

The seal of the State of New York Attorney General is centered in the background. It features a circular design with the text "STATE OF NEW YORK" at the top and "ATTORNEY GENERAL" at the bottom. In the center, there is a figure holding a scale of justice, with a globe and a banner above it. The word "EXCELSIOR" is written on a banner below the figure.

New York Voting Rights Act Preclearance Webinar for Covered Entities

CIVIL RIGHTS BUREAU, VOTING RIGHTS SECTION

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AGENDA

Introduction to the Civil Rights Bureau and Voting Rights Section

Overview of the NYVRA's Preclearance Requirement

Preliminary Identification of Covered Entities

Preliminary Identification of Covered Policies

What to Expect Next



Introduction to the Civil Rights Bureau and Voting Rights Section

- ❑ OAG's Civil Rights Bureau ("CRB")
 - **The team:** Chief, Deputy Chief, line attorneys, analysts and support staff
 - **Functions**
 - **Law enforcement:** Investigate and enforce violations of federal, state and local civil rights laws

- ❑ The CRB's Voting Rights Section
 - **The team:** Chief, line attorneys, analysts and support staff
 - **Functions**
 - **Law enforcement:** Investigate and enforce violations of voting rights laws
 - **Compliance:** implementation of the New York Voting Rights Act's preclearance requirement

Overview of the NYVRA's Preclearance Requirement

- ❑ The Civil Rights Bureau issued public guidance in December 2023. All of the information is available in the guidance on the New York Office of the Attorney General website.
- ❑ The NYVRA's prohibitions on suppression and dilution have already taken effect.
- ❑ Preclearance takes effect **September 22, 2024**
- ❑ Beginning engagement process now to better understand jurisdictions as we further refine our regulatory positions on preclearance and plan to best assist with compliance

Overview of the NYVRA's Preclearance Requirement

- Preclearance boils down to three issues:
 - (1) Is the jurisdiction a **covered entity**?
 - (2) Is the change a **covered policy**?
 - (3) Does the change **diminish the ability to participate in the political process and to elect candidates of choice**?

- Focus of this webinar is on (1)
 - Will walk through guidance letter, explain how we have preliminarily identified your jurisdiction as subject to preclearance
 - Your feedback and engagement throughout this process will be critical

Overview of the NYVRA's Preclearance Requirement

- ❑ **Any jurisdiction** (county, city, town, village, school district, etc.) that is covered by the law's formula **must submit any election change covered by the law for CRB (or state supreme court) review** before it can take effect
- ❑ Preclearance Formula
 - Jurisdictions with **prior voting rights or civil rights violations**
 - Counties where **arrest rates are high among members of a particular race**
 - Jurisdictions with **high rates of racial segregation in housing**
- ❑ Changes Subject to Preclearance
 - NYVRA contains list of the **types of changes** that qualify (“covered policies”)
 - CRB is authorized to **add qualifying changes** through rulemaking process

Overview of the NYVRA's Preclearance Requirement

- **Covered entity submits a covered policy** to the CRB for preclearance review
 - Within **10 days** CRB **publishes submission** online and **solicits public comment (5 or 10 days)**
 - For poll site selection and assignment of election districts, we have **15 days to review** (with a potential 20-day extension)
 - For any other policy, we have **55 days to review** (up to 180-day extension)

Overview of the NYVRA's Preclearance Requirement

- The CRB is authorized to grant preclearance only if the proposed change would not “diminish the ability of protected class members to participate in the political process and to elect their preferred candidates to office”
 - The CRB may request additional information from the jurisdiction
 - Jurisdictions can appeal denial via Article 78
- Jurisdictions may also obtain preclearance through the state courts

Preliminary Identification of Covered Entities

□ Four Prongs of Coverage

- Paragraph (a): **1 or more voting rights enforcement actions within the last 25 years** under the NYVRA, the federal VRA, the Fifteenth Amendment or the Fourteenth Amendment
- Paragraph (b): **3 or more civil rights enforcement actions within the last 25 years** under state or federal civil rights laws or the Fourteenth Amendment concerning discrimination based on race, color, or language-minority group status
- Paragraph (c): A **disproportionate arrest rate** (of a protected class) **within the last 10 years**
- Paragraph (d): A **dissimilarity index score** (a calculation of residential segregation) **above 50 within the last 10 years**

Preliminary Identification of Covered Entities

□ Additional Considerations

- “Paragraph (e)”: If a covered entity has a BOE (i.e., counties), the county’s BOE is also a covered entity
 - All non-county **elections administered by a covered county BOE are covered elections subject to preclearance**
- “Paragraph (f)”: If a covered entity is wholly within a larger jurisdiction, both the larger jurisdiction and its BOE are subject to preclearance on a limited basis
 - Limited basis: only changes concerning the covered entity are subject to preclearance

Paragraphs (a) & (b)

- Covers local jurisdictions based on **court orders and government enforcement actions** concerning voting rights violations (paragraph (a)) or civil rights violations (paragraph (b)) **within past 25 years**
 - **Government Enforcement Actions** include:
 - Denials of preclearance under the Federal Voting Rights Act and the NYVRA
 - Violations reflected in litigation or resolutions involving state or federal governmental bodies

Paragraph (c)

- Covers local jurisdictions based on disproportionate arrest rates of a protected class **within the last 10 years**
 - Local jurisdictions are covered if arrest rate for a particular protected class exceeds the protected class's proportion of the **citizen voting age population of the county by 20%**
 - Relies upon data from the Division of Criminal Justice Services (“DCJS”)
- Because DCJS data **does not identify eligible voters** within each arrest rate data set, **the CRB cannot identify covered entities under Paragraph (c)** at this time
 - NYVRA defines a **“protected class” as a group of “eligible voters”**

Paragraph (d)

- Covers local jurisdictions based on high rates of residential segregation **within the last 10 years**
 - Residential segregation is measured using the **dissimilarity index**
 - Local jurisdictions with a **dissimilarity index score above 50** are covered entities under paragraph (d)
- Paragraph (d) requires a **two-step analysis**
 - Step 1: Calculate a population prerequisite for each protected class/year
 - Step 2: Calculate a dissimilarity index for local jurisdictions that meet the population prerequisite for a particular protected class and year

Paragraph (d)

Step 1: Calculating the population prerequisite

- Paragraph (d) only covers jurisdictions where a protected class meets the **population prerequisite** within the last 10 years.
 - A protected class meets the population prerequisite where it consists of:
 - **At least 25,000 citizens of voting age**; or
 - **At least 10% of the citizen voting age population** of the local jurisdiction.

Paragraph (d)

Step 1: Population prerequisite example

Example

In the year 2020, Doe County's total citizen voting age population (citizens who are 18 years and older) was 100,000 people. In the year 2020, 50,000 people in Doe County identify as Black, and of these 50,000 Black people, 10,000 people are citizens aged 18 and older.

- Black individuals do not “consist[] of at least twenty-five thousand citizens of voting age,” because there are only 10,000 Black citizens of voting age in Doe County.
- However, Black individuals do make up “at least ten percent of the citizen voting age population” of Doe County (10,000 out of 100,000 total citizens of voting age).
- **Therefore, the population prerequisite is met as to Black residents.**

Paragraph (d)

Step 2: Calculating the dissimilarity index score

- ❑ The dissimilarity index looks at **how evenly members of racial groups are distributed across neighborhoods**
 - Dissimilarity index scores **range from 0-100 with a higher number indicating a more segregated jurisdiction**
 - A local jurisdiction with **a score above 50** for any protected class that meets the population prerequisite within the last 10 years is a covered entity
- ❑ CRB calculated dissimilarity index scores **only for the particular protected class and year** that met the population prerequisite

Paragraph (d)

Step 2: Dissimilarity index score example

Example

Doetown has a total population of 10,000, with 8,000 total White residents and 2,000 total Black residents. Doetown therefore contains four-fifths White residents and one-fifth Black residents.

Doetown has two neighborhoods within its borders, each comprised of one census tract. Neighborhood 1 has a total population of 6,000, with 4,000 White residents and 2,000 Black residents. Neighborhood 2 has a total population of 4,000 and is made up entirely of White residents.

- **Doetown has a dissimilarity index score of 50 out of a possible 100**, because the difference between the current distribution of White and Black residents and a proportional distribution of these groups within each census tract amounts to 50% of either the White or Black populations.
 - If the White residents of Neighborhood 2 (half of the total White residents of Doetown) resided in Neighborhood 1 instead, or
 - If half of the total Black residents of Doetown resided in Neighborhood 2 instead of the entire Black population residing in Neighborhood 1, the racial composition of both neighborhoods would be proportional to Doetown as a whole.

Preliminary Identification of Covered Policies

- ❑ Only changes made **on or after 9/22/24** will be covered
- ❑ Changes made in order to comply with federal or state law are not covered unless they involve **discretion/policy decisions** made by the jurisdiction
 - Discretionary/policy decisions made **before 9/22/24** (for example, poll site designations) will not be subject to preclearance this year
- ❑ Some changes may be made via local law
 - We may follow up with your jurisdiction's counsel to request information regarding **legislation related to covered policies**
- ❑ We are seeking your input to develop **guidance that makes sense for your jurisdiction**

Preliminary Identification of Covered Policies

- ❑ **Method of election**
- ❑ **Form of government**
- ❑ **Annexation, incorporation, or consolidation** of a political subdivision
- ❑ **Removal of voters from enrollment lists** or other list maintenance activities
- ❑ Number, location, or hours of any **election day or early voting poll site**
- ❑ **Dates of elections and the election calendar**, except for special elections
- ❑ **Registration of voters**
- ❑ **Assignment of election districts** to election day or early voting poll sites
- ❑ Assistance offered to members of a **language-minority group**
- ❑ Additional policies **may be designated by rule**

What to Expect Next

- ❑ **Questionnaire** regarding election administration practices and personnel: Please **respond by 2/9**
- ❑ We will follow up with **additional information** regarding:
 - **Covered policies**
 - The **legal standard** for reviewing preclearance submissions
 - **Operational details** (e.g. where and how to send in submissions)
- ❑ We will send a **follow-up email** with reminders of upcoming deadlines and links to submit feedback
- ❑ **Sign up for notifications** of preclearance submissions and other important preclearance updates
- ❑ **Questions? Contact us at: votingcompliance@ag.ny.gov** (dedicated line for covered entities)