



The John R. Lewis Voting Rights Act of New York (“NYVRA”) Debunking Myths About Preclearance Under the NYVRA

The 2022 John R. Lewis Voting Rights Act of New York (the “NYVRA”) sets a new standard for protecting all New York voters, including Black voters and other voters of color. The NYVRA’s preclearance program went into effect on September 22, 2024.¹ Under the NYVRA, preclearance requires local governments with a recent history of voting or civil rights violations, or other indicia of racial discrimination, to get approval from New York’s Attorney General or a court before changing key voting rules or procedures.² This program empowers all New Yorkers to exercise their right to vote by preventing discriminatory voting changes before they occur.

This document addresses myths about New York’s new preclearance program. To learn more about the benefits of preclearance and how the program works, visit <https://www.naacpldf.org/wp-content/uploads/NYVRA-Fact-Sheet-Preclearance.pdf>. To learn about all of the NYVRA’s key provisions, visit www.naacpldf.org/new-york-voting-rights-act/.

<p>Myth: Preclearance is unconstitutional under the Supreme Court’s 2013 ruling <i>Shelby County v. Holder</i>.³</p>	<p>Fact: The NYVRA’s preclearance program fully complies with all federal and state constitutional rules. In <i>Shelby County v. Holder</i>, the Supreme Court invalidated the federal Voting Rights Act’s framework for determining which places were subject to the preclearance protection, <i>not the concept of preclearance itself</i>.⁴ This decision was also based on grounds (federalism and equal state sovereignty) that do not constrain state preclearance programs.⁵</p> <p>And while the Court in <i>Shelby County</i> invalidated the federal preclearance coverage framework in large part because it had not been recently updated, the coverage criteria under the NYVRA are limited to current and/or recent conditions.⁶</p>
<p>Myth: Preclearance imposes a significant administrative burden on local governments.</p>	<p>Fact: The preclearance process is streamlined and inexpensive and saves resources in the long term.</p> <p>Unlike federal preclearance, which mandated review of all election law or practice changes by covered jurisdictions, the NYVRA</p>

	<p>includes a more limited set of changes that must be submitted for preclearance.⁷</p> <p>Although the cost of specific preclearance submissions may vary, under the federal preclearance program it only cost an average of \$500 for jurisdictions to submit paperwork for preclearance of changes to voting practices.⁸</p> <p>A 2013 legal brief filed by New York State and other states in support of the federal preclearance process disputed in <i>Shelby County</i> explained how preclearance submissions are routine matters and do not impose a meaningful burden on officials.⁹</p> <p>In addition, preclearance reduces the burdens on local governments because it will resolve many potential violations efficiently before they take effect, preventing unnecessary litigation.¹⁰</p>
<p>Myth: Preclearance is unnecessary because the incidents it would address are minor and better resolved through other means.</p>	<p>Fact: The importance of the right to vote cannot be overstated, and racial discrimination in voting is never minor. As the United States Supreme Court has stated, voting discrimination is an “insidious and pervasive evil,” which has been perpetuated in certain parts of the country.¹¹ Preclearance will only address changes that are discriminatory, which will never be minor.</p>
<p>Myth: Preclearance is unnecessary in New York because we do not have racial discrimination in voting like in the South and we have bipartisan election administration that is fair to voters.</p>	<p>Fact: There is a well-documented history of voting discrimination in New York at the local level notwithstanding New York’s bipartisan election administration system. Indeed, three New York counties were covered under the federal Voting Rights Act’s preclearance program.¹²</p> <p>In addition, New York voters have brought several lawsuits under the federal VRA that have resulted in changes to discriminatory voting rules, including in the Village of Port Chester and the Town of Islip.¹³ Bipartisan election administration does not provide a comprehensive safeguard against</p>

	voting discrimination and does not even reach a key aspect of such discrimination—voting districts or at-large elections that drown out the voices of protected class members, including Black voters.
<p>Myth: Preclearance under the NYVRA gives unprecedented power over election processes to Attorney General Letitia James, a partisan elected official.</p>	<p>Fact: The NYVRA’s preclearance provisions give the New York Attorney General and its Civil Rights Bureau a serious responsibility with clear guidelines, not unfettered power. The Attorney General must follow strict standards laid out in the NYVRA to review voting-related changes in covered jurisdictions and ensure that they do not harm protected class members, including Black voters.</p> <p>If any covered jurisdiction is concerned with the impartiality of the Office of the Attorney General, they have the option to instead obtain preclearance from a designated court.¹⁴ Moreover, jurisdictions can always appeal any denial by the Attorney General to the courts.¹⁵</p>

¹ Office of the New York State Attorney General, *New York Voting Rights Act*, <https://ag.ny.gov/resources/organizations/new-york-voting-rights-act> (last visited Oct. 8, 2024).

² N.Y. Elec. Code § 17-210 (NYVRA).

³ *Shelby Cty. v. Holder*, 570 U.S. 529 (2013).

⁴ *Id.* at 550-557.

⁵ *Id.* at 542-43.

⁶ *Id.* at 553; NYVRA § 17-210(3).

⁷ N.Y. Elec. Code § 17-212 (requiring preclearance for “any new or modified voting qualification, prerequisite to voting, law, ordinance, standard, practice, procedure, regulation, or policy concerning and 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; (g) 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) [additional topics as may be designated by the Attorney General]”).

⁸ Br. of Joaquin Avila, et al. as Amici Curiae in Supp. of Resp’ts n.1 at 27, *Shelby Cnty., Ala. v. Holder*, No. 12-96 (U.S. Feb. 1, 2013).

⁹ Brief for New York, et al. as Amici Curiae, p. 10, *Shelby County v. Holder*, 570 US 529 (2013).

¹⁰ See *id.* at p. 10-16; see NYCLU and LDF, *John R. Lewis Voting Rights Act of New York*, NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, 17-18 (2023), <https://www.naacpldf.org/wp-content/uploads/2023-4-19-NYVRA-White-Paper-NYCLU-LDF.pdf> (“NYVRA does not require plaintiffs to prove certain background facts that are difficult to establish but not essential to ensuring nondiscrimination...the law requires plaintiffs to notify jurisdictions that their election practices may be in violation of the law prior to running up substantial fees and costs.”)

¹¹ *South Carolina v. Katzenbach*, 383 U.S. 301, 309 (1966).

¹² Civil Rights Division, U.S. Department of Justice, *Jurisdictions Previously Covered by Section 5*, <https://www.justice.gov/crt/jurisdictions-previously-covered-section-5> (last visited Oct. 8, 2024).

¹³ See, e.g., *United States v. Village of Port Chester*, 704 F.Supp.2d 411, 447 (E.D.N.Y. 2010); *Flores v. Town of Islip*, No. 18-CV-3549 (GRB)(ST), 2020 WL 6060982, at *1 (E.D.N.Y. Oct. 14, 2020) (entering consent decree); and *Nat'l Ass'n for Advancement of Colored People, Spring Valley Branch v. E. Ramapo Cent. Sch. Dist.*, 462 F. Supp. 3d 368, 373 (S.D.N.Y. 2020), *aff'd sub nom. Clerveaux v. E. Ramapo Cent. Sch. Dist.*, 984 F.3d 213 (2d Cir. 2021).

¹⁴ NYVRA § 17-210 (5).

¹⁵ NYVRA § 17-210(4)(g).