

STATE OF NEW YORK

1046--B

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

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, establishing and maintaining a statewide database of voting and election data, 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

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

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

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[~~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 the governing body; (b) in which the candidates are required to reside within given areas of the political subdivision and all of the voters of the entire political subdivision elect each of the members to the

1 governing body; or (c) that combines at-large elections with district-
2 based elections, unless the only member of the governing body of a poli-
3 tical subdivision elected at-large holds exclusively executive responsi-
4 bilities. At-large method of election does not include ranked-choice
5 voting, cumulative voting, and limited voting.

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

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

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

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

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

33 7. "Federal voting rights act" means the federal Voting Rights Act of
34 1965, 52 U.S.C. § 10301 et seq.

35 8. The "civil rights bureau" means the civil rights bureau of the
36 office of the attorney general.

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

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

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

50 § 17-206. Rights of action. 1. Right of action against voter
51 suppression. (a) No voting qualification, prerequisite to voting, law,
52 ordinance, standard, practice, procedure, regulation, or policy shall be
53 enacted or implemented by any board of elections or political subdivi-
54 sion in a manner that results in a denial or abridgement of the right of
55 any member of a protected class to vote.

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

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

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

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

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

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

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

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

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

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

54 5. Remedies. (a) Upon a finding of a violation of any provision of
55 this section, the court shall implement appropriate remedies that are

1 tailored to remedy the violation. Remedies may include, but shall not be
2 limited to:

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

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

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

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

1 ish-speaking communities, to explain the districting or redistricting
2 process and to encourage public participation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

55 (e) If, pursuant to a process commenced by a NYVRA notification
56 letter, a political subdivision enacts or implements a remedy or the

1 civil rights bureau grants approval to a NYVRA proposal, a prospective
2 plaintiff who sent the NYVRA notification letter may, within thirty days
3 of the enactment or implementation of the remedy or approval of the
4 NYVRA proposal, demand reimbursement for the cost of the work product
5 generated to support the NYVRA notification letter. A prospective plain-
6 tiff shall make the demand in writing and shall substantiate the demand
7 with financial documentation, such as a detailed invoice for demography
8 services or for the analysis of voting patterns in the political subdivi-
9 sion. A political subdivision may request additional documentation if
10 the provided documentation is insufficient to corroborate the claimed
11 costs. A political subdivision shall reimburse a prospective plaintiff
12 for reasonable costs claimed, or in an amount to which the parties mutu-
13 ally agree. The cumulative amount of reimbursements to all prospective
14 plaintiffs, except for actions brought by the attorney general, shall
15 not exceed forty-three thousand dollars, as adjusted annually to the
16 consumer price index for all urban consumers, United States city aver-
17 age, as published by the United States department of labor. To the
18 extent a prospective plaintiff who sent the NYVRA notification letter
19 and a political subdivision are unable to come to a mutual agreement,
20 either party may file a declaratory judgment action to obtain a clarifi-
21 cation of rights.

22 (f) Notwithstanding the provisions of this subdivision, if the first
23 day for designating petitions for a political subdivision's next regular
24 election to select members of its governing board has begun or is sched-
25 uled to begin within thirty days, or if a political subdivision is sche-
26 duled to conduct any election within one hundred twenty days, a plain-
27 tiff alleging any violation of this title may commence a judicial action
28 against a political subdivision under this section, provided that the
29 relief sought by such a plaintiff includes preliminary relief for that
30 election. Prior to or concurrent with commencing such a judicial action,
31 any such plaintiff shall also submit a NYVRA notification letter to the
32 political subdivision. If a judicial action commenced under this
33 provision is withdrawn or dismissed for mootness because the political
34 subdivision has enacted or implemented a remedy or the civil rights
35 bureau has granted approval of a NYVRA proposal pursuant to a process
36 commenced by a NYVRA notification letter, any such plaintiff may only
37 demand reimbursement pursuant to this subdivision.

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

42 § 17-208. Assistance for language-minority groups. 1. Political subdivi-
43 sions required to provide language assistance. A board of elections or
44 a political subdivision that administers elections shall provide
45 language-related assistance in voting and elections to a language-minor-
46 ity group in a political subdivision if, based on data from the American
47 community survey, or data of comparable quality collected by a public
48 office, that:

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

53 (b) more than four thousand of the citizens of voting age of such
54 political subdivision are members of a single language-minority group
55 and speak English "less than very well" according to the American commu-
56 nity survey; or

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

2. Language assistance to be provided. When it is determined that a board of elections or political subdivision shall provide language assistance to a particular minority group, such board of elections or political subdivision shall provide voting materials in the covered language of an equal quality of the corresponding English language materials, including registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots. Whenever any such board of elections or political subdivision provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, in a covered political subdivision, it shall provide them in the language of the applicable minority group as well as in the English language, provided that where the language of the applicable minority group is oral or unwritten or in the case of some American Indians, if the predominant language is historically unwritten, the board of elections or political subdivision is only required to furnish oral instructions, assistance, or other information relating to registration and voting.

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

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

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

2. Preclearance commission structure and membership. (a) The commission shall consist of three members to be selected as set forth in this section and shall have and exercise the powers and duties set forth in 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 may only initiate a lookback review of covered
42 policies that were enacted or implemented by a covered jurisdiction on
43 or after the date on which this title takes effect and prior to the
44 effective date of this section.

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

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

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

4 § 17-214. Right of action against voter intimidation, deception or
5 obstruction. 1. (a) No person, whether acting under color of law or
6 otherwise, may engage in acts of intimidation, deception, or obstruction
7 that affects the right of voters to access the elective franchise.

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

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

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

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

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

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

51 § 17-216. Authority to issue subpoenas. In any action or investigation
52 to enforce any provision of this title, the attorney general shall have
53 the authority to take proof and determine relevant facts and to issue
54 subpoenas in accordance with the civil practice law and rules.

55 § 17-218. Expedited judicial proceedings and preliminary relief.
56 Because of the frequency of elections, the severe consequences and irre-

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

11 § 17-220. Attorneys' fees. In any action to enforce any provision of
12 this title, the court shall allow the prevailing plaintiff party, other
13 than the state or political subdivision thereof, a reasonable attorneys'
14 fee, litigation expenses including, but not limited to, expert witness
15 fees and expenses as part of the costs. A plaintiff will be deemed to
16 have prevailed when, as a result of litigation, the defendant party
17 yields much or all of the relief sought in the suit. Prevailing defend-
18 ant parties shall not recover any costs, unless the court finds the
19 action to be frivolous, unreasonable, or without foundation.

20 § 17-222. Applicability. The provisions of this title shall apply to
21 all elections for any elected office or electoral choice within the
22 state or any political subdivision. The provisions of this title shall
23 apply notwithstanding any other provision of law, including any other
24 state law or local law.

25 § 17-224. Severability. If any provision of this title or its applica-
26 tion to any person, political subdivision, or circumstance is held
27 invalid, the invalidity shall not affect other provisions or applica-
28 tions of this title which can be given effect without the invalid
29 provision or application, and to this end the provisions of this title
30 are severable.

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