

September 22, 2022

Sent via email

New York City Districting Commission
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Dear Chair Walcott and Commissioners:

As the New York City Districting Commission prepares to consider Preliminary Plan #1 for the post-2020 census redistricting cycle, the NAACP Legal Defense and Educational Fund, Inc. (“LDF”)¹ writes to urge the Commission to revisit this map and ensure that future proposed maps fully comply with the requirements of the recently enacted John R. Lewis Voting Rights Act of New York (“NYVRA”),² as well as the baseline, affirmative obligations of the U.S. Constitution and Section 2 of the federal Voting Rights Act of 1965 (“VRA”).³ With population changes in much of New York City since the last decennial Census—and, in particular, significant growth in the City’s Latino and Asian populations⁴—the Commission must ensure equality of representation and voting rights for *all* New York City residents and prevent dilution of the voting strength of the city’s racial minority voters. Accordingly, LDF encourages the Commission to modify its preliminary plan to ensure equitable opportunities for Black, Latino, and Asian New Yorkers to participate in the political process and elect candidates of their choice.

¹ Since its founding in 1940, LDF has used litigation, policy advocacy, public education, and community organizing strategies to achieve racial justice and equity in political participation, education, economic justice, and criminal justice. Throughout its history, LDF has worked to enforce and promote laws and policies that increase access to the electoral process and prohibit voter discrimination, intimidation, and suppression. LDF has been fully separate from the National Association for the Advancement of Colored People (“NAACP”) since 1957, though LDF was originally founded by the NAACP and shares its commitment to equal rights.

² N.Y.S. Leg., S.1046E, The John R. Lewis Voting Rights Act of N.Y. (2022)

³ 52 U.S.C. § 10301.

⁴ N.Y. City Districting Commission, *NYC Districting Commission 101: A Primer* 10 (July 6, 2022), <https://www1.nyc.gov/assets/districting/downloads/pdf/20220622-primer-deviation-guide-release.pdf>.

I. The Commission’s Maps Must Comply with Federal, State, and Constitutional Mandates.

A. The John R. Lewis Voting Rights Act of New York

New York made history in the 2022 session, passing a comprehensive, state-level voting rights act that does more than any existing federal or state law to protect and empower voters of color at all stages of the political participation process, including in redistricting. The NYVRA has the power to transform the electoral process throughout New York and to set an example for the nation. We expect that the Commission will join us in celebrating this critical victory for New Yorkers’ voting rights by ensuring that any redistricting plan it enacts for New York City complies with the letter and spirit of the NYVRA.

Governor Kathy Hochul signed the NYVRA—S.1046E (Myrie), A.6678E (Walker)—into law on June 20, 2022, advancing New York toward becoming the leading state champion in the fight to protect equal voting rights for all people and to preserve and strengthen our democracy. This landmark victory for voters of color comes at a critical time, amid a nationwide onslaught on the voting rights of people of color and during the post-2020 redistricting cycle. Importantly, several of the NYVRA’s protections are directly relevant to this Commission’s task. This national context, combined with the Act’s stated purpose to “[e]nsure 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,”⁵ should guide the Commission’s creation of maps that provide all voters—and especially racial minority voters—an equal opportunity to elect candidates of their choice. We also remind the Commission that the affirmative obligations set forth in the NYVRA—as well as those in the U.S. Constitution and Section 2 of the VRA—collectively embody fundamental principles of democracy, political representation, and equity, and must be respected.

1. NYVRA Protections against Racial Vote Dilution

Among its several significant provisions, the NYVRA enacts a framework for racial vote dilution claims that is clearer, more efficient, and more accessible to voters than the analogous framework under federal law. Section 2 of the

⁵ S.1046E, § 17-200(2).

NYVRA (Election Law § 17-206) removes the unnecessary prerequisite that voters of color challenging a dilutive election method or districting map demonstrate they are sufficiently numerous and geographically compact to constitute a majority in a hypothetical remedial district,⁶ as required under Section 2 of the federal Voting Rights Act.⁷ The federally required proposal of an alternative map poses a substantial obstacle for communities that may be smaller or geographically dispersed within a jurisdiction.⁸ By removing this requirement, the NYVRA lifts this heavy barrier and empowers New Yorkers of color to more efficiently and effectively identify and challenge discriminatory maps or election structures.

Additionally, the NYVRA explicitly allows coalition claims brought jointly by members of one or more protected classes.⁹ Successful coalition claims must demonstrate that the combined voting preferences of the multiple protected classes the members represent are polarized against the rest of the electorate. Where two or more protected classes are politically cohesive and polarized as such, the Commission should consider whether creating “coalition districts” may be appropriate. Rather than only one racial group forming the majority, as in majority-minority districts, the majority in a coalition district can comprise two or more different minority populations that share the same preferred candidate or electoral preferences and join to form a majority of the relevant population.¹⁰ Where appropriate, creating such districts and ensuring their efficacy with performance analysis can enable the Commission to comply with the NYVRA and assure an equal opportunity to participate in the political process and elect candidates of choice, even in situations when creating single-group majority districts may not be feasible.

Under the NYVRA, when a protected class’s preferred candidates or electoral choices are usually defeated as a result of a redistricting map or at-

⁶ N.Y. Civil Liberties Union & NAACP Legal Defense and Educational Fund, Inc., *John R. Lewis Voting Rights Act of New York* (Mar. 2022), <https://www.naacpldf.org/wp-content/uploads/NYVRA-White-Paper-NYCLU-LDF-March-2022.pdf>.

⁷ See *Thornburg v. Gingles*, 478 U.S. 30, 50 (1986).

⁸ Richard L. Engstrom, *The Supreme Court and Equipopulous Gerrymandering: A Remaining Obstacle in the Quest for Fair and Effective Representation*, 1976 ARIZ. ST. L.J. 277, 282 (1976) (recognizing that the difficulty with proving gerrymandering allegations lies, to some extent, in the inevitable vote dilution that results from residential dispersion or concentration of a group’s voting strength).

⁹ S.1046E, § 17-206(8).

¹⁰ See, e.g., *Huot v. City of Lowell*, No. 1:17-cv-10895-DLC (D. Mass. June 13, 2019), <http://lawyersforcivilrights.org/wp-content/uploads/2019/05/Huot-v.-Lowell-Consent-Decree.pdf>.

large system, vote dilution claims may be established either by proving the existence of racially polarized voting (“RPV”) or by showing that, under the “totality of the circumstances,” the protected class’s ability “to elect candidates of their choice or influence the outcome of elections is impaired.”¹¹ RPV means that there is a significant divergence in the electoral choices or candidate preferences of protected class voters, as compared to other voters. Court cases going back to the Supreme Court’s 1986 decision in *Thornburg v. Gingles* have made clear that RPV can create an unfair playing field for voters of color, especially in at-large election structures or when district lines are drawn unfairly. The NYVRA’s “totality of the circumstances” analysis closely mirrors the Senate Factors laid out by the Supreme Court in the context of congressional districting, with two additional considerations relating to the voter turnout of the protected class and the extent of their political campaign contributions.

By making it possible for plaintiffs to prove racial vote dilution through a demonstration of racially polarized voting in the political subdivision, the NYVRA builds directly on the success of the California Voting Rights Act (“CVRA”), as well as other state-level voting rights acts. This is also consistent with the Supreme Court’s recognition, in *Gingles* and other cases, that racially polarized voting is one of the “most important” factors in racial vote dilution claims.¹² As the Supreme Court has explained, the centrality of racially polarized voting to vote dilution claims stems from the fact that at-large election structures or district lines that are unfairly manipulated “can dilute the voting strength of politically cohesive minority group members.”¹³ Thus, the NYVRA recognizes the centrality of RPV to vote dilution cases by making it possible to prove a violation where RPV is accompanied by either an at-large structure or the usual defeat of protected class members’ preferred candidates in a districted or alternative method of election.¹⁴

With respect to the “totality of the circumstances,” this second way to prove a violation is also drawn from the federal VRA’s text and case law. This prong allows plaintiffs to introduce expert and fact evidence under a range of relevant factors identified by the Supreme Court, Congress, and other courts to demonstrate that the challenged map or method of election, in the words of the Supreme Court, “interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by [protected class voters] and white

¹¹ S.1046E, § 17-206(2)(b)(i)-(ii).

¹² *Gingles*, 478 U.S. at 48 n.15.

¹³ *Johnson v. De Grandy*, 512 U.S. 997, 1007 (1994).

¹⁴ *Gingles*, 478 U.S. at 47.

voters to elect their preferred representatives” or influence the outcome of elections.¹⁵ Importantly, however, while successful claims of voter dilution under federal law are required to meet the three preconditions set forth in the Supreme Court’s *Gingles* decision before advancing to a totality-of-the-circumstances analysis, the NYVRA does away with these unnecessary barriers to entry. Successful claims of voter dilution under the NYVRA need only show that, under the totality of the circumstances, minority voters “have less opportunity than the rest of the electorate to elect candidates of their choice or influence the outcome of elections,”¹⁶ and that their preferred candidates would usually be defeated.¹⁷ The Act thus substantially lowers the burden for meritorious voting rights claims.

California, Washington, and other states have successfully used statutory language similar to this component of the NYVRA to identify and mitigate racial vote dilution and increase the fairness of the political process for all voters at the local level. California’s experience in particular demonstrates the importance of incorporating these requirements into any new redistricting plan. For example, a 2014 study on the California Voting Rights Act’s impact by the Lawyers’ Committee for Civil Rights of the San Francisco Bay Area reports 16 voting rights cases brought under the CVRA between 2003 and 2014 where voters of color either won in court or reached favorable settlements.¹⁸ The Lawyers’ Committee report also identifies 140 California jurisdictions that voluntarily resolved potential voting rights violations after the CVRA was enacted—a significant indication of these common-sense provisions’ power.¹⁹

B. Federal Requirements under Section 2 of the Voting Rights Act and the Fourteenth Amendment to the U.S. Constitution

A. Complying with “One Person, One Vote”

New York City also has an affirmative obligation to develop an electoral structure for the City Council that adheres to the U.S. Constitution and Section 2 of the Voting Rights Act of 1965 (“Section 2”). The Fourteenth Amendment demands that states balance the populations of people among districts at *all*

¹⁵ *Id.*

¹⁶ S.1046E, § 17-206(1)(b).

¹⁷ *Id.* at § (2)(b)(ii).

¹⁸ Lawyers’ Comm. for Civil Rights of the S.F. Bay Area, *Voting Rights Barriers & Discrimination in Twenty-First Century California: 2000-2013* 6 (Mar. 2014), <https://lccrsf.org/wp-content/uploads/2014/03/REPORT-Voting-Rights-Barriers-Report-2014.pdf>.

¹⁹ *Id.* at 7.

levels of government, including the local level. Section 2 prohibits states and other bodies responsible for redistricting from drawing electoral lines with the intent or effect of diluting the voting strength of voters of color. Accordingly, this Commission must ensure that any maps it adopts comply with the “One Person, One Vote” principle of the Fourteenth Amendment’s Equal Protection Clause and Section 2’s nationwide prohibition on racial discrimination in voting.

The “One Person, One Vote” principle, a constitutional mandate for nearly 60 years, provides that redistricting schemes that weaken the voting power and representation of residents of one area of a jurisdiction as compared to others elsewhere in the same jurisdiction cannot withstand constitutional scrutiny.²⁰ In *Reynolds v. Sims*, the Supreme Court explained that “[d]iluting the weight of votes because of place of residence impairs basic constitutional rights under the Fourteenth Amendment just as much as invidious discriminations based upon factors such as race . . . or economic status”²¹

Maps may violate this principle if a representative body’s districts impermissibly deviate from population equality. As the U.S. Supreme Court held in *Board of Estimate of City of New York v. Morris*, the “One Person, One Vote” principle applies to all levels of government, including “local government apportionment.”²² Redistricting schemes that weaken the voting power and representation of residents of one part of the city as compared to others elsewhere in the same city thus raise constitutional concerns.

A. Complying with Section 2’s Prohibition Against Redistricting Maps with Discriminatory Effects

Section 2 of the Voting Rights Act of 1965 demands that voters of color have an equal opportunity “to participate in the political process and elect candidates of their choice” at all levels of government.²³ The Section 2 analysis is conducted in light of the local demographics, voting patterns, history, and other circumstances. To ensure federal compliance, the Commission must guarantee that the newly drawn maps do not dilute the voting power of racial and language minorities.

²⁰ *Reynolds*, 377 U.S. at 567-68.

²¹ *Id.* at 565-66.

²² *Board of Estimate of City of New York v. Morris*, 489 U.S. 688, 692 (1989).

²³ *N.A.A.C.P., Inc. v. City of Niagara Falls, N.Y.*, 65 F.3d 1002, 1006 (2d Cir. 1995) (citing *Gingles*, 478 U.S. at 43-44).

Among the potential stratagems by which voters of color’s electoral power can be illegally or unconstitutionally diluted through the redistricting process, two common ways are known as “packing” and “cracking.” Packing occurs where voters of color are grouped in a district where they represent an inappropriately *high* proportion of the population. Cracking occurs where voters of color are spread over multiple districts, all in which they represent inappropriately *low* proportions of the population. Both scenarios effectively deny voters of color an equal and equitable ability to elect candidates of their choice in any of those districts. Moreover, packing or cracking for intentionally discriminatory reasons violates the U.S. Constitution.²⁴

II. The Commission’s Preliminary Plan #1 Should be Revised to Protect the Voting Power of New Yorkers of Color.

A. Shortcomings of Preliminary Plan #1

This Commission’s proposed Preliminary Plan #1 falls short of ensuring equitable voting rights for racial minority voters in several significant ways. These shortcomings are particularly notable when Preliminary Plan #1 is contrasted with the map proposed by the Unity Map Coalition, which is also before this Commission for consideration.²⁵ Using the Unity Map as a guide, the Commission should revise its Preliminary Plan #1 to more fully protect the opportunity of Latino, Black, and Asian community members to elect candidates of choice, in coalitions where appropriate and in majority-minority districts where feasible. Several ways in which Preliminary Plan #1 can and should be improved to achieve these objectives are discussed below.

First, Preliminary Plan #1 unnecessarily breaks up communities of interest comprised of voters of color, most strikingly in Sunset Park. The preliminary plan would crack Sunset Park’s diverse residents between Council

²⁴ See, e.g., *Alabama Legislative Black Caucus v. Alabama*, 575 U.S. 254, 278 (2015).

²⁵ Formed three decades ago, the Unity Map Coalition is a group of three leading legal voting rights advocacy organizations representing diverse communities of color in New York City: the Asian American Legal Defense and Education Fund, the Center for Law and Social Justice at Medgar Evers College, and LatinoJustice PRLDEF. On July 18, 2022, the Coalition released a statement commenting on the Commission’s preliminary map as well as providing its own proposed map and recommendations to increase the strength of Black, Asian, and Latino communities and voters across the city. See LatinoJustice PRLDEF, *Proposed “Unity Map” for NY City Council is “Fair and Necessary”* (July 18, 2022), <https://www.latinojustice.org/en/news/proposed-unity-map-ny-city-council-fair-and-necessary>.

Districts (“CDs”) 38 and 43, likely ending CD 38’s existence as an effectively functioning coalition district. Council District 43 is also configured in a way that divides Bensonhurst, another longstanding community of interest in Brooklyn. And, in Queens, the preliminary plan needlessly divides Sunnyside from Woodside, putting parts of the existing CD 26 into redrawn CDs 22, 25, and 30.

Second, Preliminary Plan #1 misses several opportunities to create majority-Black districts where population numbers, federal and state law, and relevant factual circumstances warrant their creation. In addition, in several nominally majority-minority districts in the Commission’s preliminary plan, white voters are a substantial plurality and the largest individual racial group within the district, raising questions as to these districts’ practical ability to perform effectively for voters of color in elections.²⁶ These issues cast doubt on Preliminary Plan #1’s consistency with the objectives expressed in the NYVRA as well as the New York City Charter’s recognition of the need for any redistricting plan to “ensure[s] the fair and effective representation of the racial and language minority groups in New York city.”²⁷

Third, Preliminary Plan #1 appears to inappropriately prioritize maintaining three wholly contained districts on Staten Island, despite Richmond County’s slower pace of population growth as compared to neighboring boroughs.²⁸ These three Staten Island districts—CDs 49, 50, and 51—are severely underpopulated in the preliminary plan, with deviations that approach presumptively legal limits and far exceed those anywhere else in the plan. Each of these three districts has fewer than 165,500 residents. By contrast, the least populous district outside of Staten Island, CD 41 in Central Brooklyn, has 171,081 residents, nearly 6,000 more than CDs 49, 50, or 51. Unless revised by the Commission, this population imbalance will have the effect of inappropriately inflating the voting strength and political representation of

²⁶ This includes CDs 1 (49% white) and 30 (46% white). In all, 10 of Preliminary Plan #1’s majority-minority districts include voters who identify as white or “other” as a substantial plurality.

²⁷ See N.Y. City Charter § 52(1)(b).

²⁸ Although the New York City Charter encourages map-drawers to avoid crossing borough or county boundaries where avoidable, it also makes clear that it may sometimes be necessary to do so. See *Id.* § 52(3) (“If any district includes territory in two boroughs, then no other district may also include territory from the same two boroughs.”). Moreover, the charter specifies that its redistricting criteria “shall be applied and given priority in the order in which they are listed,” establishing that “not cross[ing] borough or county boundaries” is of lower priority than ensuring fair and effective representation of racial and language minority groups, respecting communities of interest, and maintaining compactness. *Id.* § 52(1)

Richmond County residents at the expense of all other New Yorkers. Compared to Staten Island residents, residents of all other New York City boroughs will have to contend with a greater number of fellow voters and constituents in their city council districts to make their voices heard—an inequitable outcome that can and should be prevented.

B. Support for the “Unity Map”

In contrast to the Commission’s Preliminary Plan #1, the map proposed by the Unity Map Coalition more equitably protects the voting rights of Latino, Black, and Asian community members, who together make up the majority of New York City’s population. We urge the Commission to consider and adopt a plan based more closely on the Unity Map. Several features of the Unity Map are highlighted below.

First, the Unity Map creates three additional districts where Black residents of voting age are a majority—CDs 9, 46, and 28—and a fourth district, CD 36, where Black residents are a majority in total population, and a near-majority in voting-age population. Given that nearly a quarter of all New Yorkers are Black, the Unity Map’s increased opportunities for Black voters to elect candidates of their choice is well justified. In addition, the Unity Map both creates an additional majority-minority district, and draws coalition districts that, based on overall demographics, appear likely to function effectively to provide voters of color an opportunity to elect candidates of choice.

Second, the Unity Map better respects communities of interest than does Preliminary Plan #1. It does not crack Sunset Park in CD 38, and it keeps Richmond Hill, South Richmond Hill, and South Ozone Park as whole as possible in CD 32, avoiding splits seen in the Commission’s Preliminary Plan. In addition, the Unity Map maintains CD 26 as a performing coalition district.

Finally, the Unity Map is the product of extensive community engagement and outreach that enables it to keep together existing communities of interest more effectively than the Commission’s preliminary plan. The Unity Map protects racial and language minority communities across the city and respects the ties that connect the members of those communities. In short, the Unity Map appears to represent the best available model for this Commission to protect the voting power of Latino, Black, and Asian communities. The Commission should learn from it and revise its preliminary plan accordingly.

* * *

Please feel free to contact Steven Lance at slance@naacpldf.org with any questions or to discuss these recommendations in more detail. We also encourage you to review the newly passed John R. Lewis Voting Rights Act of New York in its entirety, a copy of which we enclose for ease of reference.

Sincerely,

/s/ Steven Lance

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Enc.: S.1046E (2022)

STATE OF NEW YORK

1046--E

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, THOMAS -- 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 -- reported favorably from said committee and committed to the Committee on Rules -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- 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)".

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

LBD02423-24-2

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

4 VIOLATIONS OF THE ELECTIVE FRANCHISE

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

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

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

10 TITLE 2

11 JOHN R. LEWIS VOTING RIGHTS ACT OF NEW YORK

- 12 Section 17-200. Legislative purpose and statement of public policy.
- 13 17-202. Interpretation of laws related to the elective fran-
- 14 chise.
- 15 17-204. Definitions.
- 16 17-206. Prohibitions on voter disfranchisement.
- 17 17-208. Assistance for language-minority groups.
- 18 17-210. Preclearance.
- 19 17-212. Prohibition against voter intimidation, deception or
- 20 obstruction.
- 21 17-214. Authority to issue subpoenas.
- 22 17-216. Expedited judicial proceedings and preliminary relief.
- 23 17-218. Attorneys' fees.
- 24 17-220. Applicability.
- 25 17-222. Severability.

26 § 17-200. Legislative purpose and statement of public policy. In
27 recognition of the protections for the right to vote provided by the
28 constitution of the state of New York, which substantially exceed the
29 protections for the right to vote provided by the constitution of the
30 United States, and in conjunction with the constitutional guarantees of
31 equal protection, freedom of expression, and freedom of association
32 under the law and against the denial or abridgement of the voting rights
33 of members of a race, color, or language-minority group, it is the
34 public policy of the state of New York to:

- 35 1. Encourage participation in the elective franchise by all eligible
- 36 voters to the maximum extent; and
- 37 2. Ensure that eligible voters who are members of racial, color, and
- 38 language-minority groups shall have an equal opportunity to participate
- 39 in the political processes of the state of New York, and especially to
- 40 exercise the elective franchise.

41 § 17-202. Interpretation of laws related to the elective franchise.
42 In further recognition of the protections for the right to vote provided
43 by the constitution of the state of New York, all statutes, rules and
44 regulations, and local laws or ordinances related to the elective fran-
45 chise shall be construed liberally in favor of (a) protecting the right
46 of voters to have their ballot cast and counted; (b) ensuring that
47 eligible voters are not impaired in registering to vote, and (c) ensur-
48 ing voters of race, color, and language-minority groups have equitable
49 access to fully participate in the electoral process in registering to
50 vote and voting. The authority to prescribe or maintain voting or
51 elections policies and practices cannot be so exercised as to unneces-
52 sarily deny or abridge the right to vote. Policies and practices that

1 burden the right to vote must be narrowly tailored to promote a compel-
2 ling policy justification that must be supported by substantial
3 evidence.

4 § 17-204. Definitions. For the purposes of this title:

5 1. "At-large" method of election means a method of electing members to
6 the governing body of a political subdivision: (a) in which all of the
7 voters of the entire political subdivision elect each of the members to
8 the governing body; (b) in which the candidates are required to reside
9 within given areas of the political subdivision and all of the voters of
10 the entire political subdivision elect each of the members to the
11 governing body; or (c) that combines at-large elections with district-
12 based elections, unless the only member of the governing body of a poli-
13 tical subdivision elected at-large holds exclusively executive responsi-
14 bilities. For the purposes of this title, at-large method of election
15 does not include ranked-choice voting, cumulative voting, and limited
16 voting.

17 2. "District-based" method of election means a method of electing
18 members to the governing body of a political subdivision using a
19 districting or redistricting plan in which each member of the governing
20 body resides within a district or ward that is a divisible part of the
21 political subdivision and is elected only by voters residing within that
22 district or ward, except for a member of the governing body that holds
23 exclusively executive responsibilities.

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

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

32 5. "Protected class" means a class of eligible voters who are members
33 of a race, color, or language-minority group.

34 5-a. "Language minorities" or "language-minority group" means persons
35 who are American Indian, Asian American, Alaskan Natives or of Spanish
36 heritage.

37 6. "Racially polarized voting" means voting in which there is a diver-
38 gence in the candidate, political preferences, or electoral choice of
39 members in a protected class from the candidates, or electoral choice of
40 the rest of the electorate.

41 7. "Federal voting rights act" means the federal Voting Rights Act of
42 1965, 52 U.S.C. § 10301 et seq., as amended.

43 8. The "civil rights bureau" means the civil rights bureau of the
44 office of the attorney general.

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

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

55 § 17-206. Prohibitions on voter disenfranchisement. 1. Prohibition
56 against voter suppression. (a) No voting qualification, prerequisite to

1 voting, law, ordinance, standard, practice, procedure, regulation, or
2 policy shall be enacted or implemented by any board of elections or
3 political subdivision in a manner that results in a denial or abridge-
4 ment of the right of members of a protected class to vote.

5 (b) A violation of paragraph (a) of this subdivision shall be estab-
6 lished upon a showing that, based on the totality of the circumstances,
7 members of a protected class have less opportunity than the rest of the
8 electorate to elect candidates of their choice or influence the outcome
9 of elections.

10 2. Prohibition against vote dilution. (a) No board of elections or
11 political subdivision shall use any method of election, having the
12 effect of impairing the ability of members of a protected class to elect
13 candidates of their choice or influence the outcome of elections, as a
14 result of vote dilution.

15 (b) A violation of paragraph (a) of this subdivision shall be estab-
16 lished upon a showing that a political subdivision:

17 (i) used an at-large method of election and either: (A) voting
18 patterns of members of the protected class within the political subdivi-
19 sion are racially polarized; or (B) under the totality of the circum-
20 stances, the ability of members of the protected class to elect candi-
21 dates of their choice or influence the outcome of elections is impaired;
22 or

23 (ii) used a district-based or alternative method of election and that
24 candidates or electoral choices preferred by members of the protected
25 class would usually be defeated, and either: (A) voting patterns of
26 members of the protected class within the political subdivision are
27 racially polarized; or (B) under the totality of the circumstances, the
28 ability of members of the protected class to elect candidates of their
29 choice or influence the outcome of elections is impaired; or

30 (c) For the purposes of demonstrating that a violation of paragraph
31 (a) of this subdivision has occurred, evidence shall be weighed and
32 considered as follows: (i) elections conducted prior to the filing of an
33 action pursuant to this subdivision are more probative than elections
34 conducted after the filing of the action; (ii) evidence concerning
35 elections for members of the governing body of the political subdivision
36 are more probative than evidence concerning other elections; (iii)
37 statistical evidence is more probative than non-statistical evidence;
38 (iv) where there is evidence that more than one protected class of
39 eligible voters are politically cohesive in the political subdivision,
40 members of each of those protected classes may be combined; (v) evidence
41 concerning the intent on the part of the voters, elected officials, or
42 the political subdivision to discriminate against a protected class is
43 not required; (vi) evidence that voting patterns and election outcomes
44 could be explained by factors other than racially polarized voting,
45 including but not limited to partisanship, shall not be considered;
46 (vii) evidence that sub-groups within a protected class have different
47 voting patterns shall not be considered; (viii) evidence concerning
48 whether members of a protected class are geographically compact or
49 concentrated shall not be considered, but may be a factor in determining
50 an appropriate remedy; and (ix) evidence concerning projected changes in
51 population or demographics shall not be considered, but may be a factor,
52 in determining an appropriate remedy.

53 3. In determining whether, under the totality of the circumstances, a
54 violation of subdivision one or two of this section has occurred,
55 factors that may be considered shall include, but not be limited to: (a)
56 the history of discrimination in or affecting the political subdivision;

1 (b) the extent to which members of the protected class have been elected
2 to office in the political subdivision; (c) the use of any voting quali-
3 fication, prerequisite to voting, law, ordinance, standard, practice,
4 procedure, regulation, or policy that may enhance the dilutive effects
5 of the election scheme; (d) denying eligible voters or candidates who
6 are members of the protected class to processes determining which groups
7 of candidates receive access to the ballot, financial support, or other
8 support in a given election; (e) the extent to which members of the
9 protected class contribute to political campaigns at lower rates; (f)
10 the extent to which members of a protected class in the state or poli-
11 tical subdivision vote at lower rates than other members of the elector-
12 ate; (g) the extent to which members of the protected class are disad-
13 vantaged in areas including but not limited to education, employment,
14 health, criminal justice, housing, land use, or environmental
15 protection; (h) the extent to which members of the protected class are
16 disadvantaged in other areas which may hinder their ability to partic-
17 ipate effectively in the political process; (i) the use of overt or
18 subtle racial appeals in political campaigns; (j) a significant lack of
19 responsiveness on the part of elected officials to the particularized
20 needs of members of the protected class; and (k) whether the political
21 subdivision has a compelling policy justification that is substantiated
22 and supported by evidence for adopting or maintaining the method of
23 election or the voting qualification, prerequisite to voting, law, ordi-
24 nance, standard, practice, procedure, regulation, or policy. Nothing in
25 this subdivision shall preclude any additional factors from being
26 considered, nor shall any specified number of factors be required in
27 establishing that such a violation has occurred.

28 4. Standing. Any aggrieved person, organization whose membership
29 includes aggrieved persons or members of a protected class, organization
30 whose mission, in whole or in part, is to ensure voting access and such
31 mission would be hindered by a violation of this section, or the attor-
32 ney general may file an action against a political subdivision pursuant
33 to this section in the supreme court of the county in which the poli-
34 tical subdivision is located.

35 5. Remedies. (a) Upon a finding of a violation of any provision of
36 this section, the court shall implement appropriate remedies to ensure
37 that voters of race, color, and language-minority groups have equitable
38 access to fully participate in the electoral process, which may include,
39 but shall not be limited to:

- 40 (i) a district-based method of election;
- 41 (ii) an alternative method of election;
- 42 (iii) new or revised districting or redistricting plans;
- 43 (iv) elimination of staggered elections so that all members of the
44 governing body are elected on the same date;
- 45 (v) reasonably increasing the size of the governing body;
- 46 (vi) moving the dates of regular elections to be concurrent with the
47 primary or general election dates for state, county, or city office as
48 established in section eight of article three or section eight of arti-
49 cle thirteen of the constitution, unless the budget in such political
50 subdivision is subject to direct voter approval pursuant to part two of
51 article five or article forty-one of the education law;
- 52 (vii) transferring authority for conducting the political subdivi-
53 sion's elections to the board of elections for the county in which the
54 political subdivision is located;
- 55 (viii) additional voting hours or days;
- 56 (ix) additional polling locations;

1 (x) additional means of voting such as voting by mail;
2 (xi) ordering of special elections;
3 (xii) requiring expanded opportunities for voter registration;
4 (xiii) requiring additional voter education;
5 (xiv) modifying the election calendar;
6 (xv) the restoration or addition of persons to registration lists; or
7 (xvi) retaining jurisdiction for such period of time on a given matter
8 as the court may deem appropriate, during which no redistricting plan
9 shall be enforced unless and until the court finds that such plan does
10 not have the purpose of diluting the right to vote on the basis of
11 protected class membership, or in contravention of the voting guarantees
12 set forth in this title, except that the court's finding shall not bar a
13 subsequent action to enjoin enforcement of such redistricting plan.

14 (b) The court shall consider proposed remedies by any parties and
15 interested non-parties, but shall not provide deference or priority to a
16 proposed remedy offered by the political subdivision. The court shall
17 have the power to require a political subdivision to implement remedies
18 that are inconsistent with any other provision of law where such incon-
19 sistent provision of law would preclude the court from ordering an
20 otherwise appropriate remedy in such matter.

21 6. Procedures for implementing new or revised districting or redis-
22 tricting plans. The governing body of a political subdivision with the
23 authority under this title and all applicable state and local laws to
24 enact and implement a new method of election that would replace the
25 political subdivision's at-large method of election with a district-
26 based or alternative method of election, or enact and implement a new
27 districting or redistricting plan, shall undertake each of the steps
28 enumerated in this subdivision, if proposed subsequent to receipt of a
29 NYVRA notification letter, as defined in subdivision seven of this
30 section, or the filing of a claim pursuant to this title or the federal
31 voting rights act.

32 (a) Before drawing a draft districting or redistricting plan or plans
33 of the proposed boundaries of the districts, the political subdivision
34 shall hold at least two public hearings over a period of no more than
35 thirty days, at which the public is invited to provide input regarding
36 the composition of the districts. Before these hearings, the political
37 subdivision may conduct outreach to the public, including to non-Engl-
38 ish-speaking communities, to explain the districting or redistricting
39 process and to encourage public participation.

40 (b) After all draft districting or redistricting plans are drawn, the
41 political subdivision shall publish and make available for release at
42 least one draft districting or redistricting plan and, if members of the
43 governing body of the political subdivision would be elected in their
44 districts at different times to provide for staggered terms of office,
45 the potential sequence of such elections. The political subdivision
46 shall also hold at least two additional hearings over a period of no
47 more than forty-five days, at which the public shall be invited to
48 provide input regarding the content of the draft districting or redis-
49 tricting plan or plans and the proposed sequence of elections, if appli-
50 cable. The draft districting or redistricting plan or plans shall be
51 published at least seven days before consideration at a hearing. If the
52 draft districting or redistricting plan or plans are revised at or
53 following a hearing, the revised versions shall be published and made
54 available to the public for at least seven days before being adopted.

55 (c) In determining the final sequence of the district elections
56 conducted in a political subdivision in which members of the governing

1 body will be elected at different times to provide for staggered terms
2 of office, the governing body shall give special consideration to the
3 purposes of this title, and it shall take into account the preferences
4 expressed by members of the districts.

5 7. Notification requirement and safe harbor for judicial actions.
6 Before commencing a judicial action against a political subdivision
7 under this section, a prospective plaintiff shall send by certified mail
8 a written notice to the clerk of the political subdivision, or, if the
9 political subdivision does not have a clerk, the governing body of the
10 political subdivision, against which the action would be brought,
11 asserting that the political subdivision may be in violation of this
12 title. This written notice shall be referred to as a "NYVRA notification
13 letter" in this title. For actions against a school district or any
14 other political subdivision that holds elections governed by the educa-
15 tion law, the prospective plaintiff shall also send by certified mail a
16 copy of the NYVRA notification letter to the commissioner of education.

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

20 (b) Before receiving a NYVRA notification letter, or within fifty days
21 of mailing of a NYVRA notification letter, the governing body of a poli-
22 tical subdivision may pass a resolution affirming: (i) the political
23 subdivision's intention to enact and implement a remedy for a potential
24 violation of this title; (ii) specific steps the political subdivision
25 will undertake to facilitate approval and implementation of such a reme-
26 dy; and (iii) a schedule for enacting and implementing such a remedy.
27 Such a resolution shall be referred to as a "NYVRA resolution" in this
28 title. If a political subdivision passes a NYVRA resolution, such poli-
29 tical subdivision shall have ninety days after such passage to enact and
30 implement such remedy, during which a prospective plaintiff shall not
31 commence an action to enforce this section against the political subdi-
32 vision. For actions against a school district, the commissioner of
33 education may order the enactment of a NYVRA resolution pursuant to the
34 commissioner's authority under section three hundred five of the educa-
35 tion law.

36 (c) If the governing body of a political subdivision lacks the author-
37 ity under this title or applicable state law or local laws to enact or
38 implement a remedy identified in a NYVRA resolution, or fails to enact
39 or implement a remedy identified in a NYVRA resolution, within ninety
40 days after the passage of the NYVRA resolution, or if the political
41 subdivision is a covered entity as defined under section 17-210 of this
42 title, the governing body of the political subdivision shall undertake
43 the steps enumerated in the following provisions:

44 (i) The governing body of the political subdivision may approve a
45 proposed remedy that complies with this title and submit such a proposed
46 remedy to the civil rights bureau. Such a submission shall be referred
47 to as a "NYVRA proposal" in this title.

48 (ii) Prior to passing a NYVRA proposal, the political subdivision
49 shall hold at least one public hearing, at which the public shall be
50 invited to provide input regarding the NYVRA proposal. Before this
51 hearing, the political subdivision may conduct outreach to the public,
52 including to non-English-speaking communities, to encourage public
53 participation.

54 (iii) Within forty-five days of receipt of a NYVRA proposal, the civil
55 rights bureau shall grant or deny approval of the NYVRA proposal.

1 (iv) The civil rights bureau shall only grant approval to the NYVRA
2 proposal if it concludes that: (A) the political subdivision may be in
3 violation of this title; (B) the NYVRA proposal would remedy any poten-
4 tial violation of this title; (C) the NYVRA proposal is unlikely to
5 violate the constitution or any federal law; (D) the NYVRA proposal
6 would not diminish the ability of protected class members to participate
7 in the political process and to elect their preferred candidates to
8 office; and (E) implementation of the NYVRA proposal is feasible.

9 (v) If the civil rights bureau grants approval, the NYVRA proposal
10 shall be enacted and implemented immediately, notwithstanding any other
11 provision of law, including any other state or local law.

12 (vi) If the political subdivision is a covered entity as defined under
13 section 17-210 of this title, the political subdivision shall not be
14 required to obtain preclearance for the NYVRA proposal pursuant to such
15 section upon approval of the NYVRA proposal by the civil rights bureau.

16 (vii) If the civil rights bureau denies approval, the NYVRA proposal
17 shall not be enacted or implemented. The civil rights bureau shall
18 explain the basis for such denial and may, in its discretion, make
19 recommendations for an alternative remedy for which it would grant
20 approval.

21 (viii) If the civil rights bureau does not respond, the NYVRA proposal
22 shall not be enacted or implemented.

23 (d) A political subdivision that has passed a NYVRA resolution may
24 enter into an agreement with the prospective plaintiff providing that
25 such prospective plaintiff shall not commence an action pursuant to this
26 section against the political subdivision for an additional ninety days.
27 Such agreement shall include a requirement that either the political
28 subdivision shall enact and implement a remedy that complies with this
29 title or the political subdivision shall pass a NYVRA proposal and
30 submit it to the civil rights bureau.

31 (e) If, pursuant to a process commenced by a NYVRA notification
32 letter, a political subdivision enacts or implements a remedy or the
33 civil rights bureau grants approval to a NYVRA proposal, a prospective
34 plaintiff who sent the NYVRA notification letter may, within thirty days
35 of the enactment or implementation of the remedy or approval of the
36 NYVRA proposal, demand reimbursement for the cost of the work product
37 generated to support the NYVRA notification letter. A prospective plain-
38 tiff shall make the demand in writing and shall substantiate the demand
39 with financial documentation, such as a detailed invoice for demography
40 services or for the analysis of voting patterns in the political subdivi-
41 vision. A political subdivision may request additional documentation if
42 the provided documentation is insufficient to corroborate the claimed
43 costs. A political subdivision shall reimburse a prospective plaintiff
44 for reasonable costs claimed, or in an amount to which the parties mutu-
45 ally agree. The cumulative amount of reimbursements to all prospective
46 plaintiffs, except for actions brought by the attorney general, shall
47 not exceed forty-three thousand dollars, as adjusted annually to the
48 consumer price index for all urban consumers, United States city aver-
49 age, as published by the United States department of labor. To the
50 extent a prospective plaintiff who sent the NYVRA notification letter
51 and a political subdivision are unable to come to a mutual agreement,
52 either party may file a declaratory judgment action to obtain a clarifi-
53 cation of rights.

54 (f) Notwithstanding the provisions of this subdivision, in the event
55 that the first day for designating petitions for a political subdivi-
56 sion's next regular election to select members of its governing board

1 has begun or is scheduled to begin within thirty days, or in the event
2 that a political subdivision is scheduled to conduct any election within
3 one hundred twenty days, a plaintiff alleging any violation of this
4 title may commence a judicial action against a political subdivision
5 under this section, provided that the relief sought by such a plaintiff
6 includes preliminary relief for that election. Prior to or concurrent
7 with commencing such a judicial action, any such plaintiff shall also
8 submit a NYVRA notification letter to the political subdivision. In the
9 event that a judicial action commenced under this provision is withdrawn
10 or dismissed for mootness because the political subdivision has enacted
11 or implemented a remedy or the civil rights bureau has granted approval
12 of a NYVRA proposal pursuant to a process commenced by a NYVRA notifica-
13 tion letter, any such plaintiff may only demand reimbursement pursuant
14 to this subdivision.

15 8. Coalition claims permitted. Members of different protected classes
16 may file an action jointly pursuant to this title in the event that they
17 demonstrate that the combined voting preferences of the multiple
18 protected classes are polarized against the rest of the electorate.

19 § 17-208. Assistance for language-minority groups. 1. Political subdi-
20 visions required to provide language assistance. A board of elections or
21 a political subdivision that administers elections shall provide
22 language-related assistance in voting and elections to a language-minor-
23 ity group in a political subdivision if, based on data from the American
24 community survey, or data of comparable quality collected by a public
25 office, that:

26 (a) more than two percent, but in no instance fewer than three hundred
27 individuals, of the citizens of voting age of a political subdivision
28 are members of a single language-minority group and are limited English
29 proficient.

30 (b) more than four thousand of the citizens of voting age of such
31 political subdivision are members of a single language-minority group
32 and are limited English proficient.

33 (c) in the case of a political subdivision that contains all or any
34 part of a Native American reservation, more than two percent of the
35 Native American citizens of voting age within the Native American reser-
36 vation are members of a single language-minority group and are limited
37 English proficient. For the purposes of this paragraph, "Native Ameri-
38 can" is defined to include any persons recognized by the United States
39 census bureau or New York as "American Indian" or "Alaska Native".

40 2. Language assistance to be provided. A board of elections or poli-
41 tical subdivision required to provide language assistance to a partic-
42 ular language-minority group pursuant to this section shall provide
43 voting materials in the covered language of an equal quality of the
44 corresponding English language materials, including registration or
45 voting notices, forms, instructions, assistance, or other materials or
46 information relating to the electoral process, including ballots. Any
47 registration or voting notices, forms, instructions, assistance, or
48 other materials or information relating to the electoral process,
49 including ballots, in a covered political subdivision, shall be provided
50 in the language of the applicable language-minority group as well as in
51 the English language, provided that where the language of the applicable
52 language-minority group is historically oral or unwritten, the board of
53 elections or political subdivision shall only be required to furnish
54 oral instructions, assistance, or other information relating to regis-
55 tration and voting.

1 3. Action for declaratory judgment for English-only voting materials.
2 A board of elections or political subdivision subject to the require-
3 ments of this section which seeks to provide English-only materials may
4 file an action against the state for a declaratory judgment permitting
5 such provision. The court shall grant the requested relief if it finds
6 that the determination was unreasonable or an abuse of discretion.

7 4. Standing. Any aggrieved persons, organization whose membership
8 includes aggrieved persons or members of a protected class, organization
9 whose mission, in whole or in part, is to ensure voting access and such
10 mission would be hindered by a violation of this section, or the attor-
11 ney general may file an action pursuant to this section in the supreme
12 court of the county in which the alleged violation of this section
13 occurred.

14 5. This section shall not apply to special districts as defined by
15 section one hundred two of the real property tax law.

16 § 17-210. Preclearance. 1. Preclearance. To ensure that the right to
17 vote is not denied or abridged on account of race, color, or language-
18 minority group, the enactment or implementation of a covered policy by a
19 covered entity, as defined in subdivisions two and three of this section
20 respectively, shall be subject to preclearance by the civil rights
21 bureau or by a designated court as set forth in this section.

22 2. Covered policies. A "covered policy" shall include any new or modi-
23 fied voting qualification, prerequisite to voting, law, ordinance, stan-
24 dard, practice, procedure, regulation, or policy concerning any of the
25 following topics:

- 26 (a) Method of election;
27 (b) Form of government;
28 (c) Annexation of a political subdivision;
29 (d) Incorporation of a political subdivision;
30 (e) Consolidation or division of political subdivisions;
31 (f) Removal of voters from enrollment lists or other list maintenance
32 activities;
33 (g) Number, location, or hours of any election day or early voting
34 poll site;
35 (h) Dates of elections and the election calendar, except with respect
36 to special elections;
37 (i) Registration of voters;
38 (j) Assignment of election districts to election day or early voting
39 poll sites;
40 (k) Assistance offered to members of a language-minority group; and
41 (l) Any additional topics designated by the civil rights bureau pursu-
42 ant to a rule promulgated under the state administrative procedure act,
43 upon a determination by the civil rights bureau that a new or modified
44 voting qualification, prerequisite to voting, law, ordinance, standard,
45 practice, procedure, regulation, or policy concerning such topics may
46 have the effect of denying or abridging the right to vote on account of
47 race, color, or language-minority group.

48 3. Covered entity. A "covered entity" shall include: (a) any political
49 subdivision which, within the previous twenty-five years, has become
50 subject to a court order or government enforcement action based upon a
51 finding of any violation of this title, the federal voting rights act,
52 the fifteenth amendment to the United States constitution, or a voting-
53 related violation of the fourteenth amendment to the United States
54 constitution; (b) any political subdivision which, within the previous
55 twenty-five years, has become subject to at least three court orders or
56 government enforcement actions based upon a finding of any violation of

1 any state or federal civil rights law or the fourteenth amendment to the
2 United States constitution concerning discrimination against members of
3 a protected class; (c) any county in which, based on data provided by
4 the division of criminal justice services, the combined misdemeanor and
5 felony arrest rate of members of any protected class consisting of at
6 least ten thousand citizens of voting age or whose members comprise at
7 least ten percent of the citizen voting age population of the county,
8 exceeds the proportion that the protected class constitutes of the citi-
9 zen voting age population of the county as a whole by at least twenty
10 percent at any point within the previous ten years; or (d) any political
11 subdivision in which, based on data made available by the United States
12 census, the dissimilarity index of any protected class consisting of at
13 least twenty-five thousand citizens of voting age or whose members
14 comprise at least ten percent of the citizen voting age population of
15 the political subdivision, is in excess of fifty with respect to non-
16 Hispanic white citizens of voting age within the political subdivision
17 at any point within the previous ten years. If any covered entity is a
18 political subdivision in which a board of elections has been estab-
19 lished, that board of elections shall also be deemed a covered entity.
20 If any political subdivision in which a board of elections has been
21 established contains a covered entity fully within its borders, that
22 political subdivision and that board of elections shall both be deemed a
23 covered entity.

24 4. Preclearance by the attorney general. A covered entity may obtain
25 preclearance for a covered policy from the civil rights bureau pursuant
26 to the following process:

27 (a) The covered entity shall submit the covered policy in writing to
28 the civil rights bureau. If the covered entity is a county or city board
29 of elections, it shall contemporaneously provide a copy of the covered
30 policy to the state board of elections.

31 (b) Upon submission of a covered policy for preclearance, as soon as
32 practicable but no later than within ten days, the civil rights bureau
33 shall publish the submission on its website.

34 (c) After publication of a submission, there shall be an opportunity
35 for members of the public to comment on the submission to the civil
36 rights bureau within the time periods set forth below. To facilitate
37 public comment, the civil rights bureau shall provide an opportunity for
38 members of the public to sign up to receive notifications or alerts
39 regarding submission of a covered policy for preclearance.

40 (d) Upon submission of a covered policy for preclearance, the civil
41 rights bureau shall review the covered policy, and any public comment,
42 and shall, within the time periods set forth below, provide a report and
43 determination as to whether, under this title, preclearance should be
44 granted or denied to the covered policy. Such time period shall run
45 concurrent with the time periods for public comment. The civil rights
46 bureau shall not make such determination until the period for public
47 comment is closed. The civil rights bureau may request additional infor-
48 mation from a covered entity at any time during its review to aid in
49 developing its report and recommendation. The failure to timely comply
50 with reasonable requests for more information may be grounds for the
51 denial of preclearance. The civil rights bureau's reports and determi-
52 nation shall be posted publicly on its website.

53 (e) In any determination as to preclearance, the civil rights bureau
54 shall identify in writing whether it is approving or rejecting the
55 covered policy; provided, however, that the civil rights bureau may, in
56 its discretion, designate preclearance as "preliminary" in which case

1 the civil rights bureau may deny preclearance within sixty days follow-
2 ing the receipt of submission of the covered policy.

3 (i) The civil rights bureau shall grant preclearance only if it deter-
4 mines that the covered policy will not diminish the ability of protected
5 class members to participate in the political process and to elect their
6 preferred candidates to office. If the civil rights bureau grants
7 preclearance, the covered entity may enact or implement the covered
8 policy immediately.

9 (ii) If the civil rights bureau denies preclearance, the civil rights
10 bureau shall interpose objections explaining its basis and the covered
11 policy shall not be enacted or implemented.

12 (iii) If the civil rights bureau fails to respond within the required
13 time frame as established in this section, the covered policy shall be
14 deemed precleared and the covered entity may enact or implement such
15 covered policy.

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

19 (i) For any covered policy concerning the designation or selection of
20 poll sites or the assignment of election districts to poll sites, wheth-
21 er for election day or early voting, the period for public comment shall
22 be five business days. The civil rights bureau shall review the covered
23 policy, including any public comment, and make a determination to deny
24 or grant preclearance for such covered policy within fifteen days
25 following the receipt of such covered policy.

26 (ii) Upon a showing of good cause, the civil rights bureau may receive
27 an extension of up to twenty days to make a determination pursuant to
28 this paragraph.

29 (iii) For any other covered policy, the period for public comment
30 shall be ten business days. The civil rights bureau shall review the
31 covered policy, including any public comment, within fifty-five days
32 following the receipt of such covered policy and make a determination to
33 deny or grant preclearance for such covered policy. The civil rights
34 bureau may invoke up to two extensions of ninety days each.

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

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

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

55 (a) The covered entity shall submit the covered policy in writing to
56 the following designated court in the judicial department within which

1 the covered entity is located: (i) first judicial department: New York
2 county; (ii) second judicial department: Westchester county; (iii)
3 third judicial department: Albany county; and (iv) fourth judicial
4 department: Erie county. If the covered entity is a county or city
5 board of elections, it shall contemporaneously provide a copy of the
6 covered policy to the state board of elections.

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

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

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

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

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

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

32 7. Rules and regulations. The civil rights bureau may promulgate such
33 rules and regulations as are necessary to effectuate the purposes of
34 this section.

35 § 17-212. Prohibition against voter intimidation, deception or
36 obstruction. 1. (a) No person, whether acting under color of law or
37 otherwise, may engage in acts of intimidation, deception, or obstruction
38 that affects the right of voters to access the elective franchise.

39 (b) A violation of paragraph (a) this subdivision shall be established
40 if:

41 (i) a person uses or threatens to use any force, violence, restraint,
42 abduction or duress, or inflicts or threatens to inflict any injury,
43 damage, harm or loss, or in any other manner practices intimidation that
44 causes or will reasonably have the effect of causing any person to vote
45 or refrain from voting in general or for or against any particular
46 person or for or against any proposition submitted to voters at such
47 election; to place or refrain from placing their name upon a registry of
48 voters; or to request or refrain from requesting an absentee ballot; or

49 (ii) a person knowingly uses any deceptive or fraudulent device,
50 contrivance or communication, that impedes, prevents or otherwise inter-
51 feres with the free exercise of the elective franchise by any person, or
52 that causes or will reasonably have the effect of causing any person to
53 vote or refrain from voting in general or for or against any particular
54 person or for or against any proposition submitted to voters at such
55 election; to place or refrain from placing their name upon a registry of
56 voters; or to request or refrain from requesting an absentee ballot; or

1 (iii) a person obstructs, impedes, or otherwise interferes with access
2 to any polling place or elections office, or obstructs, impedes, or
3 otherwise interferes with any voter in any manner that causes or will
4 reasonably have the effect of causing any delay in voting or the voting
5 process, including the canvassing and tabulation of ballots.

6 2. Standing. Any aggrieved persons, organization whose membership
7 includes aggrieved persons or members of a protected class, organization
8 whose mission, in whole or in part, is to ensure voting access and such
9 mission would be hindered by a violation of this section, or the attor-
10 ney general may file an action pursuant to this section in the supreme
11 court of the county in which the alleged violation of this section
12 occurred.

13 3. Remedies. Upon a finding of a violation of any provision of this
14 section, the court shall implement appropriate remedies that are
15 tailored to remedy the violation, including but not limited to providing
16 for additional time to cast a ballot that may be counted in the election
17 at issue. Any party who shall violate any of the provisions of the
18 foregoing section or who shall aid the violation of any of said
19 provisions shall be liable to any prevailing plaintiff party for
20 damages, including nominal damages for any violation, and compensatory
21 or punitive damages for any intentional violation.

22 § 17-214. Authority to issue subpoenas. In any action or investigation
23 to enforce any provision of this title, the attorney general shall have
24 the authority to take proof and determine relevant facts and to issue
25 subpoenas in accordance with the civil practice law and rules.

26 § 17-216. Expedited judicial proceedings and preliminary relief.
27 Because of the frequency of elections, the severe consequences and irre-
28 parable harm of holding elections under unlawful conditions, and the
29 expenditure to defend potentially unlawful conditions that benefit
30 incumbent officials, actions brought pursuant to this title shall be
31 subject to expedited pretrial and trial proceedings and receive an auto-
32 matic calendar preference. In any action alleging a violation of this
33 section in which a plaintiff party seeks preliminary relief with respect
34 to an upcoming election, the court shall grant relief if it determines
35 that: (a) plaintiffs are more likely than not to succeed on the merits;
36 and (b) it is possible to implement an appropriate remedy that would
37 resolve the alleged violation in the upcoming election.

38 § 17-218. Attorneys' fees. In any action to enforce any provision of
39 this title, the court shall allow the prevailing plaintiff party, other
40 than the state or political subdivision thereof, a reasonable attorneys'
41 fee, litigation expenses including, but not limited to, expert witness
42 fees and expenses as part of the costs. A plaintiff will be deemed to
43 have prevailed when, as a result of litigation, the defendant party
44 yields much or all of the relief sought in the suit. Prevailing defend-
45 ant parties shall not recover any costs, unless the court finds the
46 action to be frivolous, unreasonable, or without foundation.

47 § 17-220. Applicability. The provisions of this title shall apply to
48 all elections for any elected office or electoral choice within the
49 state or any political subdivision. The provisions of this title shall
50 apply notwithstanding any other provision of law, including any other
51 state law or local law; provided, however, that school districts and
52 libraries shall continue to conduct their elections under the education
53 law, subject to and not inconsistent with the provisions of this title,
54 to ensure voters of race, color, and language-minority groups have equi-
55 table access to fully participate in the electoral process.

1 § 17-222. Severability. If any provision of this title or its applica-
2 tion to any person, political subdivision, or circumstance is held
3 invalid, the invalidity shall not affect other provisions or applica-
4 tions of this title which can be given effect without the invalid
5 provision or application, and to this end the provisions of this title
6 are severable.

7 § 5. This act shall take effect immediately; provided, however, that
8 paragraph (c) of subdivision seven of section 17-206 of the election law
9 as added by section four of this act shall take effect one year after it
10 shall have become a law; and provided further, however, that section
11 17-208 of the election law as added by section four of this act shall
12 take effect three years after it shall have become a law; and provided
13 further, however, that section 17-210 of the election law, as added by
14 section four of this act, shall take effect one year after the attorney
15 general certifies that the office of the attorney general is prepared to
16 execute the duties assigned in section four of this act, if after the
17 expiration of one year the attorney general requires more time to certi-
18 fy that the office of the attorney general is prepared to execute the
19 duties assigned in section four of this act, the attorney general, may,
20 for good cause shown, apply to the governor for such an extension of
21 time. The governor may grant or deny an extension of up to one year
22 according to his or her discretion. The attorney general shall notify
23 the legislative bill drafting commission upon the occurrence of the
24 enactment of the legislation provided for in section four of this act in
25 order that the commission may maintain an accurate and timely effective
26 data base of the official text of the laws of the state of New York in
27 furtherance of effectuating the provisions of section 44 of the legisla-
28 tive law and section 70-b of the public officers law.