DESIGNING STATE VOTING RIGHTS ACTS:
A Guide to Securing Equal Voting Rights for People of Color and a Model Bill
ACKNOWLEDGMENTS

This guide was written by Ruth Greenwood and Aseem Mulji, with assistance from Danny Li. Thank you to Colin Cole, Molly Danahy, Christopher Elemendorf, Annabelle Harless, Christopher Lamar, and Paul Smith for their feedback, and to Jane Ignacio for designing the report.

The materials and information contained in this guide provide general information only and not legal advice. Providing this material does not create an attorney-client relationship and is not a substitute for legal advice from a qualified attorney tailored to a specific jurisdiction’s or state’s laws.

Experts at the Campaign Legal Center are always available to provide tailored advice. Please feel free to contact us to discuss your state. You can reach us at info@campaignlegalcenter.org, (202) 736-2200, or www.campaignlegalcenter.org.

# TABLE OF CONTENTS

I. **INTRODUCTION** ................................................................. 1

II. **BACKGROUND: DEVELOPMENT AND USE OF THE FEDERAL VRA TO PREVENT VOTE DILUTION** ........................................ 3
   1. Using Section 5 to Prevent Vote Dilution. .......................... 4
   2. Using Section 2 to Prevent Vote Dilution. .......................... 4

III. **PROBLEMS WITH FEDERAL VRA LITIGATION** ............... 6
   1. Section 2 litigation is prohibitively expensive for many communities . 6
   2. Section 2 requires proof of residential segregation, which, while still substantial, is decreasing. ............................... 7
   3. Section 2 requires proof of racially polarized voting based on actual election results, which are often not probative. ............ 8
   4. The government gets to choose the new electoral system after a proven VRA violation. ............................... 8
   5. Many policies that result in minority vote dilution are not reviewed by courts under the federal VRA. .......................... 9

IV. **STATE VRA SOLUTIONS** ........................................... 10
   1. Empower minority voters and supportive jurisdictions to remedy a violation collaboratively without litigating an expensive lawsuit........................................ 10
   2. Improve the test for disenfranchised minorities to prove vote dilution.................................................. 10
   3. Make it possible for disenfranchised minorities that are geographically dispersed to enforce their right to an undiluted vote. ........................................... 11
   4. Clarify that there is no deference to the government’s proposed remedy.................................................. 11
   5. Enable courts to order a wider range of locally tailored remedies that better enfranchise communities of color. .................. 13
   6. Ensure transparency by requiring jurisdictions to make the public aware when they make electoral changes. .................. 13
   7. Require jurisdictions that violate the law to seek preclearance from a court before making more electoral changes. ........... 13

V. **CONCLUSION** ................................................................. 14

**ENDNOTES** ................................................................. 15

**APPENDIX** ............................................................... 18

**MODEL STATE VOTING RIGHTS ACT** ................................. 24
I. INTRODUCTION

The Voting Rights Act of 1965 (“VRA”) is widely regarded as the “most remarkable and consequential pieces of congressional legislation ever enacted.”¹ Hundreds of lawsuits have been filed and won by communities of color seeking equal access to elect candidates of their choice.² However, while its impact has been enormous, over time the VRA has become an unwieldy—and sometimes unwieldable—tool for minority communities to secure equal voting rights. This report urges states to pass state voting rights acts to supplement the protections of the federal VRA.

Consider the story of Rogelio Montes of Yakima, Washington. In 2012 he filed a lawsuit alleging that the system of electing the seven City Council members, all at-large, violated his rights under the VRA. The at-large electoral system prevented Latinx voters from electing their candidates of choice, despite comprising about one-third of the voting-age population, because the white majority could always elect their preferred candidates instead. In effect, this system diluted the value of Latinx votes. During the 37-year history of at-large voting in Yakima, not a single member of the Latinx community had ever been elected to the city council.

To win his vote dilution case under the federal VRA, Mr. Montes had to prove all of the following:

- If the City instead elected council members from seven single-member districts, a majority of the Latinx community would fit into at least one district and win that seat;
- The white majority always voted together and consistently prevented the election of candidates preferred by the Latinx community; and
- Under the totality of the circumstances, Latinx voters had less opportunity than members of the white majority to participate in the political process and to elect representatives of their choice.

After two years of litigation, costing about $3 million, Mr. Montes proved his case, and the federal court ordered the City to remedy the discriminatory electoral system.³ The court approved his proposed plan to elect council-members in seven single-member districts. As a result, in 2015, the first Latinx members were elected to the Yakima City Council.⁴
Not every disenfranchised person of color can use the federal VRA like Mr. Montes. Indeed, the circumstances have to be precisely right for a disenfranchised community to prevail. Mr. Montes had to find an organization willing to represent him that could advance the substantial costs of federal litigation. He had to be able to prove, for example, that the Latinx community was sufficiently segregated and large enough to fit in a majority-minority district. Even after he won, he had to convince the court not to defer to the City’s proposed remedy and accept his proposed remedy of seven single-member districts. And, because of the limited relief available under the federal VRA, Mr. Montes could not pursue additional reforms that would make the council more representative of Latinx voters, such as increasing the number of seats.

Across the country, tens of thousands of voters like Mr. Montes are prevented from electing candidates of their choice to local government positions because of electoral systems that dilute their vote. But many voters of color will fail to clear at least one of the hurdles Mr. Montes had to overcome to enforce his rights under the VRA.

States can offer new hope for these voters of color by adopting state voting rights acts that improve upon their federal counterpart. By passing state VRAs, states can reduce the cost of enforcing voting rights, and make it possible for disenfranchised communities that are not segregated to also enforce their rights. States can clarify that government-proposed remedies do not get deference as they might in federal court. And they can empower state courts to impose a wider range of locally-tailored remedies that better enfranchise communities of color.

So far, three states have adopted comprehensive state VRAs to supplement the guarantees of federal law, including Mr. Montes’s home state of Washington. And more states are debating or drafting VRA bills. This guide is for community members, activists, legislators, and the media—anyone who wants to understand why state VRAs are necessary, and how they should be written to ensure that people of color and local governments have the necessary tools to secure equal voting rights. It proceeds in four parts. Part II provides a brief overview of the development and use of the federal VRA to prevent vote dilution. Part III describes five limitations on the use of the federal VRA to enfranchise communities of color. Part IV outlines the specific provisions that state VRAs should include to improve upon federal law. At the end of this report is model language for a state VRA bill.
II. BACKGROUND: DEVELOPMENT AND USE OF THE FEDERAL VRA TO PREVENT VOTE DILUTION

Congress passed the Voting Rights Act in 1965 at the height of the Civil Rights Movement. The purpose of the law was to enfranchise Black citizens by putting a stop to the many tactics states and localities used to deny people of color an equal right to vote. Indeed, the VRA was enacted to fulfill the Fourteenth Amendment’s promise of equal voting rights and to enforce the Fifteenth Amendment, which prohibited denial or abridgement of that right based on race or color.

The VRA introduced a slew of reforms, including an immediate ban on literacy tests and deployment of federal monitors to some Southern states to oversee voter registration. In addition, Section 5 of the Act established a “preclearance” regime requiring certain jurisdictions to get approval from either the U.S. Department of Justice (“DOJ”) or the federal district court in D.C. before changing any voting procedure. And Section 2, with language mirroring the Fifteenth Amendment, imposed a nationwide prohibition on any “standard, practice, or procedure” that would “deny or abridge the right of any citizen . . . to vote on account of race or color.”

These reforms were quickly successful in dismantling the traditional barriers that kept Black people from the polls. But as Black citizens registered to vote and cast ballots in record numbers, many states and localities scrambled to find ways to make those ballots as meaningless as possible. In 1966, for example, Mississippi’s all-white legislature began a campaign of “massive resistance” in which it passed thirteen laws to make it “more difficult for black candidates to get elected and for the newly enfranchised black voters to gain representation of their choice.”

A key tactic of this new disenfranchisement was to dilute the votes of people of color by switching from voting by district to voting at-large. In at-large systems, the whole jurisdiction chooses every member of a legislative body by majority vote. As a result, in racially polarized jurisdictions, white majorities can always win every seat, leaving even sizeable minorities no chance of electing even a single representative of their choice. The evolution of the Section 5 preclearance regime and Section 2 made the VRA a powerful but limited tool to combat this and other forms of vote dilution.
1. Using Section 5 to Prevent Vote Dilution

Section 5 was “designed to prevent recalcitrant white Southerners from undermining the effectiveness of black enfranchisement.”\(^13\) The Section 5 preclearance requirement stalled changes to any election “standard, practice, or procedure” in a covered jurisdiction until the DOJ or the federal district court in D.C. determined that the change did not have a discriminatory purpose or effect. Although the scope of “standard, practice, or procedure” was initially unclear, the Supreme Court clarified in 1969 that a broad range of changes were subject to preclearance, including a shift from district-based to at-large voting.\(^14\)

When the VRA was enacted in 1965, Section 5 was authorized for only five years. In 1970, Congress determined that preclearance was still necessary to prevent covered jurisdictions from undermining minority voting rights, and reauthorized the law. It did so again in 1975, 1982, and 2006. In 2013, in *Shelby County v. Holder*, the U.S. Supreme Court struck down the formula determining which jurisdictions were subject to preclearance, rendering Section 5 mostly obsolete.\(^15\)

Even before *Shelby County*, however, preclearance could only be used to prevent jurisdictions from switching to at-large systems; it could not be used to challenge at-large systems that were already in place before 1965.\(^16\) For those cases, litigators had always depended on the Fourteenth and Fifteenth Amendments, and Section 2 of the VRA.

2. Using Section 2 to Prevent Vote Dilution

Section 2 outlaws any standard, practice, or procedure that denies or abridges the right to vote on account of race or color. It is an invaluable tool for challenging at-large systems that dilute, or “abridge,” the voting rights of people of color. But how does a challenger prove that an at-large system violates Section 2?

In 1980, the Supreme Court decided that challenges to electoral systems under Section 2 had to satisfy the same heavy burden as challenges under the Fourteenth and Fifteenth Amendments: in addition to showing that a system dilutes minority votes, challengers also had to prove that the government intended for the system to discriminate against people of color.\(^17\) Because savvy governments could always give pretextual, race-neutral reasons for adopting at-large and other dilutive systems, advocates seeking to overturn them had little success before 1982.\(^18\)

In 1982, however, Congress clarified the scope of Section 2 by making two crucial changes to the law. First, it amended Section 2 to prohibit any voting procedure that “results in a denial or abridgment”—explicitly adopting what is known as the “results test.”\(^19\) Second, it made clear that Section 2 could be used to challenge electoral systems that provide people of color “less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.”\(^20\)
Four years later, in *Thornburg v. Gingles*, the Supreme Court set out the test to prove a violation under the post-1982 version of Section 2, which stands to this day. The *Gingles* test first requires a racial, ethnic, or language minority group to prove three “preconditions,” i.e. that the group is:

(a) sufficiently large and geographically compact to constitute a majority in a single-member district;
(b) politically cohesive; and
(c) in the absence of special circumstances, that bloc voting by the white majority usually defeats the minority’s preferred candidate.

To succeed in a Section 2 suit, challengers must also prove that under the “totality of the circumstances” the political process is not equally open to minority voters. The factors a court may consider in determining the totality of circumstances include the seven “Senate factors”:

1. the history of official voting-related discrimination in the state or political subdivision;
2. the extent to which voting in the elections of the state or political subdivision is racially polarized;
3. the extent to which the state or political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group, such as unusually large election districts, majority-vote requirements, and prohibitions against bullet voting;
4. the exclusion of members of the minority group from candidate slating processes;
5. the extent to which minority group members bear the effects of discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process;
6. the use of overt or subtle racial appeals in political campaigns; and
7. the extent to which members of the minority group have been elected to public office in the jurisdiction.

These factors are not exclusive. Courts may also consider, for example, whether elected officials are failing to respond to the particularized needs of minority groups, and whether the government’s justification for the challenged election system is tenuous.

Section 2 has undoubtedly changed the landscape of voting rights in the United States. At least 1,600 Section 2 cases were filed between 1982 and 2006. Some 14 years later, that number is surely much larger. And it does not include places where the mere mention of the VRA led to changes without a suit being filed. Whatever the total, it is undeniable that hundreds of thousands of people of color have vindicated their the right to cast a meaningful ballot as a result of Section 2. However, despite this progress, Section 2 is by no means a perfect tool to enforce voting rights. The next section describes the key obstacles advocates face in using Section 2 litigation to secure equal voting rights for communities of color.
III. PROBLEMS WITH FEDERAL VRA LITIGATION

1. Section 2 litigation is prohibitively expensive for many communities.

Litigating a Section 2 claim is costly and time-intensive. Cases often turn on statistical analysis, which means expensive expert witnesses on both sides. Plaintiffs must often collect mountains of evidence to support the totality of circumstances inquiry, which means extended discovery periods and long trials. For example, Yakima, Washington produced more than 340,000 documents and more than 50 people were deposed in its defense of the Section 2 claim brought by Rogelio Montes. The costs amounted to more than $3 million. Charleston County, South Carolina paid about $712,000 in an unsuccessful effort to defend itself from a Section 2 challenge. And Pasadena, Texas recently agreed to settle a Section 2 claim by Latino voters challenging the city’s at-large election scheme for $1.1 million in attorney fees.

As in all civil cases, the litigation costs and attorney fees are allocated at the end of a lawsuit. As a result, plaintiffs who cannot pay the exhorbitant costs of Section 2 litigation upfront must rely on donations or hire lawyers who are willing to advance the costs of the case. If plaintiffs lose or settle without an agreement as to attorney fees, then no fees are paid by the defendant jurisdiction. Even if a plaintiff wins a Section 2 suit, there is no guarantee that the full costs of the litigation will be paid by the defendant jurisdiction because awards of attorney fees under the VRA are discretionary, not mandatory. Given this reality, it is “virtually impossible for ordinary citizens to enlist private lawyers to handle voting claims.”

Instead, a small number of legal organizations that specialize in voting rights claims must commit a large chunk of their litigation budget to advance Section 2 claims. With the loss of Section 5 due to Shelby County, there are many more places where Section 2 claims could and should be brought to secure the voting rights of people of color. But the cadre of legal organizations who could bring these cases do not have the resources to fund them all.

The bottom line is that many communities of color across the country are unable to enforce their voting rights simply because the cost is extraordinarily high. And even when these communities win under Section 2, the bill ultimately goes to the same local government into which people of color pay taxes, creating a perverse system in which the very people who object to a racially discriminatory electoral system always end up paying to enforce their rights.
2. Section 2 requires proof of residential segregation, which, while still substantial, is decreasing.

The first prong of the Gingles test requires a plaintiff to prove that the community alleging a violation of the VRA is “sufficiently large and geographically compact to constitute a majority in a single-member district”—stated differently, big enough and segregated enough to win a district.

This segregation requirement is a function of the dispute the Supreme Court had before it in 1986. In Gingles, Black voters challenged six multi-member districts in North Carolina’s redistricting plan, alleging that those districts diluted their community’s vote. In assessing their claim, the Court refused to strike down the challenged multi-member districts unless the plaintiffs could show that the Black community had “the potential to elect representatives in the absence of the challenged structure or practice.” At the time, the only proposed alternative to multi-member districts was single-member districts, so the Court fashioned a test to determine whether the Black community would be able to elect candidates of choice in single-member districts. This required the community to be big and segregated enough to draw majority-minority districts around it.

At the time, this test was effective in securing representation for Black litigants in the form of majority-minority single-member districts. The Black voters in North Carolina that sued in Gingles, for example, lived in heavily segregated neighborhoods, and if the state switched from multi-member districts to single-member districts, the Black community would have been able to elect multiple candidates of choice.

But the geography of race has changed since Gingles was decided. Much of the United States is quickly becoming less racially segregated. Thus, even though communities of color across the country are facing vote dilution on par with Black North Carolinians in the 1980s, the lack of residential segregation actually harms their ability to form majority-minority districts.

At the same time, racial inequities persist in virtually every area of life, including voting. And racial polarization in voting between white and non-white voters has “been remarkably stable . . . over the past two decades.” Indeed, “Hispanic and white voters, like black and white voters, remain as politically divergent today as they were forty years ago.” But if these communities were to knock on the courthouse doors with a Section 2 claim today, they would find it difficult to get past even the first prong of the Gingles test. In other words, sufficiently large but geographically dispersed minorities are unable to use Section 2 litigation to combat vote dilution.
3. **Section 2 requires proof of racially polarized voting based on actual election results, which are often not probative.**

The second and third prongs of the *Gingles* test require a plaintiff to prove that candidates of choice of a minority community are usually defeated by a cohesive white voting bloc. This is known as the racially polarized voting (“RPV”) analysis. In federal VRA litigation, plaintiffs must prove RPV based on “voting preferences expressed in actual elections.”

The problem with this requirement is obvious: in places with long histories of vote dilution and disenfranchisement, candidates preferred by minority voters simply stop running for office. Why run for office when the election system nearly guarantees that you will lose? Campaigning for office is expensive and time-consuming, and especially so when daily doorknocking and registering voters and wooing donors always leaves you short of the votes necessary to defeat candidates backed by a white majority.

Furthermore, courts prefer evidence of RPV from elections to the government body at issue in the case (i.e. “endogenous” elections) rather than elections for other government positions. But endogenous elections can be poor indicators of RPV because they occur in the same unfair dilutive system that plaintiffs seek to reform and are not competitive for minority-preferred candidates. Presidential elections, which are almost always competitive, can provide a more accurate measure of RPV among an electorate. Polling data and testimony may also reliably show that political preferences of white and minority communities widely diverge.

Thus, the effect of vote dilution itself means that minority communities will often be hardpressed to find “proof” that RPV exists in actual election results. And the refusal of federal courts to consider other evidence probative of racial polarization makes it difficult to use the VRA to protect those communities that are so disenfranchised that they do not run candidates or turn out to vote in a system stacked against them.

4. **The government gets to choose the new electoral system after a proven VRA violation.**

Section 2 gives government defendants the “first opportunity to suggest a legally acceptable remedial plan.” The court must defer to the government’s choice as long as it is consistent with federal law and the Constitution—“the degree of deference is quite strong.” On occasion, plaintiffs may show that the government’s proposed remedy does not actually correct the electoral harm, and in that case, a court may adopt the plaintiffs’ proposed remedy. Most of the time, however, government defendants get to select a remedy that minimally fixes the problem rather than implementing a system that will best secure equal voting rights for the plaintiffs.
In the vast majority of cases that challenge at-large electoral systems, government defendants choose to adopt election by districts, and the court rubber stamps that choice. The problem with this remedy is that a majority of the legislative body has the power to redraw district lines after each decennial census, and can do so to the detriment of minority voters.

Only 90 jurisdictions have adopted a system aside from districts as a result of a Section 2 suit. And only one, Eastpointe, Michigan, has opted to remedy an at-large system with ranked choice voting (see Part IV.5).

5. Many policies that result in minority vote dilution are not reviewed by courts under the federal VRA.

At-large elections are one of many practices that can dilute the voting rights of people of color, like holding elections in off-years or in cold months, staggering elections so that fewer candidates are up for election in any given year, limiting the size of a legislative body and so on.

Yet federal courts have often declined to apply Section 2 to dilutive practices that they perceive to lack clear benchmarks by which to measure their dilutive effect. For example, in *Holder v. Hall*, the Supreme Court rejected a Section 2 challenge to a Georgia county’s “single-commissioner” electoral system, in which the entire county was represented by just one commissioner. The Court claimed that the plaintiffs had failed to show that the system diluted Black votes as measured against another “reasonable alternative practice.” Because the Court felt it could not reasonably compare the dilutive effects of a single-member legislature to the dilutive effects of any other sized legislature, it rejected the plaintiffs’ claim. But as Justice Blackmun noted in his dissent, five-member commissions were, by tradition and practice, the norm in Georgia; they were obviously less dilutive than single-member commissions, and thus offered a “reasonable and workable” benchmark.

This failure to recognize that many dilutive practices do indeed have reasonable benchmarks has made it difficult for plaintiffs to challenge many pernicious dilutive practices in federal court.
IV. STATE VRA SOLUTIONS

The federal VRA continues to be a useful tool for communities of color to seek enfranchisement in federal court. But, as described above, the challenges of VRA litigation often make it impossible for minority communities to enforce their right to a meaningful vote. State VRAs can fill the gap to ensure that all communities of color have the means to enforce their equal voting rights.

This section introduces and explains the key reforms that a state VRA should include, while making references to a model state VRA bill (“Model Bill”) included at the end of this report. We also encourage readers to refer to the Appendix for a summary of policies contained in other state VRAs currently proposed or on the books.

1. **Empower minority voters and supportive jurisdictions to remedy a violation collaboratively without litigating an expensive lawsuit.**

   As discussed in Part III.1, the cost of litigating a federal VRA lawsuit is often enormous, no matter the size, budget, and intentions of the defendant jurisdictions. State VRAs should make it less costly for minority voters and friendly jurisdictions to collaboratively develop a remedy before resorting to expensive litigation. **Section 4(7) of the Model Bill** requires plaintiffs to provide pre-litigation notice to a jurisdiction in potential violation of the state VRA. It encourages the parties to find a mutual solution during that notice period, and caps attorney fees and costs to give local jurisdictions an incentive to settle a case before litigation begins.

2. **Improve the test for disenfranchised minorities to prove vote dilution.**

   Section 2 is intended to be a “permanent, nationwide ban on racial discrimination in voting.” But to set out even an obvious violation, minority plaintiffs must always prove all three of the **Gingles** preconditions and each of the seven factors of the totality of circumstances inquiry, as described in Part A. This is costly and time-consuming. State VRAs can substantially reduce the length and difficulty of litigation (and therefore the cost) by enabling plaintiffs to prove a vote dilution claim with the minimum elements necessary to show that their votes are being diluted.
Section 4(2) of the Model Bill reduces the burden on plaintiffs by allowing them to show racial discrimination in voting with proof of “racial polarization” or the totality circumstances, rather than both. Note that “racial polarization” is different from the requirement to show “racially polarized voting” (RPV) under the second and third prongs of the Gingles test. As discussed in Part III.3, the Gingles test requires plaintiffs to prove RPV with actual election results, which are often difficult to find and are often less probative of racially polarized political preferences than other forms of evidence like opinion polls and exogenous election results. By broadening the inquiry to “racial polarization,” state VRAs can make clear that plaintiffs have more than one way to prove that communities of color and white voters have diverging political preferences. In addition, the model bill provides an option to plaintiffs to otherwise prove racially discriminatory voting with various factors in the totality of circumstances inquiry.

3. Make it possible for disenfranchised minorities that are geographically dispersed to enforce their right to an undiluted vote.

An electoral system can dilute the voting rights of minority communities whether they are residentially segregated or geographically dispersed. Although the text of the federal VRA makes no such distinction, the Supreme Court interpreted the VRA to provide relief only where a plaintiff can show that a majority-minority district can be drawn around the affected community (i.e. the first Gingles prong). But communities of color who are not residentially segregated from white voters deserve the same right to challenge dilutive electoral systems.

State VRAs should therefore make clear that a minority need not be segregated to enforce its rights. Section 4(2) of the Model Bill sets out the minimum elements to prove vote dilution claim and omits the first Gingles prong.

4. Clarify that there is no deference to the government’s proposed remedy.

Even when plaintiffs are successful in a Section 2 suit, courts usually allow the defendant jurisdiction (the losing party) to decide how to remedy the violation. This often leads to jurisdictions choosing an electoral system that only minimally addresses a discriminatory voting practice rather than fully enfranchising the community of color that won the case. The usual remedy of the governments’ choice is election by districts, but this remedy often enables the government to dilute minority votes again in the future by gerrymandering.

For this reason, state VRAs should prevent the government defendants’ proposed remedy from holding the pride of place. And for challenges to at-large electoral systems, state VRAs should express a statutory preference for remedies like ranked choice voting that make it difficult for governments to gerrymander away a minority community’s voting power. Section 4(5) of the Model Bill articulates the process for the court to accept proposed remedies and offers a statutory preference for effective alternative election methods, like ranked choice voting.
**What is Ranked Choice Voting (RCV)?**

Everyone votes on a ballot where they can say which candidates they prefer in order.

<table>
<thead>
<tr>
<th>RANKED CHOICE AND DISTRICT</th>
<th>CANDIDATE A</th>
<th>CANDIDATE B</th>
<th>CANDIDATE C</th>
</tr>
</thead>
<tbody>
<tr>
<td>RANK 1</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>RANK 2</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>RANK 3</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
</tbody>
</table>

**How are RCV votes tallied?**

**THREE-WINNER RANKED CHOICE VOTING EXAMPLE ELECTION**

**ROUND 1**
One candidate exceeded 25%!
Her surplus votes are counted for supporters’ 2nd choices.

**ROUND 2**
No other candidates have reached the threshold, so candidate with the fewest votes is eliminated.

**ROUND 3**
His votes are counted for supporters’ second choices.
Now we have our three winners!

**25%**

**How does RCV compare to at-large plurality voting and voting by district?**

These diagrams simplify the geography of a city to a square with 45 voters, represented as dots, where:
20 voters (44%) prefer blue candidates
25 voters (56%) prefer gray candidates.

**RANKED CHOICE VOTING**
2 blue and 3 gray candidates of choice are elected.

**AT-LARGE PLURALITY VOTING**
5 gray candidates of choice are elected.

**VOTING BY DISTRICT**
2 blue and 3 gray candidates of choice are elected.
5. Enable courts to order a wider range of locally tailored remedies that better enfranchise communities of color.

As discussed in Part III.5, federal VRA litigation cannot address all of the election practices that cause minority vote dilution. State VRAs can and should recognize that vote dilution tactics can take many forms, and they are not limited to at-large voting systems. As such, state laws should enable courts to tailor the remedy to the features of local election systems that cause vote dilution beyond the simple choice electoral system. These remedies may include, but should not be limited to, alternative electoral systems, such as ranked choice voting. Section 4(5) of the Model Bill sets out the language for a flexible remedies provision.

6. Ensure transparency by requiring jurisdictions to make the public aware when they make electoral changes.

Local government election laws, policies and practices are often buried in local election codes and legislative meeting minutes. State VRAs must require jurisdictions to publish electoral changes in an easy-to-find, publicly accessible format, enabling minority communities to assess whether their votes are being diluted and to determine what if any action they should take to protect their rights. Section 6 of the Model Bill sets out language that can be used for a statewide notification and database requirement.

7. Require jurisdictions that violate the law to seek preclearance from a court before making more electoral changes.

Section 5 of the federal VRA recognizes that some jurisdictions will continue to find ways to deny or abridge minority voting rights even after being subject to a court-ordered remedy. State VRAs should require these jurisdictions to seek court approval, or “preclearance,” before enacting further changes to their elections. This spares minority voters the trouble of suing every time a new discriminatory rule is adopted, and spares all taxpayers the cost of litigating these claims. Section 8 of the Model Bill sets out language that can be used for a preclearance requirement.
V. CONCLUSION

State voting rights acts allow states to offer communities of color key protections to the right to vote that go beyond the federal VRA. By passing state VRAs, states can reduce the cost of enforcing voting rights, and make it possible for disenfranchised communities that are not segregated to also enforce their rights. States can clarify that government-proposed remedies do not get deference as they might in federal court. And they can empower state courts to impose a wider range of locally-tailored remedies that better enfranchise communities of color.
ENDNOTES

2 Id. at 654.
10 After Reconstruction, Southern states “adopted a panoply of voting barriers, including literacy and property tests, poll taxes, understanding clauses, and grandfather clauses.” Andrew L. Shapiro, Challenging Criminal Disenfranchisement Under the Voting Rights Act: A New Strategy, 103 YALE L.J. 537, 537 (1993). Before these measures were enacted, “[t]o diminish black voting strength, Southern conservatives had already used violence, voting fraud, corruption, gerrymandering, at-large elections, and statutory suffrage restrictions.” Id. at 537 n. 1. See also Lani Guinier, The Representation of Minority Interests: The Question of Single–Member Districts, 14 CARDOZO L. REV. 1135, 1151 (1993) (referring to actions securing access to the ballot as the “first generation” of Voting Rights Act claims). Although the VRA was remarkably successful in addressing access to the ballot problems, “second generation” discriminatory voting practices emerged to take their place. See Shelby Cty. v. Holder, 570 U.S. 529, 563 (2013) (Ginsburg, J., dissenting) (“Although the VRA wrought dramatic changes in the realization of minority rights, the Act, to date, surely has not eliminated all vestiges of discrimination against the exercise of the franchise by minority citizens. . . . Efforts to reduce the impact of minority votes, in contrast to direct attempts to block access to the ballot, are aptly described as ‘second-generation barriers’ to minority voting.”); see also Lani Guinier, The Triumph of Tokenism: The Voting Rights Act and the Theory of Black Electoral Success, 89 Mich. L. Rev. 1077, 1080 (1991) (“[E]ven in jurisdictions with proportionate black representation, black electoral success has neither mobilized the black community nor realized the promised community-based reforms. As an empowerment mechanism, electoral control of winner-take-all majority-black districts ignores critical connections between broad-based, sustained voter participation and accountable representation.”).
15 See Shelby Cty. v. Holder, 570 U.S. 529 (2013). Note that Section 5 can become operational if any jurisdiction is “bailed” in under section 3(b) of the VRA.
17 City of Mobile v. Bolden, 446 U.S. 55, 60–61 (1980) (finding that “the language of § 2 no more than elaborates upon that of the Fifteenth Amendment, and the sparse legislative history of § 2 makes clear that it was intended to have an effect no different from that of the Fifteenth Amendment itself”).

18 See, e.g., Whitcomb v. Chavis, 403 U.S. 124 (1971) (finding that multi-member districts are not inherently invidious); and White v. Regester, 412 U.S. 755, 764 (1973) (finding that “appellees failed to carry their burden of proof insofar as they sought to establish a violation of the Equal Protection Clause from population variations alone”).


20 Section 2 of the VRA is now codified, as amended, at 52 U.S.C. § 10301.


22 Id. at 49-51.

23 These factors were first articulated in a 1982 Senate Report, S.Rep. No. 97-417, 97th Cong., 2d Sess. pp. 28-29 (1982), which the Supreme Court subsequently adopted as part of the Gingles totality of circumstances test.

24 The Department of Justice provides further information including links to cases brought by the DOJ to enforce Section 2 of the VRA. See Section 2 of the Voting Rights Act, U.S. DEPARTMENT OF JUSTICE (Sept. 14, 2018), https://www.justice.gov/crt/section-2-voting-rights-act.

25 Katz, supra note 1 at 655.


27 See Faulk, supra note 26.

28 Order on Attorney Fees at 1, Moultrie v. Charleston County, No. 2:01-562-23 (D.S.C. Mar. 6, 2003), ECF No. 206; see also LDF, supra note 26 at 3 (noting that the county spent more than $2 million total to litigate the case).


32 See LDF, supra note 26 at 1.

33 Multi-member districts are electoral districts that send more than one representative officeholder to government bodies.

34 Gingles, 478 U.S. at 51 n. 17.


37 Nicholas O. Stephanopoulos, Race, Place, and Power 68 Stan. L. Rev. 1323, 1353 (2016).

38 Id. at 1357.

39 Christopher Elmendorf et al., Racially Polarized Voting, 83 The Univ. Chi. L. Rev. 587, 608 (2016) (citing Gomez v. City of Watsonville, 863 F.2d 1407, 1415 (9th Cir. 1998)).

40 See id. at 616 (“[E]lections to the governmental body at issue in the case (‘endogenous’ elections) are customarily given more weight than elections to other governmental bodies (‘exogenous’ elections.”).


42 Id.

43 See, e.g., Montes v. City of Yakima, 40 F. Supp. 3d 1377 (E.D. Wash. 2014). Notably, the defendants had suggested the use of limited voting, and the court rejected that in favor of adopting all single member districts.

44 Independent redistricting commissions (IRCs) take the power of redistricting away from legislators, but they are have largely only been adopted for statewide redistricting. See Campaign Legal Center, Designing Independent Redistricting Commissions, https://campaignlegal.org/document/designing-independent-redistricting-commissions. FairVote, VRA Remedy Database, https://www.fairvote.org/vra_remedy_database.


46 Id.

47 Id.

48 Id. at 952-53 (Blackmun, J., dissenting).

49 Shelby Cty. v. Holder, 570 U.S. at 557.

50 Elmendorf et al. argue that “there is no monotonic relationship between racial polarization in political preferences and the average level of observed vote-share polarization in ‘usual’ elections.” Supra note 39, at 660. They suggest that online survey-based evidence of political preferences are more reliable for establishing racial polarization; these surveys “can be used to measure racial polarization in policy preferences, general political ideology, racial attitudes, or even preferences over race and other candidate attributes as revealed by choices among randomized, hypothetical candidates.” Id. at 675-76.

51 Gerrymandering refers to the “intentional manipulation of district lines to gain an advantage for a group (whether that be a political group, a racial or ethnic group, or otherwise).” Campaign Legal Center, Designing Independent Redistricting Commissions, at 4, https://campaignlegal.org/document/designing-independent-redistricting-commissions.
## APPENDIX

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>What can be challenged?</strong></td>
<td>At-large election methods for a political subdivision that result in vote dilution or abridgment.</td>
<td>Any election method for a political subdivision that impairs the ability of members of a protected class or classes to have an equal opportunity to elect candidates of their choice.</td>
<td>A school district, education service district, or community college district where the election is conducted in a manner that impairs the ability of members of a protected class to have an equal opportunity to elect candidates of their choice or an equal opportunity to influence the outcome of an election.</td>
<td>Establishes separate causes of action against election methods that result in vote dilution, and any voting qualification, prerequisite to voting, law, ordinance, standard, practice, procedure, regulation, or policy that results in voter suppression. Establishes civil liability for voter intimidation.</td>
<td>Establishes separate causes of action against election methods that result in vote dilution, any voting qualification, prerequisite to voting, law, ordinance, standard, practice, procedure, regulation, or policy that results in voter suppression, and racial gerrymandering. Establishes civil liability for voter intimidation.</td>
</tr>
<tr>
<td><strong>PROVING A VIOLATION</strong></td>
<td>A plaintiff must show that racially polarized voting occurs in elections for members of the governing body of the political subdivision or in elections incorporating other electoral choices by the voters of the subdivision.</td>
<td>A plaintiff must show polarized voting and that members of a protected class or classes do not have equal opportunity to elect candidates of their choice as a result of the dilution or abridgement of the rights of members of that protected class or classes.</td>
<td>A plaintiff must show polarized voting and that members of protected class do not have equal opportunity to elect candidates of choice or influence the outcome of an election as a result of vote dilution or abridgement.</td>
<td>For vote dilution claims, a plaintiff must show that a jurisdiction uses at-large voting or candidates preferred by a protected class are usually defeated in a district or alternative system, and either the presence of racial polarization or under the totality of circumstances, the ability of members of protected class to elect candidates of choice or influence outcome is impaired, with an affirmative defense if electoral system can be shown to be narrowly tailored to serve a compelling state interest.</td>
<td>For vote dilution claims, a plaintiff must show that the jurisdiction uses at-large voting or candidates preferred by a protected class are usually defeated in a district or alternative system, and either the presence of racial polarization or under the totality of circumstances, the ability of members of protected class to elect candidates of choice or influence outcome is impaired, with an affirmative defense if electoral system can be shown to be narrowly tailored to serve a compelling state interest.</td>
</tr>
<tr>
<td><strong>Is a plaintiff required to show a majority-minority district can be drawn?</strong></td>
<td>No, but it may be a factor in determining remedy.</td>
<td>No, it shall not preclude a finding of a violation, but may be factor in determining remedy.</td>
<td>No, it shall not preclude a finding of a violation, but may be factor in determining remedy.</td>
<td>No, it shall not be considered, but may be a factor in determining remedy.</td>
<td>No.</td>
</tr>
</tbody>
</table>

1. See caption 1.
2. See caption 2.
3. See caption 3.
4. See caption 4.
5. See caption 5.
7. See caption 7.
8. See caption 8.
10. See caption 10.
11. See caption 11.
12. See caption 12.
15. See caption 15.
16. See caption 16.
| | CALIFORNIA  
Enacted July 2002 | WASHINGTON  
Enacted Mar. 2018 | OREGON  
Enacted June 2019 | NEW YORK  
Proposed Jan. 2020 | State VRA Model Bill |
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>PROVING A VIOLATION (con’t)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Is a plaintiff required to show racial polarization in voting?</strong></td>
<td>Yes (racially polarized voting)</td>
<td>Yes (polarized voting)</td>
<td>Yes (polarized voting)</td>
<td>No. A showing of racially polarized voting is never necessary. Plaintiffs can prove vote dilution by showing that the voting eligible population within the political subdivision exhibits racial polarization (i.e. a showing of racially polarized political preferences or interests (not just in voting)).</td>
<td></td>
</tr>
<tr>
<td><strong>What evidence must be used to prove racial polarization?</strong></td>
<td>Elections in which at least one candidate was a member of the protected class, or elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of a protected class.</td>
<td>Elections of the governing body of the political subdivision, ballot measure elections, elections in which at least one candidate is a member of a protected class, and other electoral choices that affect the rights and privileges of members of a protected class.</td>
<td>Elections in which at least one candidate was a member of the protected class, or other electoral choices that affect the rights and privileges of the protected class.</td>
<td>Not limited. Notes that “methodologies” from federal cases may be used, but are not the exclusive means, to show racially polarized voting.</td>
<td>Not limited. Notes that some types of evidence, such as statistical evidence, are more probative than others.</td>
</tr>
<tr>
<td><strong>Are other factors considered in determining a violation?</strong></td>
<td>Yes.</td>
<td>Yes.</td>
<td>Yes.</td>
<td>Yes.</td>
<td>Yes.</td>
</tr>
<tr>
<td><strong>REMEDY</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>What remedies can the court order?</strong></td>
<td>Appropriate remedies, including district-based elections.</td>
<td>Appropriate remedies, including but not limited to district-based elections.</td>
<td>Any remedy necessary to cure a violation, including a new electoral system.</td>
<td>Any appropriate remedy, including district-based elections, additional polling locations, increasing size of governing body, etc.</td>
<td>Court shall implement appropriate remedies that are tailored to remedy the violation, including but not limited to changes in electoral systems and changing various election administration procedures. For claims against at-large systems, the court shall order an alternative-voting remedy if feasible and adequate to remedy the violation.</td>
</tr>
<tr>
<td>---------------------</td>
<td>-----------------------------</td>
<td>-----------------------------</td>
<td>--------------------------</td>
<td>-----------------------------</td>
<td></td>
</tr>
<tr>
<td>REMEDY (con’t)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Does the statute prohibit deference to the government’s remedy?</td>
<td>No.</td>
<td>No.</td>
<td>Yes. Expressly prohibits deference or priority to the government’s proposed remedy.</td>
<td>Yes. Expressly prohibits deference or priority to the government’s proposed remedy.</td>
<td></td>
</tr>
<tr>
<td>How does the statute allocate attorney fees and costs?</td>
<td>Prevailing plaintiffs get reasonable fees and costs. Reimbursement for cost of notice letters capped at $30,000. Prevailing defendants are entitled to costs only if the action is found to be frivolous.</td>
<td>Prevailing plaintiffs get reasonable fees and costs if an action is filed. No reimbursement for cost of notice letters. Prevailing defendants are entitled to reasonable fees and costs if the action is found to be frivolous or without reasonable cause.</td>
<td>Prevailing plaintiffs get reasonable fees and costs. Reimbursement for cost of notice letters capped at $30,000. Prevailing defendants are entitled to costs only if the action is found to be frivolous or without reasonable cause.</td>
<td>Prevailing plaintiffs get reasonable fees and costs. Reimbursement for cost of notice letters capped at $50,000.</td>
<td></td>
</tr>
<tr>
<td>NOTICE, VOLUNTARY COMPLIANCE &amp; SAFE HARBOR</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>How long do the parties have to agree on a remedy after a plaintiff sends a notice letter but before filing suit?</td>
<td>45 days.</td>
<td>90 days, for notice letters received after July 1, 2021. 180 days for notice letters received before that date.</td>
<td>90 days.</td>
<td>50 days.</td>
<td></td>
</tr>
<tr>
<td>Is safe harbor available to jurisdictions that adopt a remedy?</td>
<td>Yes. If a jurisdiction passes a resolution to transition from at-large to district-based elections, a prospective plaintiff may not sue for 90 days.</td>
<td>Yes. If a jurisdiction adopts a remedy that has been approved or ordered by a court, no prospective plaintiff may sue for 4 years, unless the jurisdiction enacts a change that otherwise violates the state VRA.</td>
<td>Yes. If a jurisdiction passes a resolution adopting a remedy after receiving notice, then the person who sent notice cannot sue for 90 days.</td>
<td>Only by agreement. A jurisdiction that passes a resolution adopting a remedy after receiving a notice letter may enter into an agreement with a prospective plaintiff who sent the letter that they will not sue for an additional 90 days.</td>
<td></td>
</tr>
<tr>
<td>Can jurisdictions make voluntary changes to comply with the state VRA before receiving a notice letter?</td>
<td>Yes.</td>
<td>Yes.</td>
<td>Yes.</td>
<td>Not specified.</td>
<td>Yes.</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td><strong>Are jurisdictions that make voluntary changes required to notify and consult the affected community?</strong></td>
<td>Yes. Must hold at least 2 hearings before and after developing draft district boundaries. May conduct outreach to the public, including non-English speaking communities, to encourage public participation.50</td>
<td>Yes. If a jurisdiction adopts a district-based election system or redistricts, it must provide public notice, including verbal and written notice in multiple languages if a significant segment of the community speaks a language other than English. Must hold at least 1 public hearing before adoption.59</td>
<td>Yes. Must provide public notice of change in electoral system. Must hold at least 2 hearings before and after developing draft district boundaries.50</td>
<td>N/A.</td>
<td>Yes. Must hold at least one public hearing before adopting a proposed remedy. May conduct outreach to the public, including to non-English-speaking communities, to encourage public participation.61</td>
</tr>
<tr>
<td><strong>PRECLEARANCE</strong></td>
<td>No.</td>
<td>No.</td>
<td>No.</td>
<td>Yes. Certain policies enacted by covered jurisdictions are subject to preclearance by a designated court or the Attorney General.62</td>
<td>Yes. Certain policies enacted by covered jurisdictions are subject to preclearance by a designated court or the Attorney General.63</td>
</tr>
</tbody>
</table>
APPENDIX ENDNOTES

5 Id. § 17-214.
6 STATE VRA MODEL BILL §§ 4(1)(a), (2)(a), 3(a); 9(1) (CAMPAIGN LEGAL CTR. PROPOSED DRAFT 2020).
7 CAL. ELEC. § 14028.
8 WASH. § 29A.92.030(1).
9 OR. § 449.4(1).
10 N.Y. S07528 § 17-206(2)(b)(i).
12 CAL. ELEC. § 14028(c).
13 WASH. § 29A.92.030(2).
14 OR. § 449.4(4).
15 N.Y. S07528 § 17-206(2)(c)(viii).
16 MODEL BILL § 4(2).
17 CAL. ELEC. § 14028(a).
18 WASH. § 29A.92.030(1).
19 OR. § 449.4(1).
20 N.Y. S07528 § 17-206(2)(b)(i).
22 CAL. ELEC. § 14028(b).
23 WASH. § 29A.92.030(3).
24 OR. § 449.4(5).
25 N.Y. S07528 § 17-204(6).
26 MODEL BILL § 4(2)(c).
27 CAL. ELEC. § 14028(e).
28 WASH. § 29A.92.030(6).
29 OR. § 449.4(7)(a)-(e).
30 N.Y. S07528 § 17-206(2)(d).
31 MODEL BILL § 4(2)(d).
32 CAL. ELEC. § 14029.
33 WASH. § 29A.92.110(1).
34 OR. § 449.4(8)(a).
35 N.Y. S07528 § 17-206(4).
36 MODEL BILL § 4(5)(a)-(b).
37 N.Y. S07528 § 17-206(4)(b).
38 MODEL BILL § 4(5)(b).
40 WASH. § 29A.92.130.
41 OR. § 449.4(9); OR. § 449.6(5)-(6).
42 N.Y. S07528 § 17-216; 17-206(6)(e).
43 MODEL BILL § 4(7)(e); § 10.
45 WASH. § 29A.92.080(1).
46 OR. § 449.6(2).
47 N.Y. S07528 § 17-206(6)(a).
Model Bill § 4(7)(a).


Wash. § 29A.92.070(3).

Or. § 449.64(4).

N.Y. S07528 § 17-206(6)(d).

Model Bill § 4(7)(b)(iii).

Cal. Elec. § 10010.

Wash. § 29A.92.040(1).

Or. § 449.31(1)(b).

Model Bill § 4(7)(b).

Cal. Elec. § 10010(a)(1)-(2).

Wash. § 29A.92.050.

Or. § 449.51(1)(a).

Model Bill § 4(6).

N.Y. S07528 § 17-212(1).

Model Bill § 8.
MODEL STATE VOTING RIGHTS ACT

Section 1: Legislative purpose and statement of public policy
(1) In recognition of the protections for the right to [vote/free and equal elections] provided by the constitution of the state of [State], 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, ethnicity, or language-minority group, it is the public policy of the state of [State] to:

(a) Encourage participation in the elective franchise by all eligible voters to the maximum extent; and

(b) Ensure that eligible voters who are members of racial, ethnic, and language-minority groups shall have an equal opportunity to participate in the political processes of the state of [State], and especially to exercise the elective franchise.

(2) The legislature intends [for this to apply to home-rule jurisdictions and despite any other provisions of the election law as to the form of government that jurisdictions may take]
Section 2: Interpretation of laws related to elective franchise

(1) In further recognition of the protections for the right to vote provided by the constitution of the state of [State], statutes related to the elective franchise shall be construed liberally in favor of protecting the right to cast an effective ballot.

Section 3: 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 with one or more plurality winners and:

(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 governing body; or

(c) that combines at-large elections with district-based elections, unless the only member of the governing body of a political subdivision elected at-large holds exclusively executive responsibilities. At-large method of election does not include ranked-choice voting, cumulative voting, and limited voting.

(2) “District-based” method of election means a method of electing members to the governing body of a political subdivision using an apportionment plan in which each member of the governing body resides within a district or ward that is a divisible part of the political subdivision and is elected only by voters residing within that district or ward, except for a member of the governing body that holds exclusively executive responsibilities.

(3) “Alternative” method of election means a method of electing members to the governing body of a political subdivision using a method other than at-large or district-based, including, but not limited to, ranked-choice voting, cumulative voting, and limited voting.

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

(5) “Protected class” means a class of eligible voters who are members of a race, ethnicity, or language-minority group.

(6) “Racial polarization” means that the political preferences or interests of members of a protected class or classes are substantially different from the political preferences or interests of the rest of the electorate within a jurisdiction.

Section 4: Rights of Action

(1) Right of action against barriers to equal participation.
   a. Unless it is necessary to serve a compelling state interest, no voting qualification, prerequisite to voting, law, ordinance, standard, practice, procedure, regulation, or policy shall be enacted or implemented by any board of elections or political subdivision in a manner that results in a denial or abridgement of the right of any member of a protected class to vote.
   b. A presumption of liability is established if, based on the totality of the circumstances, members of a protected class have less opportunity than other members of the electorate to participate in the political process or elect candidates or electoral choices preferred by members of the protected class.
   c. Circumstances that may be considered include, but are not limited to, the extent to which members of a protected class have been elected to office in the state or political subdivision and the extent to which members of a protected class in the state or political subdivision vote at lower rates than other members of the electorate.
   d. For political subdivisions where either the primary or general election is held on a date that is not concurrent with the primary or general election dates for state, county, or city office as established in [the STATE constitution and/or in state law], there shall be a presumption that the date of election results in the denial or abridgement of the right to vote where for three consecutive general elections in which there is at least one contested race for an office, the number of actual voters in each contested election is less than seventy-five percent of the total number of votes cast in the most recent general election for the presidency of the United States by voters in the political subdivision, or in which, for 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, the percent of members of that protected class that are actual voters is at least twenty-five percent lower than the percent of citizens of voting age that are not members of that protected class that are actual voters.

(2) Right of action against vote dilution.
   a. Unless it is necessary to serve a compelling state interest, a method of election, including at-large, district-based, or alternative, shall not impair the ability of members of a protected class to equally affect the composition of a legislative body by electing candidates of their choice or otherwise influencing the outcome of elections.
   b. A presumption of liability under this subdivision shall be:
      i. established if a political subdivision uses an at-large method of election and it is shown that either:
A. the voting eligible population within the political subdivision exhibits racial polarization and a different electoral system would provide the protected class with an opportunity to usually elect their preferred candidates of choice; or

B. under the totality of the circumstances, the ability of members of the protected class to elect candidates of their choice or influence the outcome of elections is impaired and a different electoral system would provide the protected class with an opportunity to usually elect their preferred candidates of choice.

ii. established if a political subdivision uses a district-based or alternative method of election and it is shown that candidates or electoral choices preferred by members of the protected class would usually be defeated, and either:

A. electoral preferences of members of the protected class within the political subdivision are racially polarized and a different electoral system would provide the protected class with an opportunity to usually elect their preferred candidates of choice; or

B. under the totality of the circumstances, the ability of members of the protected class to elect candidates of their choice or influence the outcome of elections is impaired and a different electoral system would provide the protected class with an opportunity to usually elect their preferred candidates of choice.

c. In assessing whether political preferences of the voting-eligible population within the political subdivision are racially polarized or whether candidates or electoral choices preferred by members of the protected class would usually be defeated:

i. evidence concerning electoral preferences for members of the governing body of the political subdivision, or for issues before that governing body, are more probative than evidence concerning other elections or issues;

ii. elections prior to the filing of an action pursuant to this subdivision are more probative than elections after the filing of the action;

iii. statistical evidence is more probative than non-statistical evidence;

iv. where there is evidence that more than one protected class of eligible voters are politically cohesive in the political subdivision, members of each of those protected classes may be combined;

v. evidence concerning the intent on the part of the voters, elected officials, or the political subdivision to discriminate against a protected class is not required.
d. In assessing whether, under the totality of the circumstances, the ability of members of the protected class to elect candidates of their choice or influence the outcome of elections is impaired, factors that may be considered shall include, but not be limited to:

i. the history of discrimination in the political subdivision, geographic region, or the state;

ii. the extent to which members of the protected class have been elected to office in the political subdivision;

iii. the use of any voting qualification, prerequisite to voting, law, ordinance, standard, practice, procedure, regulation, or policy that may enhance the dilutive effects of the election scheme;

iv. denial of access of either eligible voters or candidates who are members of the protected class to those processes determining which groups of candidates will receive access to the ballot, financial support, or other support in a given election;

v. the extent to which members of the protected class contribute to political campaigns at lower rates;

vi. the extent to which members of a protected class in the state or political subdivision vote at lower rates than other members of the electorate;

vii. the extent to which members of the protected class are disadvantaged in areas including but not limited to education, employment, health, criminal justice, housing, land use, or environmental protection;

viii. the extent to which members of the protected class are disadvantaged in other areas which may hinder their ability to participate effectively in the political process;

ix. the use of overt or subtle racial appeals in political campaigns;

x. a significant lack of responsiveness on the part of elected officials to the particularized needs of members of the protected class; and

xi. whether the political subdivision has a compelling policy justification for adopting or maintaining the method of election.

No factor is dispositive or necessary to establish the existence of a violation of this section. Evidence of these factors concerning the state, private actors, or other political subdivisions in the geographic region may be considered but is less probative than evidence concerning the political subdivision itself.
(3) Right of action against racial gerrymandering.

a. Unless it is necessary to serve a compelling state interest, such as preventing racial vote dilution, electoral districts shall not be drawn on racial lines.

b. A presumption of liability under this section is established if it is shown

i. that the political subdivision used data on race, ethnicity, or language-minority group, or another characteristic that serves as a proxy for race, ethnicity, or language-minority group, for the purpose of apportionment, and that the use of such data was not necessary to comply with this title, the federal voting rights act, the [State] constitution, or the constitution of the United States.

ii. that the electoral district boundaries of the political subdivision “crack” or “pack” minority communities of interest, and that such cracking or packing was not necessary to comply with this title, the federal voting rights act, the [State] constitution, or the constitution of the United States. To establish presumptive liability under this section, an intent to crack or pack need not be shown.

(4) Standing. Any aggrieved person, 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 [superior/supreme] court for the county in which the political subdivision is located.

(5) Remedies.

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

i. a district-based method of election;

ii. an alternative method of election, including, but not limited to elimination of primary or run-off elections;

iii. new or revised apportionment plans;

iv. elimination of staggered elections so that all members of the governing body are elected on the same date;

v. increasing the size of the governing body;

vi. moving the dates of elections to be concurrent with the primary or general election dates for state, county, or city office as established in section eight of article three or section eight of article thirteen of the constitution;

vii. additional voting hours or days;

viii. additional polling locations;
ix. additional means of voting such as voting by mail;

x. ordering of special elections;

xi. requiring expanded opportunities for voter registration;

xii. requiring additional voter education;

xiii. modifying the election calendar; or

xiv. the restoration or addition of persons to registration lists.

b. The court shall adopt a remedy that will provide the fairest representation to all members of the voting-eligible electorate in the jurisdiction. The Court may not adopt a remedy that diminishes the ability of minority groups to participate in the political process and to elect their preferred candidates to office. The court shall consider proposed remedies by any parties and interested non-parties, and shall not provide deference or priority to a proposed remedy because it is proposed by the political subdivision. However, where an at-large electoral system has been found to violate this section, the court shall, if feasible and adequate to remedy the violation, adopt an alternative-voting remedy under which representatives continue to be elected on a jurisdiction-wide basis, rather than from territorial districts. This title gives the court authority to implement remedies notwithstanding any other provision of state or local law.

(6) Procedures for implementing new or revised apportionment plans. The governing body of a political subdivision with the authority under this title and all applicable state and local laws to enact and implement a new method of election that will replace the political subdivision’s at-large method of election with a district-based or alternative method of election, or enact and implement a new apportionment plan, shall undertake each of the steps enumerated in this subdivision, if proposed subsequent to receipt of a STATEVRA notification letter, as defined in subdivision six of this section, or the filing of a claim pursuant to this title or the federal voting rights act.

a. Before drawing a draft apportionment plan or plans of the proposed boundaries of the districts, the political subdivision shall hold at least two public hearings over a period of no more than thirty days, at which the public is invited to provide input regarding the composition of the districts. Before these hearings, the political subdivision shall conduct outreach to the public, including to non-English-speaking communities, to explain the apportionment process and to encourage public participation.

b. After all draft apportionment plans are drawn, the political subdivision shall publish and make available for release at least one draft apportionment plan and, if members of the governing body of the political subdivision will be elected in their districts at different times to provide for staggered terms of office, the potential sequence of the elections. The political subdivision shall also hold at least two additional hearings over a period of no more than forty-five days, at which the
public is invited to provide input regarding the content of the draft apportionment plan or plans and the proposed sequence of elections, if applicable. The draft apportionment plan or plans shall be published at least seven days before consideration at a hearing. If the draft apportionment plan or plans are revised at or following a hearing, the revised versions shall be published and made available to the public for at least seven days before being adopted.

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

(7) Notification requirement and safe harbor for judicial actions. Before commencing a judicial action against a political subdivision under this section, a prospective plaintiff shall send by trackable mail a written notice to the clerk of the political subdivision, or, if the political subdivision does not have a clerk, the governing body of the political subdivision, against which the action would be brought, asserting that the political subdivision may be in violation of this title. This written notice shall be referred to as a “STATEVRA notification letter” in this title. For actions against a school district or any other political subdivision that holds elections governed by the education law, the prospective plaintiff shall also send by certified mail a copy of the STATEVRA notification letter to the commissioner of education.

a. A prospective plaintiff shall not commence a judicial action against a political subdivision under this section within fifty days of sending to the political subdivision a STATEVRA notification letter.

b. Before receiving a STATEVRA notification letter, or within fifty days of mailing of a STATEVRA notification letter, the governing body of a political subdivision may pass a resolution affirming:

i. the political subdivision’s intention to enact and implement a remedy for a potential violation of this title;

ii. specific steps it will undertake to facilitate approval and implementation of such a remedy; and

iii. a schedule for enacting and implementing such a remedy. Such a resolution shall be referred to as a “STATEVRA resolution” in this title. If a political subdivision passes a STATEVRA resolution, a prospective plaintiff shall not commence an action to enforce this section against the political subdivision within ninety days of the resolution’s passage. For actions against a school district, the commissioner of education may order the enactment of an STATEVRA resolution pursuant to the commissioner’s authority under section three hundred five of the education law.
c. If the governing body of a political subdivision lacks the authority under this title or applicable state law or local laws to enact or implement a remedy identified in a STATEVRA resolution within ninety days after the passage of the STATEVRA resolution, or if the political subdivision is a covered entity as defined under section 3 of this title, the governing body of the political subdivision may undertake the steps enumerated in the following provisions upon passage of a STATEVRA resolution:

i. The governing body of the political subdivision may approve a proposed remedy that complies with this title and submit such a proposed remedy to the [State Court] or Attorney General. Such a submission shall be referred to as a “STATEVRA proposal” in this title.

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

iii. Within sixty days of receipt of a STATEVRA proposal, the [State Court] or Attorney General shall either grant or deny approval of the STATEVRA proposal.

iv. The [State Court] or Attorney General shall only grant approval to the STATEVRA proposal if it concludes that:

A. the political subdivision may be in violation of this title;

B. the STATEVRA proposal would remedy any potential violation of this title;

C. the STATEVRA proposal is unlikely to violate the constitution or any federal law;

D. the STATEVRA proposal will not diminish the ability of minority groups to participate in the political process and to elect their preferred candidates to office; and

E. implementation of the STATEVRA proposal is feasible. The [State Court] or Attorney General may grant approval to the STATEVRA proposal notwithstanding any other provision of state or local law.

v. If the [State Court] or Attorney General grants approval, the STATEVRA proposal shall be enacted and implemented immediately, notwithstanding any other provision of state or local law. If the political subdivision is a covered entity as defined under section 3 of this title, there shall be no need for the political subdivision to also obtain preclearance for the STATEVRA proposal pursuant to such section.

vi. If the [State Court] or Attorney General denies approval, the STATEVRA proposal shall not be enacted or implemented. The [State Court] or Attorney General may, in its discretion, interpose objections explaining its basis or indicate another STATEVRA proposal for which it would grant approval.
vii. If the [State Court] or Attorney General does not respond, the STATEVRA proposal shall not be enacted or implemented.

d. A political subdivision that has passed a STATEVRA resolution may enter into an agreement with a prospective plaintiff who sends a STATEVRA notification letter providing that such a prospective plaintiff shall not commence an action to enforce this section against the political subdivision for an additional ninety days. This written agreement may be referred to as a “STATEVRA extension agreement”. The STATEVRA extension agreement shall include a requirement that either the political subdivision shall enact and implement a remedy that complies with this title or the political subdivision shall pass a STATEVRA proposal and submit it to the [State Court] or Attorney General.

e. If, pursuant to a process commenced by a STATEVRA notification letter, a political subdivision enacts or implements a remedy or the [State Court] or Attorney General grants approval to a STATEVRA proposal, a prospective plaintiff who sent the STATEVRA notification letter may, within thirty days of the enactment or implementation of the remedy or approval of the STATEVRA proposal, demand reimbursement for the cost of the work product generated to support the STATEVRA notification letter. A prospective plaintiff shall make the demand in writing and shall substantiate the demand with financial documentation, such as a detailed invoice for demography services or for the analysis of voting patterns in the political subdivision. A political subdivision may request additional documentation if the provided documentation is insufficient to corroborate the claimed costs. A political subdivision shall reimburse a prospective plaintiff for reasonable costs claimed, or in an amount to which the parties mutually agree, within forty-five days of receiving the written demand, except that if more than one prospective plaintiff is entitled to reimbursement, the political subdivision shall reimburse the prospective plaintiffs in the order in which they sent STATEVRA notification letters. The cumulative amount of reimbursements to all prospective plaintiffs, except for actions brought by the Attorney General, shall not exceed [fifty thousand dollars], as adjusted annually to the consumer price index for all urban consumers, United States city average, as published by the United States department of labor.

f. Notwithstanding the provisions of this subdivision, if the first day for designating petitions for a political subdivision’s next regular election to select members of its governing board has begun or is scheduled to begin within thirty days, or if a political subdivision is scheduled to conduct any election within one hundred twenty days, a plaintiff alleging that the mode of election or apportionment plan in effect for that election will violate this title may commence a judicial action against a political subdivision under this section, provided that the relief sought by such a plaintiff includes preliminary relief for that election. Prior to or concurrent with commencing such a judicial action, any such plaintiff shall also submit a STATEVRA notification letter to the political subdivision. If a judicial action commenced under this provision is withdrawn or dismissed for mootness because the political subdivision has enacted or implemented a remedy or the [State Court] or Attorney
General has granted approval of a STATEVRA proposal pursuant to a process commenced by a STATEVRA notification letter, any such plaintiff may only demand reimbursement pursuant to this subdivision.

(8) Expedited judicial proceedings and preliminary relief. Because of the frequency of elections, the severe consequences and irreparable harm of holding elections under unlawful conditions, and the expenditure to defend potentially unlawful conditions that benefit incumbent officials, actions brought pursuant to this section shall be subject to expedited pretrial and trial proceedings and receive an automatic calendar preference. In any action alleging a violation of this section in which a plaintiff party seeks preliminary relief with respect to an upcoming election, the court shall grant relief if it determines that: (a) plaintiffs are more likely than not to succeed on the merits; and (b) it is possible to implement an appropriate remedy that would resolve the alleged violation in the upcoming election.

Section 5: Affirmative Defense
A defendant may rebut the presumption of liability established pursuant to Section 4 by demonstrating that the law, ordinance, standard, practice, procedure, regulation, or policy at issue is narrowly tailored to serve a compelling state interest.

Section 6: Maintenance of voting and election data
1. Establishment of a statewide database. There shall be established within the state university of [State] a repository of the data necessary to assist the state and all political subdivisions with evaluating whether and to what extent existing laws and practices with respect to voting and elections are consistent with the public policy expressed in this title, implementing best practices in voting and elections to achieve the purposes of this title, and to investigate potential infringements upon the right to vote. This repository shall be referred to as the “statewide database” in this title.

2. Director of the statewide database. The operation of the statewide database shall be the responsibility of the director of the statewide database, hereinafter referred to in this title as the “director”, who shall be a member of the faculty of the state university of [State] with doctoral-level expertise in demography, statistical analysis, and electoral systems. The director shall be appointed by the governor.

3. Statewide database staff. The director shall appoint such staff as are necessary to implement and maintain the statewide database.
4. Data, information, and estimates maintained. The statewide database shall maintain in electronic format at least the following data and records for at least the previous twelve year period:

a. Estimates of the total population, voting age population, and citizen voting age population by race, ethnicity, and language-minority group, broken down to the election district level on a year-by-year basis for every political subdivision in the state, based on data from the United States census bureau, American community survey, or data of comparable quality collected by a public office.

b. Election results at the election district level for every statewide election and every election in every political subdivision.

c. Contemporaneous voter registration lists, voter history files, election day poll site locations, and early voting site locations, for every election in every political subdivision.

d. Contemporaneous maps, descriptions of boundaries, and shapefiles for election districts.

e. Election day or early voting poll sites including, but not limited to, lists of election districts assigned to each polling place, if applicable.

f. Apportionment plans for every election in every political subdivision.

g. Any other data that the director deems advisable to maintain in furtherance of the purposes of this title.

5. Public availability of data. Except for any data, information, or estimates that identifies individual voters, the data, information, and estimates maintained by the statewide database shall be posted online and made available to the public at no cost.

6. Data on race, ethnicity, and language-minority groups. The statewide database shall prepare any estimates made pursuant to this section by applying the most advanced, peer-reviewed, and validated methodologies.

7. Calculation and publication of political subdivisions required to provide assistance to language-minority groups. On or before February twenty-eighth, two thousand twenty-one and every third year thereafter, the statewide database shall publish on its web site and transmit to the state board of elections for dissemination to the county boards of elections and for the state education department a list of political subdivisions required pursuant to this section to provide assistance to members of language-minority groups and each language in which those political subdivisions are required to provide assistance. The boards of elections shall transmit the list described herein to all political subdivisions within their jurisdiction.
8. Duty to send data and information to statewide database. Upon the certification of election results and the completion of the voter history file after each election, each election authority shall transmit copies of:

a. election results at the election district level;

b. contemporaneous voter registration lists;

c. voter history files;

d. maps, descriptions, and shapefiles for election districts; and

e. lists of election day poll site and early voting sites and lists, shapefiles, or descriptions of the election districts assigned to each election day poll site or early voting site. As used in this subdivision, the term “election authority” refers to the agency primarily responsible for maintaining the records listed in subdivision four of this section and include any board of election, as well as general purpose local governments or special purpose local governments that administer their own elections or maintain their own voting and election records.

9. Technical assistance to political subdivisions. Staff at the statewide database may provide non-partisan technical assistance to political subdivisions, scholars, and the general public seeking to use the resources of the statewide database.

10. Presumption of validity. The data, information, and estimates maintained by the statewide database shall be granted a rebuttable presumption of validity by any court concerning any claim brought pursuant to this title.

Section 7: Assistance for language-minority groups

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

a. more than two percent of the citizens of voting age of a political subdivision are members of a single language-minority group and speak English “less than very well” according to the American Community Survey;

b. more than four thousand of the citizens of voting age of such political subdivision are members of a single language-minority group and speak English “less than very well” according to the American community 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 [State] as “American Indian” or “Alaska Native”.

2. Language assistance to be provided. When the director determines 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 notwithstanding the determination of the director, 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 of the director was unreasonable or an abuse of discretion.

Section 8: Preclearance

1. Preclearance. To ensure that the right to vote is not denied or abridged on account of race, ethnicity, or language-minority group, as a result of the enactment or implementation of a covered policy, as defined in subdivision two of this section, after the effective date of this section, the enactment or implementation of a covered policy by a covered entity, as defined in subdivision three of this section, shall be subject to preclearance by the Attorney General or by a designated court as set forth in this section.

2. Covered policies. A “covered policy” shall include any new or modified voting qualification, prerequisite to voting, law, ordinance, standard, practice, procedure, regulation, or policy concerning any of the following topics:
   a. Apportionment;
   b. Method of election;
   c. Form of government;
   d. Annexation of a political subdivision;
   e. Incorporation of a political subdivision;
   f. Consolidation or division of political subdivisions;
g. Removal of voters from enrollment lists or other list maintenance activities;

h. Number, location, or hours of any election day or early voting poll site;

i. Dates of elections and the election calendar, except with respect to special elections;

j. Registration of voters;

k. Assignment of election districts to election day or early voting poll sites;

l. Assistance offered to members of a language-minority group;

m. Changes to the governmental powers of elected officials; and

n. The Attorney General 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, ethnicity, 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 five years, has failed to comply with its obligations to provide data or information to the statewide database, as stated in section 5 of this title;

c. 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; or

d. any county in which, based on data provided by [relevant criminal justice agency], 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 that 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.

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.
4. Preclearance by Attorney General. A covered entity may obtain preclearance for a covered policy from the Attorney General pursuant to the following process:

a. The covered entity shall submit the covered policy in writing to the Attorney General of the office of the attorney general. 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 Attorney General shall grant or deny preclearance within the following time periods:

   i. For any covered policy concerning the designation of poll sites or the assignment of election districts to poll sites, whether for election day or early voting, the Attorney General shall grant or deny preclearance within thirty days following the receipt of submission. If the Attorney General grants preclearance, it may, in its discretion, designate preclearance as “preliminary” in which case the Attorney General may deny preclearance within sixty days following the receipt of submission of the covered policy.

   ii. For any other covered policy, the Attorney General shall grant or deny preclearance within sixty days following the receipt of submission of the covered policy.

   iii. For any covered policy concerning the establishment of a district-based or alternative method of election, apportionment plans, or a change to the form of government of a political subdivision, the Attorney General may invoke up to two extensions of ninety days.

c. The Attorney General shall grant preclearance only if it determines that the covered policy will not diminish the ability of minority groups to participate in the political process and to elect their preferred candidates to office. If the Attorney General grants preclearance, the covered entity may enact or implement the covered policy immediately.

d. If the Attorney General denies preclearance, the Attorney General shall interpose objections explaining its basis and the covered policy shall not be enacted or implemented.

e. If the Attorney General fails to respond within the time for response as established in this section, the covered policy shall be deemed precleared and the covered entity may enact or implement the covered policy immediately.

f. Appeal of any denial by the Attorney General may be heard in the supreme court for the county of [State], 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.

g. The Attorney General may promulgate such rules and regulations pursuant to the state administrative procedure act as are necessary to effectuate the purposes of this subdivision.
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. [add court designations for State]

b. The covered entity shall contemporaneously provide a copy of the covered policy to the Attorney General. The failure of the covered entity to provide a copy of the covered policy to the Attorney General 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 minority groups 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. Failure to seek or obtain preclearance. If any covered entity enacts or implements a covered policy without seeking preclearance pursuant to this section, or enacts or implements a covered policy notwithstanding the denial of preclearance, either the Attorney General or any other party with standing to bring an action under this title may bring an action to enjoin the covered policy and to seek sanctions against the political subdivision and officials in violation.

Section 9: Civil liability for voter intimidation

1. Voter intimidation prohibited. No person, whether acting under color of law or otherwise, shall use or threaten to use any force, violence or restraint, or inflict or threaten to inflict any injury, damage, harm or loss, or in any other manner practice intimidation that causes any person to place or cause to be placed his name upon a registry of voters; or to vote or refrain from voting in general or for or against any particular person or for or against any proposition submitted to voters at such election.
2. Voter deception prohibited. No person, whether acting under color of law or otherwise, shall by abduction, duress or any forcible or fraudulent device or contrivance impede, prevent or otherwise interfere with the free exercise of the elective franchise by any person eligible to vote with the purpose of interfering with the free exercise of the elective franchise in any way, including registering to vote; voting; or declining to vote; or voting for or against any particular candidate or proposition; or declining to vote for or against any particular candidate or proposition. No person acting under color of law shall use any fraudulent device or contrivance that causes interference with the free exercise of the elective franchise by any person eligible to vote without regard to the intent underlying the use of the fraudulent device or contrivance.

3. 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.

4. Remedies. Upon a finding of a violation of any provision of this section, the court shall implement appropriate remedies that are tailored to remedy the violation, including but not limited to providing for additional time to cast a ballot that may be counted in the election at issue. This title gives the court authority to implement remedies notwithstanding any other provision of state or local law.

Section 10: Attorney’s fees
In any action to enforce any provision of this title, the court shall allow the prevailing plaintiff party, other than the state or political subdivision thereof, a reasonable attorney’s fee, litigation expenses including, but not limited to, expert witness fees and expenses as part of the costs. A plaintiff will be deemed to have prevailed when, as a result of litigation, the political subdivision yields much or all of the relief sought in the suit. Prevailing defendant parties shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

Section 11: Applicability
The provisions of this title shall apply to all elections for any elected office or electoral choice within the state or any political subdivision. The provisions of this title shall apply notwithstanding any other provision of law, including any other state law or local law.

Section 12: Severability
If any provision of this title or its application to any person, political subdivision, or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this title which can be given effect without the invalid provision or application, and to this end the provisions of this title are severable.