S T A T E O F N E W Y O R K

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I N A S S E M B L Y

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Introduced by M. of A. P. RIVERA, KELLNER, BENEDETTO, KAVANAGH, MILLMAN, JAFFEE, J. RIVERA, N. RIVERA, COOK, STEVENSON, BOYLAND, HOOPER -- Multi-Sponsored by -- M. of A. ARROYO, AUBRY, BRENNAN, CAHILL, CALHOUN, CAMARA, CLARK, CONTE, FARRELL, GANTT, HEASTIE, JEFFRIES, P. LOPEZ, V. LOPEZ, MAISEL, ORTIZ, PEOPLES-STOKES, PERRY, PRETLOW, RAMOS, REILLY, ROBINSON, TITUS, WRIGHT -- read once and referred to the Committee on Election Law

AN ACT to amend the civil rights law, in relation to enacting the voting rights act

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The civil rights law is amended by adding a new article 3-A to read as follows:

ARTICLE 3-A

VOTING RIGHTS ACT

SECTION 30. SHORT TITLE.
31. DEFINITIONS.
32. APPLICATION OF ARTICLE.
33. AT-LARGE ELECTIONS; LIMITED.
34. VIOLATIONS.
35. REMEDY.
36. RECOVERY OF COSTS.
37. PURPOSE.
38. INDIVIDUAL CAUSE OF ACTION.

S 30. SHORT TITLE. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "VOTING RIGHTS ACT".

S 31. DEFINITIONS. AS USED IN THIS ARTICLE, THE FOLLOWING TERMS SHALL MEAN:

1. "AT-LARGE METHOD OF ELECTION" MEANS ANY OF THE FOLLOWING METHODS OF ELECTING MEMBERS TO THE LEGISLATIVE OR GOVERNING BODY OF A POLITICAL SUBDIVISION:

(A) ONE IN WHICH THE VOTERS OF THE ENTIRE JURISDICTION ELECT THE MEMBERS OF THE LEGISLATIVE OR GOVERNING BODY;

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

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(B) ONE IN WHICH THE CANDIDATES ARE REQUIRED TO RESIDE WITHIN GIVEN AREAS OF THE JURISDICTION AND THE VOTERS OF THE ENTIRE JURISDICTION ELECT THE MEMBERS OF THE LEGISLATIVE OR GOVERNING BODY; OR

(C) ONE WHICH COMBINES AT-LARGE ELECTIONS WITH DISTRICT-BASED ELECTIONS.

2. "DISTRICT-BASED ELECTIONS" MEANS A METHOD OF ELECTING MEMBERS OF THE LEGISLATIVE OR GOVERNING BODY OF A POLITICAL SUBDIVISION IN WHICH THE CANDIDATE MUST RESIDE WITHIN AN ELECTION DISTRICT THAT IS A DIVISIBLE PART OF THE POLITICAL SUBDIVISION AND IS ELECTED ONLY BY VOTERS RESIDING WITHIN THAT ELECTION DISTRICT.

3. "POLITICAL SUBDIVISION" MEANS A GEOGRAPHIC AREA OF REPRESENTATION CREATED FOR THE PROVISION OF GOVERNMENT SERVICES, INCLUDING, BUT NOT LIMITED TO, A CITY, A SCHOOL DISTRICT, A COMMUNITY SCHOOL BOARD, TOWN, VILLAGE, COUNTY OR OTHER DISTRICT ORGANIZED PURSUANT TO STATE LAW.

4. "PROTECTED CLASS" MEANS A CLASS OF VOTERS WHO ARE MEMBERS OF A RACE, COLOR OR LANGUAGE MINORITY GROUP, AS THIS CLASS IS REFERENCED AND DEFINED IN THE FEDERAL VOTING RIGHTS ACT (42 U.S.C. SEC. 1973 ET SEQ.).

5. "RACIALLY POLARIZED VOTING" MEANS VOTING IN WHICH THERE IS A DIFFERENCE, AS DEFINED IN CASE LAW REGARDING ENFORCEMENT OF THE FEDERAL VOTING RIGHTS ACT (42 U.S.C. SEC. 1973 ET SEQ.), IN THE CHOICE OF CANDIDATES OR OTHER ELECTORAL CHOICES THAT ARE PREFERRED BY VOTERS IN A PROTECTED CLASS, AND IN THE CHOICE OF CANDIDATES AND ELECTORAL CHOICES THAT ARE PREFERRED BY VOTERS IN THE REST OF THE ELECTORATE. THE METHODOLOGIES FOR ESTIMATING GROUP VOTING BEHAVIOR AS APPROVED IN APPLICABLE FEDERAL CASES TO ENFORCE THE FEDERAL VOTING RIGHTS ACT (42 U.S.C. SEC. 1973 ET SEQ.) TO ESTABLISH RACIALLY POLARIZED VOTING MAY BE USED FOR PURPOSES OF THIS ARTICLE TO PROVE THAT ELECTIONS ARE CHARACTERIZED BY RACIALLY POLARIZED VOTING.

S 32. APPLICATION OF ARTICLE. THE PROVISIONS OF THIS ARTICLE SHALL SUPERSEDE ANY OTHER PROVISION OF LAW RELATING TO THE ESTABLISHMENT OF ELECTION DISTRICTS.

S 33. AT-LARGE ELECTIONS; LIMITED. NO AT-LARGE METHOD OF ELECTION SHALL BE IMPOSED OR APPLIED IN A MANNER THAT IMPAIRS THE ABILITY OF A PROTECTED CLASS TO ELECT CANDIDATES OF ITS CHOICE OR ITS ABILITY TO INFLUENCE THE OUTCOME OF AN ELECTION, AS A RESULT OF THE DILUTION OR THE ABRIDGMENT OF THE RIGHTS OF VOTERS WHO ARE MEMBERS OF SUCH CLASS.

S 34. VIOLATIONS. 1. A VIOLATION OF SECTION THIRTY-THREE OF THIS ARTICLE SHALL BE ESTABLISHED IF IT IS SHOWN THAT RACIALLY POLARIZED VOTING OCCURS IN ELECTIONS FOR MEMBERS OF THE LEGISLATIVE OR GOVERNING BODY OF THE POLITICAL SUBDIVISION OR IN ELECTIONS INCORPORATING OTHER ELECTORAL CHOICES BY THE VOTERS OF THE POLITICAL SUBDIVISION. ELECTIONS CONDUCTED PRIOR TO THE FILING OF AN ACTION PURSUANT TO SECTION THIRTY-THREE OF THIS ARTICLE SHALL BE DEEMED TO BE MORE PROBATIVE TO ESTABLISH THE EXISTENCE OF RACIALLY POLARIZED VOTING THAN ELECTIONS CONDUCTED AFTER THE FILING OF THE ACTION.

2. THE OCCURRENCE OF RACIALLY POLARIZED VOTING SHALL BE DETERMINED FROM EXAMINING RESULTS OF ELECTIONS IN WHICH AT LEAST ONE CANDIDATE IS A MEMBER OF A PROTECTED CLASS OR ELECTIONS INVOLVING BALLOT MEASURES, OR OTHER ELECTORAL CHOICES THAT AFFECT THE RIGHTS AND PRIVILEGES OF MEMBERS OF A PROTECTED CLASS. ONE CIRCUMSTANCE THAT MAY BE CONSIDERED IN DETERMINING A VIOLATION OF SECTION THIRTY-THREE OF THIS ARTICLE IS THE EXTENT TO WHICH CANDIDATES WHO ARE MEMBERS OF A PROTECTED CLASS AND WHO ARE PREFERRED BY VOTERS OF THE PROTECTED CLASS, AS DETERMINED BY AN ANALYSIS OF VOTING BEHAVIOR, HAVE BEEN ELECTED TO THE LEGISLATIVE OR GOVERNING BODY OF A POLITICAL SUBDIVISION THAT IS THE SUBJECT OF AN ACTION BASED ON SECTION THIRTY-THREE OF THIS ARTICLE. IN MULTISEAT AT-LARGE ELECTION

DISTRICTS, WHERE THE NUMBER OF CANDIDATES WHO ARE MEMBERS OF A PROTECTED CLASS IS FEWER THAN THE NUMBER OF SEATS AVAILABLE, THE RELATIVE GROUP-WIDE SUPPORT RECEIVED BY CANDIDATES FROM MEMBERS OF A PROTECTED CLASS SHALL BE THE BASIS FOR THE RACIAL POLARIZATION ANALYSIS.

3. THE FACT THAT MEMBERS OF A PROTECTED CLASS ARE NOT GEOGRAPHICALLY COMPACT OR CONCENTRATED SHALL NOT PRECLUDE A FINDING OF RACIALLY POLARIZED VOTING, OR A VIOLATION OF SECTION THIRTY-THREE OF THIS ARTICLE, BUT MAY BE A FACTOR IN DETERMINING AN APPROPRIATE REMEDY.

4. PROOF OF AN INTENT ON THE PART OF THE VOTERS OR ELECTED OFFICIALS TO DISCRIMINATE AGAINST A PROTECTED CLASS SHALL NOT BE REQUIRED.

5. OTHER FACTORS SUCH AS THE HISTORY OF DISCRIMINATION, THE USE OF ELECTORAL DEVICES OR OTHER VOTING PRACTICES OR PROCEDURES THAT MAY ENHANCE THE DILUTIVE EFFECTS OF AT-LARGE ELECTIONS, DENIAL OF ACCESS TO THOSE PROCESSES DETERMINING WHICH GROUPS OF CANDIDATES WILL RECEIVE FINANCIAL OR OTHER SUPPORT IN A GIVEN ELECTION, THE EXTENT TO WHICH MEMBERS OF A PROTECTED CLASS BEAR THE EFFECTS OF PAST DISCRIMINATION IN AREAS SUCH AS EDUCATION, EMPLOYMENT AND HEALTH, WHICH HINDER THEIR ABILITY TO PARTICIPATE EFFECTIVELY IN THE POLITICAL PROCESS, AND THE USE OF OVERT OR SUBTLE RACIAL APPEALS IN POLITICAL CAMPAIGNS ARE PROBATIVE, BUT NOT NECESSARY FACTORS TO ESTABLISH A VIOLATION OF SECTION THIRTY-THREE OF THIS ARTICLE.

S 35. REMEDY. UPON A FINDING OF A VIOLATION OF SECTION THIRTY-THREE OF THIS ARTICLE, THE SUPREME COURT SHALL IMPLEMENT APPROPRIATE REMEDIES, INCLUDING THE IMPOSITION OF DISTRICT-BASED ELECTIONS, THAT ARE TAILORED TO REMEDY THE VIOLATION.

S 36. RECOVERY OF COSTS. IN ANY ACTION TO ENFORCE SECTION THIRTY-THREE OF THIS ARTICLE, THE SUPREME COURT SHALL ALLOW THE PREVAILING PLAINTIFF PARTY, OTHER THAN THE STATE OR A POLITICAL SUBDIVISION THEREOF, REASONABLE ATTORNEY'S FEES, AND LITIGATION EXPENSES INCLUDING, BUT NOT LIMITED TO, EXPERT WITNESS FEES AND EXPENSES AS PART OF THE COSTS. PREVAILING DEFENDANT PARTIES SHALL NOT RECOVER ANY COSTS, UNLESS THE COURT FINDS THE ACTION TO BE FRIVOLOUS, UNREASONABLE OR WITHOUT FOUNDATION.

S 37. PURPOSE. THE PROVISIONS OF THIS ARTICLE ARE ENACTED TO IMPLEMENT THE GUARANTEES OF ARTICLE TWO OF THE STATE CONSTITUTION.

S 38. INDIVIDUAL CAUSE OF ACTION. ANY REGISTERED VOTER WHO IS A MEMBER OF A PROTECTED CLASS AND WHO RESIDES IN A POLITICAL SUBDIVISION WHERE A VIOLATION OF SECTION THIRTY-THREE OF THIS ARTICLE IS ALLEGED MAY COMMENCE A CAUSE OF ACTION IN THE SUPREME COURT FOR THE COUNTY IN WHICH THE POLITICAL SUBDIVISION IS LOCATED.

S 2. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.