notification letter providing that such a prospective plaintiff shall
49 not commence an action to enforce this section against the political
50 subdivision for an additional ninety days. This written agreement may be
51 referred to as a "NYVRA extension agreement". The NYVRA extension agree-
52 ment shall include a requirement that either the political subdivision
53 shall enact and implement a remedy that complies with this title or the
54 political subdivision shall pass a NYVRA proposal and submit it to the
55 civil rights bureau.

(e) If, pursuant to a process commenced by a NYVRA notification letter, a political subdivision enacts or implements a remedy or the civil rights bureau grants approval to a NYVRA proposal, a prospective plaintiff who sent the NYVRA notification letter may, within thirty days of the enactment or implementation of the remedy or approval of the NYVRA proposal, demand reimbursement for the cost of the work product generated to support the NYVRA notification letter. A prospective plaintiff shall make the demand in writing and shall substantiate the demand with financial documentation, such as a detailed invoice for demography services or for the analysis of voting patterns in the political subdivision. A political subdivision may request additional documentation if the provided documentation is insufficient to corroborate the claimed costs. A political subdivision shall reimburse a prospective plaintiff for reasonable costs claimed, or in an amount to which the parties mutually agree. The cumulative amount of reimbursements to all prospective plaintiffs, except for actions brought by the attorney general, shall not exceed forty-three thousand dollars, as adjusted annually to the consumer price index for all urban consumers, United States city average, as published by the United States department of labor. To the extent a prospective plaintiff who sent the NYVRA notification letter and a political subdivision are unable to come to a mutual agreement, either party may file a declaratory judgment action to obtain a clarification of rights.

(f) Notwithstanding the provisions of this subdivision, if the first day for designating petitions for a political subdivision's next regular election to select members of its governing board has begun or is scheduled to begin within thirty days, or if a political subdivision is scheduled to conduct any election within one hundred twenty days, a plaintiff alleging any violation of this title may commence a judicial action against a political subdivision under this section, provided that the relief sought by such a plaintiff includes preliminary relief for that election. Prior to or concurrent with commencing such a judicial action, any such plaintiff shall also submit a NYVRA notification letter to the political subdivision. If a judicial action commenced under this provision is withdrawn or dismissed for mootness because the political subdivision has enacted or implemented a remedy or the civil rights bureau has granted approval of a NYVRA proposal pursuant to a process commenced by a NYVRA notification letter, any such plaintiff may only demand reimbursement pursuant to this subdivision.

8. Coalition claims permitted. Members of different protected classes may file an action jointly pursuant to this chapter if they demonstrate that the combined voting preferences of the multiple protected classes are polarized against the rest of the electorate.

§ 17-208. Assistance for language-minority groups. 1. Political subdivisions required to provide language assistance. A board of elections or a political subdivision that administers elections shall provide language-related assistance in voting and elections to a language-minority group in a political subdivision if, based on data from the American community survey, or data of comparable quality collected by a public office, that:

(a) more than two percent of the citizens of voting age of a political subdivision are members of a single language-minority group and speak English "less than very well" according to the American community survey;

(b) more than four thousand of the citizens of voting age of such political subdivision are members of a single language-minority group

1 and speak English "less than very well" according to the American commu-
2 nity survey; or

3 (c) in the case of a political subdivision that contains all or any
4 part of a Native American reservation, more than two percent of the
5 Native American citizens of voting age within the Native American reser-
6 vation are members of a single language-minority group and speak English
7 "less than very well" according to the American community survey. For
8 the purposes of this paragraph, "Native American" is defined to include
9 any persons recognized by the United States census bureau or New York as
10 "American Indian" or "Alaska Native".

11 2. Language assistance to be provided. When it is determined that a
12 board of elections or political subdivision shall provide language
13 assistance to a particular minority group, such board of elections or
14 political subdivision shall provide voting materials in the covered
15 language of an equal quality of the corresponding English language mate-
16 rials, including registration or voting notices, forms, instructions,
17 assistance, or other materials or information relating to the electoral
18 process, including ballots. Whenever any such board of elections or
19 political subdivision provides any registration or voting notices,
20 forms, instructions, assistance, or other materials or information
21 relating to the electoral process, including ballots, in a covered poli-
22 tical subdivision, it shall provide them in the language of the applica-
23 ble minority group as well as in the English language, provided that
24 where the language of the applicable minority group is oral or unwritten
25 or in the case of some American Indians, if the predominant language is
26 historically unwritten, the board of elections or political subdivision
27 is only required to furnish oral instructions, assistance, or other
28 information relating to registration and voting.

29 3. Action for declaratory judgment for English-only voting materials.
30 A board of elections or political subdivision that shall provide
31 language assistance to a particular minority group, which seeks to
32 provide English-only materials may file an action against the state for
33 a declaratory judgment permitting such provision. The court shall grant
34 the requested relief if it finds that the determination was unreasonable
35 or an abuse of discretion.

36 4. Standing. Any aggrieved persons, organization whose membership
37 includes or is likely to include aggrieved persons, organization whose
38 mission would be frustrated by a violation of this section, organization
39 that would expend resources in order to fulfill its mission as a result
40 of a violation of this section, or the attorney general may file an
41 action pursuant to this section in the supreme court of the county in
42 which the alleged violation of this section occurred.

43 § 17-210. Preclearance commission. 1. Preclearance commission. There
44 is hereby established within the department of law, a preclearance
45 commission. Such entity shall be responsible for making determinations
46 on preclearance and other matters as enumerated under this title. Such
47 determinations shall be based upon the provisions of this title and the
48 recommendations of the civil rights bureau. This commission shall here-
49 inafter be referred to as the "preclearance commission" or "commission"
50 in this title. The commission shall operate and maintain a website for
51 posting preclearance submissions and decisions to ensure that they are
52 accessible to the public.

53 2. Preclearance commission structure and membership. (a) The commis-
54 sion shall consist of three members to be selected as set forth in this
55 section and shall have and exercise the powers and duties set forth in
56 this title.

1 (b) The governor shall select one member, and the attorney general
2 shall select one member. Upon their selection both members shall therein
3 jointly select one member to serve on such commission.

4 (c) To be eligible to serve as a member of the commission an individ-
5 ual must:

6 (i) be a resident of New York state;

7 (ii) have demonstrated experience representing or working on behalf of
8 members of protected classes, as defined in this title;

9 (iii) have experience working with members of protected classes, as
10 defined in this title, in voting in elections in the state of New York,

11 (d) No individual shall be eligible to serve as a member of the
12 commission who:

13 (i) is currently serving in any elected governmental office or has
14 within the last five years served in any elected governmental office;

15 (ii) is currently serving on any board of elections; or

16 (iii) is currently holding any official position for a political
17 party.

18 (e) Members of the commission shall serve staggered terms. The first
19 member shall be chosen by the attorney general and shall serve a term of
20 five years, the second member shall be chosen by the governor and shall
21 serve a term of four years and the third member chosen by the first two
22 members shall serve a term of three years. All subsequent members of
23 the commission shall be selected and appointed as described in this
24 section and shall serve a term of five years, unless selected and
25 appointed to complete a vacant term.

26 (f) The commission by a majority vote shall elect a chairperson from
27 among its members to preside over its meetings, other proceedings, and
28 votes. The chairperson shall serve a one year term.

29 (g) A majority of the members of the commission, conferring in person,
30 telephonically, by videoconference, or by other means as agreed by the
31 commission, shall constitute a quorum, and the commission shall have the
32 power to act by majority vote of the total number of members of the
33 commission without vacancy.

34 (h) Members of the commission shall be reimbursed for all reasonable
35 and necessary expenses incurred in the performance of their duties.

36 (i) Members of the commission may be removed for cause by majority
37 vote of the commission for substantial neglect of duty, misconduct in
38 office, or inability to discharge the powers or duties of office, after
39 written notice and opportunity for a reply.

40 (j) Any vacancy occurring on the commission shall be filled within
41 thirty days of its occurrence, by those who selected the member in such
42 seat, to complete the vacant term.

43 (k) Nothing in this article shall prevent a member from serving a
44 second consecutive term unless such person has previously been removed
45 for cause from said commission.

46 § 17-212. Preclearance. 1. Preclearance. To ensure that the right to
47 vote is not denied or abridged on account of race, color, or language-
48 minority group, as a result of the enactment or implementation of a
49 covered policy, as defined in subdivision two of this section, after the
50 effective date of this section, the enactment or implementation of a
51 covered policy by a covered entity, as defined in subdivision three of
52 this section, shall be subject to preclearance by the civil rights
53 bureau or by a designated court as set forth in this section.

54 2. Covered policies. A "covered policy" shall include any new or modi-
55 fied voting qualification, prerequisite to voting, law, ordinance, stan-

dard, practice, procedure, regulation, or policy concerning any of the following topics:

- (a) Method of election;
- (b) Form of government;
- (c) Annexation of a political subdivision;
- (d) Incorporation of a political subdivision;
- (e) Consolidation or division of political subdivisions;
- (f) Removal of voters from enrollment lists or other list maintenance activities;
- (g) Number, location, or hours of any election day or early voting poll site;
- (h) Dates of elections and the election calendar, except with respect to special elections;
- (i) Registration of voters;
- (j) Assignment of election districts to election day or early voting poll sites;
- (k) Assistance offered to members of a language-minority group; and
- (l) The civil rights bureau may designate additional topics for inclusion in this list pursuant to a rule promulgated under the state administrative procedure act, if it determines that a new or modified voting qualification, prerequisite to voting, law, ordinance, standard, practice, procedure, regulation, or policy concerning such topics may have the effect of denying or abridging the right to vote on account of race, color, or language-minority group.

3. Covered entity. A "covered entity" shall include: (a) any political subdivision which, within the previous twenty-five years, has become subject to a court order or government enforcement action based upon a finding of any violation of this title, the federal voting rights act, the fifteenth amendment to the United States constitution, or a voting-related violation of the fourteenth amendment to the United States constitution; (b) any political subdivision which, within the previous twenty-five years, has become subject to at least three court orders or government enforcement actions based upon a finding of any violation of any state or federal civil rights law or the fourteenth amendment to the United States constitution concerning discrimination against members of a protected class; (c) any county in which, based on data provided by the division of criminal justice services, the combined misdemeanor and felony arrest rate of members of any protected class consisting of at least ten thousand citizens of voting age or whose members comprise at least ten percent of the citizen voting age population of the county, exceeds the proportion that the protected class constitutes of the citizen voting age population of the county as a whole by at least twenty percent at any point within the previous ten years; or (d) any political subdivision in which, based on data made available by the United States census, the dissimilarity index of any protected class consisting of at least twenty-five thousand citizens of voting age or whose members comprise at least ten percent of the citizen voting age population of the political subdivision, is in excess of fifty with respect to non-Hispanic white citizens of voting age within the political subdivision at any point within the previous ten years. If any covered entity is a political subdivision in which a board of elections has been established, that board of elections shall also be deemed a covered entity. If any political subdivision in which a board of elections has been established contains a covered entity fully within its borders, that political subdivision and that board of elections shall both be deemed a covered entity.

1 4. Preclearance by the attorney general and the preclearance commis-
2 sion. A covered entity may obtain preclearance for a covered policy from
3 the preclearance commission pursuant to the following process:

4 (a) The covered entity shall submit the covered policy in writing to
5 the preclearance commission and the civil rights bureau. If the covered
6 entity is a county or city board of elections, it shall contemporaneous-
7 ly provide a copy of the covered policy to the state board of elections.

8 (b) Upon submission of a covered policy for preclearance, as soon as
9 practicable but no later than within ten days, the commission shall
10 publish the submission on its website.

11 (c) After publication of a submission, there shall be an opportunity
12 for members of the public to comment on the submission to the civil
13 rights bureau within the time periods set forth below. To facilitate
14 public comment, the commission shall provide an opportunity for members
15 of the public to sign up to receive notifications or alerts regarding
16 submission of a covered policy for preclearance.

17 (d) Upon submission of a covered policy for preclearance, the civil
18 rights bureau shall review the submission and shall, within the time
19 periods set forth below, provide a report and recommendation to the
20 commission, which shall include a recommendation as to whether, under
21 this title, preclearance should be granted or denied to the covered
22 policy. Such time period shall run concurrent with the time periods for
23 public comment. The civil rights bureau may not submit its report and
24 recommendation until the period for public comment is closed. The civil
25 rights bureau may request more information from a jurisdiction submit-
26 ting a covered policy at any time during its review to aid in developing
27 its report and recommendation. The failure to timely comply with reason-
28 able requests for more information may be grounds for the denial of
29 preclearance. The civil rights bureau's reports and recommendation shall
30 be posted publicly on the preclearance commission's website promptly
31 after they are received by the commission. Provided, however, such
32 communications between the civil rights bureau and the commission or its
33 members other than the civil rights bureau's report and recommendation
34 shall be exempt from public disclosure under article six of the public
35 officers law. The civil rights bureau may instead opt to grant or deny
36 preclearance directly without sending a recommendation to the commis-
37 sion.

38 (e) Upon receipt of the civil rights bureau's report and recommenda-
39 tion regarding a covered policy submitted for preclearance, the
40 preclearance commission shall review the covered policy, the civil
41 rights bureau's report and recommendation, and any public comment, and
42 shall, within the time periods set forth below, deny or grant preclear-
43 ance. In determining whether to deny or grant preclearance, the commis-
44 sion shall give deference to the civil rights bureau's recommendation
45 under an "arbitrary and capricious" standard of review. In any determi-
46 nation as to preclearance, the commission shall identify in writing
47 whether it is approving or rejecting the civil rights bureau's recommen-
48 dation. If the preclearance commission grants preclearance, it may, in
49 its discretion, designate preclearance as "preliminary" in which case
50 the commission may deny preclearance within sixty days following the
51 receipt of submission of the covered policy.

52 (i) The commission shall grant preclearance only if it determines,
53 upon review of the civil rights bureau's recommendation, that the
54 covered policy will not diminish the ability of protected class members
55 to participate in the political process and to elect their preferred

1 candidates to office. If the commission grants preclearance, the covered
2 entity may enact or implement the covered policy immediately.

3 (ii) If the commission denies preclearance, the commission shall
4 interpose objections explaining its basis and the covered policy shall
5 not be enacted or implemented.

6 (iii) If the commission fails to respond within the time for response
7 as established in this section, the civil rights bureau's recommendation
8 on the covered policy shall govern.

9 (iv) If the commission's membership falls below a quorum at any time,
10 or during any time period that may elapse between the effective date of
11 this section and the establishment of a quorum on the commission, the
12 civil rights bureau's recommendation as to whether preclearance should
13 be granted or denied shall have the force of final preclearance determi-
14 nation until the commission's quorum is established or restored.

15 (f) The time periods for public comment, civil rights bureau review,
16 and the decision of the commission to grant or deny preclearance on
17 submission shall be as follows:

18 (i) For any covered policy concerning the designation or selection of
19 poll sites or the assignment of election districts to poll sites, wheth-
20 er for election day or early voting, the period for public comment shall
21 be five business days. The civil rights bureau shall submit its report
22 and recommendation to the commission within ten days following the
23 receipt of such submission and a single commissioner, assigned on a
24 rotating basis, shall review the submission, the civil rights bureau's
25 recommendation, and any public comment. Within five days such commis-
26 sioner shall, either: (A) approve the civil rights bureau's recommenda-
27 tion; or (B) refer the submission and the civil rights bureau's recom-
28 mendation to the full commission for a determination as to whether
29 preclearance shall be denied or granted.

30 (ii) Upon a showing of good cause, the civil rights bureau may receive
31 an extension of up to twenty days to submit its report and recommenda-
32 tion to the commission. If the commissioner initially assigned refers
33 the submission and the civil rights bureau's recommendation to the
34 commission for a determination, the commission shall deny or grant
35 preclearance within five days from the date of referral.

36 (iii) For any other covered policy, the period for public comment
37 shall be ten business days, the civil rights bureau shall submit its
38 report and recommendation to the commission within forty days, and a
39 single commissioner, assigned on a rotating basis, shall review the
40 submission, the civil rights bureau's recommendation, and any public
41 comment, and shall, within five days, either: (A) approve the civil
42 rights bureau's recommendation; or (B) refer the submission and the
43 civil rights bureau's recommendation to the commission for a determi-
44 nation as to whether preclearance shall be denied or granted. If the
45 commissioner initially assigned refers the submission and the civil
46 rights bureau's recommendation to the commission for a determination,
47 the commission shall deny or grant preclearance within ten days from the
48 date of referral. In consultation with the civil rights bureau, the
49 commission may invoke up to two extensions of ninety days each.

50 (iv) The civil rights bureau is hereby authorized to promulgate rules
51 for an expedited, emergency preclearance process in the event of a
52 covered policy occurring during or imminently preceding an election as a
53 result of any disaster within the meaning of section 3-108 of this chap-
54 ter or other exigent circumstances. Any preclearance granted under this
55 provision shall be designated "preliminary" and the commission may deny
56 preclearance within sixty days following receipt of the covered policy.

(g) Appeal of any denial by the preclearance commission may be heard in the supreme court for the county of New York or the county of Albany in a proceeding commenced against the commission, pursuant to article seventy-eight of the civil practice law and rules, from which appeal may be taken according to the ordinary rules of appellate procedure. Due to the frequency and urgency of elections, actions brought pursuant to this section shall be subject to expedited pretrial and trial proceedings and receive an automatic calendar preference on appeal.

5. Preclearance by a designated court. A covered entity may obtain preclearance for a covered policy from a court pursuant to the following process:

(a) The covered entity shall submit the covered policy in writing to the following designated court in the judicial department within which the covered entity is located: (i) first judicial department: New York county; (ii) second judicial department: Westchester county; (iii) third judicial department: Albany county; and (iv) fourth judicial department: Erie county. If the covered entity is a county or city board of elections, it shall contemporaneously provide a copy of the covered policy to the state board of elections.

(b) The covered entity shall contemporaneously provide a copy of the covered policy to the civil rights bureau. The failure of the covered entity to provide a copy of the covered policy to the civil rights bureau will result in an automatic denial of preclearance.

(c) The court shall grant or deny preclearance within sixty days following the receipt of submission of the covered policy.

(d) The court shall grant preclearance only if it determines that the covered policy will not diminish the ability of protected class members to participate in the political process and to elect their preferred candidates to office. If the court grants preclearance, the covered entity may enact or implement the covered policy immediately.

(e) If the court denies preclearance, or fails to respond within sixty days, the covered policy shall not be enacted or implemented.

(f) Appeal of any denial may be taken according to the ordinary rules of appellate procedure. Due to the frequency and urgency of elections, actions brought pursuant to this section shall be subject to expedited pretrial and trial proceedings and receive an automatic calendar preference on appeal.

6. Preclearance by public notice and comment. A covered entity may obtain preclearance for a covered policy through the use of a public notice and comment period pursuant to the following process:

(a) Prior to enacting or seeking to administer any covered policies under subdivision two of this section the covered entity shall publish the proposed covered policy change on its official website, along with an explanation for how the change would not diminish the ability of protected class members to participate in the political process and to elect their preferred candidates to office, and publish general notice of opportunity for public comment on the proposed covered practice. The covered entity shall also publicize the notice through press releases and such other media. The covered entity shall notify the civil rights bureau and the preclearance commission of its intent to use the notice and comment process to preclear a proposed change.

(b) Such notice shall be made at least forty-five days in advance of the last date prescribed in the notice for public comment.

(c) Public comment shall be accepted for a period of no fewer than thirty days. During this period, the covered entity shall afford interested persons an opportunity to submit data, views, and arguments in

1 writing by mail, fax, or email, or through an online public comment
2 portal on the official website for the locality if one has been estab-
3 lished.

4 (d) The covered entity shall conduct at least one public hearing
5 during this period to receive public comment on the proposed covered
6 practice.

7 (e) The covered entity may make changes to the proposed covered prac-
8 tice in response to public comment received. In doing so, the revised
9 covered practice shall be published and public comment shall be accepted
10 in accordance with this subsection, except the public comment period
11 shall be no fewer than fifteen days.

12 (f) Following the public comment period or periods prescribed, the
13 covered entity shall publish the final covered practice, which shall
14 include a plain English description of the practice and the text of an
15 ordinance if applicable, giving effect to the practice, maps of proposed
16 boundary changes, or other relevant materials, and notice that the
17 covered practice will take effect in thirty days.

18 (g) During this thirty-day waiting period, any person who will be
19 subject to, or affected by, the covered practice may challenge, in the
20 supreme court of the locality where the covered practice is to be imple-
21 mented, the covered practice as having the purpose or effect of dimin-
22 ishing the ability of protected class members to participate in the
23 political process and to elect their preferred candidates to office.

24 (h) The preclearance commission or the civil rights bureau may assert
25 jurisdiction over the proposed change upon receiving notice of the
26 covered entity's intent to use the notice and comment process any time
27 before the close of the public comment period. A single member may
28 assert jurisdiction.

29 7. Failure to seek or obtain preclearance. If any covered entity
30 enacts or implements a covered policy without seeking preclearance
31 pursuant to this section, or enacts or implements a covered policy
32 notwithstanding the denial of preclearance, either the civil rights
33 bureau or any other party with standing to bring an action under this
34 title may bring an action to enjoin the covered policy and to seek sanc-
35 tions against the political subdivision and officials in violation.

36 8. Lookback review. (a) For a period of one hundred eighty days begin-
37 ning on the effective date of this section, the commission or the civil
38 rights bureau may, in its discretion, initiate a lookback review in
39 which it may deny clearance to certain covered policies that had been
40 previously enacted by covered jurisdictions.

41 (b) The commission or civil rights bureau may only initiate a lookback
42 review of covered policies that were enacted or implemented by a covered
43 jurisdiction on or after the date on which this title takes effect and
44 prior to the effective date of this section.

45 (c) In order to initiate a lookback review, the commission or civil
46 rights bureau must provide notice to a covered entity of its decision to
47 review a covered policy enacted or implemented by that covered entity.
48 Upon receipt of such notice, the covered entity shall submit the covered
49 policy in writing to the preclearance commission or civil rights bureau
50 within thirty days.

51 (d) Upon receipt of a covered policy for lookback review, the commis-
52 sion or civil rights bureau shall publish the submission on its website.
53 The schedule and procedures for receiving public comment and evaluating
54 a submission through lookback review shall reflect the schedule and
55 procedures provided by paragraph (f) of subdivision four of this

1 section, based on the type of policy that is the subject of the
2 submission.

3 9. Rules and regulations. The civil rights bureau may promulgate such
4 rules and regulations pursuant to the state administrative procedure act
5 as are necessary to effectuate the purposes of this section.

6 § 17-214. Right of action against voter intimidation, deception or
7 obstruction. 1. (a) No person, whether acting under color of law or
8 otherwise, may engage in acts of intimidation, deception, or obstruction
9 that affects the right of voters to access the elective franchise.

10 (b) A violation of this subdivision shall be:

11 (i) established if a person uses or threatens to use any force,
12 violence, restraint, abduction or duress, or inflicts or threatens to
13 inflict any injury, damage, harm or loss, or in any other manner prac-
14 tices intimidation that causes or will reasonably have the effect of
15 causing any person to vote or refrain from voting in general or for or
16 against any particular person or for or against any proposition submit-
17 ted to voters at such election; to place or refrain from placing their
18 name upon a registry of voters; or to request or refrain from requesting
19 an absentee ballot; or

20 (ii) established if a person knowingly uses any deceptive or fraudu-
21 lent device, contrivance or communication, that impedes, prevents or
22 otherwise interferes with the free exercise of the elective franchise by
23 any person, or that causes or will reasonably have the effect of causing
24 any person to vote or refrain from voting in general or for or against
25 any particular person or for or against any proposition submitted to
26 voters at such election; to place or refrain from placing their name
27 upon a registry of voters; or to request or refrain from requesting an
28 absentee ballot; or

29 (iii) established if a person obstructs, impedes, or otherwise inter-
30 feres with access to any polling place or elections office, or
31 obstructs, impedes, or otherwise interferes with any voter in any manner
32 that causes or will reasonably have the effect of causing any delay in
33 voting or the voting process, including the canvassing and tabulation of
34 ballots.

35 2. Standing. Any aggrieved persons, organization whose membership
36 includes or is likely to include aggrieved persons, organization whose
37 mission would be frustrated by a violation of this section, organization
38 that would expend resources in order to fulfill its mission as a result
39 of a violation of this section, or the attorney general may file an
40 action pursuant to this section in the supreme court of the county in
41 which the alleged violation of this section occurred.

42 3. Remedies. Upon a finding of a violation of any provision of this
43 section, the court shall implement appropriate remedies that are
44 tailored to remedy the violation, including but not limited to providing
45 for additional time to cast a ballot that may be counted in the election
46 at issue. This title gives the court authority to implement remedies
47 notwithstanding any other provision of state or local law, including any
48 other state or local law. Any party who shall violate any of the
49 provisions of the foregoing section or who shall aid the violation of
50 any of said provisions shall be liable to any prevailing plaintiff party
51 for damages, including nominal damages for any violation, and compensa-
52 tory or punitive damages for any intentional violation.

53 § 17-216. Authority to issue subpoenas. In any action or investigation
54 to enforce any provision of this title, the attorney general shall have
55 the authority to take proof and determine relevant facts and to issue
56 subpoenas in accordance with the civil practice law and rules.

1 § 17-218. Expedited judicial proceedings and preliminary relief.
2 Because of the frequency of elections, the severe consequences and irre-
3 parable harm of holding elections under unlawful conditions, and the
4 expenditure to defend potentially unlawful conditions that benefit
5 incumbent officials, actions brought pursuant to this title shall be
6 subject to expedited pretrial and trial proceedings and receive an auto-
7 matic calendar preference. In any action alleging a violation of this
8 section in which a plaintiff party seeks preliminary relief with respect
9 to an upcoming election, the court shall grant relief if it determines
10 that: (a) plaintiffs are more likely than not to succeed on the merits;
11 and (b) it is possible to implement an appropriate remedy that would
12 resolve the alleged violation in the upcoming election.

13 § 17-220. Attorneys' fees. In any action to enforce any provision of
14 this title, the court shall allow the prevailing plaintiff party, other
15 than the state or political subdivision thereof, a reasonable attorneys'
16 fee, litigation expenses including, but not limited to, expert witness
17 fees and expenses as part of the costs. A plaintiff will be deemed to
18 have prevailed when, as a result of litigation, the defendant party
19 yields much or all of the relief sought in the suit. Prevailing defend-
20 ant parties shall not recover any costs, unless the court finds the
21 action to be frivolous, unreasonable, or without foundation.

22 § 17-222. Applicability. The provisions of this title shall apply to
23 all elections for any elected office or electoral choice within the
24 state or any political subdivision. The provisions of this title shall
25 apply notwithstanding any other provision of law, including any other
26 state law or local law.

27 § 17-224. Severability. If any provision of this title or its applica-
28 tion to any person, political subdivision, or circumstance is held
29 invalid, the invalidity shall not affect other provisions or applica-
30 tions of this title which can be given effect without the invalid
31 provision or application, and to this end the provisions of this title
32 are severable.

33 § 5. This act shall take effect immediately; provided, however, that
34 paragraph (c) of subdivision seven of section 17-206 of the election law
35 as added by section four of this act shall take effect one year after it
36 shall have become a law; and provided further, however, that section
37 17-208 of the election law as added by section four of this act shall
38 take effect three years after it shall have become a law; and provided
39 further, however, that section 17-212 of the election law, as added by
40 section four of this act, shall take effect one year after the attorney
41 general certifies that the office of the attorney general is prepared to
42 execute the duties assigned in section four of this act, if after the
43 expiration of one year the attorney general requires more time to certi-
44 fy that the office of the attorney general is prepared to execute the
45 duties assigned in section four of this act, the attorney general, may,
46 for good cause shown, apply to the governor for such an extension of
47 time. The governor may grant or deny an extension of up to one year
48 according to his or her discretion. The attorney general shall notify
49 the legislative bill drafting commission upon the occurrence of the
50 enactment of the legislation provided for in section four of this act in
51 order that the commission may maintain an accurate and timely effective
52 data base of the official text of the laws of the state of New York in
53 furtherance of effectuating the provisions of section 44 of the legisla-
54 tive law and section 70-b of the public officers law.