

New York AG Proposes Rules for Preclearance Under the New York Voting Rights Act

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On June 12, the Office of the New York State Attorney General (AG) [proposed a new rule](#) related to the New York Voting Rights Act (NYVRA).

Beginning September 22, the law requires covered local jurisdictions to submit certain proposed changes to their voting or elections procedure for approval by the AG's Civil Rights Bureau (Bureau) or an appropriate court. The process of submitting proposed changes and receiving approval is called "preclearance."

The NYVRA gives the AG authority to make rules related to preclearance.

When Does the NYVRA Apply?

The NYVRA applies to covered entities attempting to enact a covered policy. Covered entities include (1) political subdivisions found in violation of applicable state or federal election laws within the previous 25 years, and (2) political subdivisions with a "dissimilarity index" over a certain threshold, indicating a higher degree of segregation between two groups. Covered policies generally include policies that address voting qualifications; prerequisites to voting; method of election; annexation, incorporation, or consolidation of political subdivisions; removal of voters from enrollment lists; number, location, or hours of poll sites; dates of elections; voter registration; and assistance for language-minority groups.

Clarifications Regarding the Preclearance Process

The NYVRA requires covered entities to submit new policies in writing to the Civil Rights Bureau, which will publish the submission online to allow for public comment before approving or rejecting the preclearance request. Rules that diminish the ability of protected class members to participate in the political process will be rejected. The proposed rule clarifies certain details of the preclearance process, including:

- **Information required for each submission.** This includes information about the existing and newly proposed policy; the submitting authority; statutory authority for the change; the reasons for the change; a statement about the effect on members of race, color, or language minority groups; etc.
- **Submission timing and procedures.** For example, the proposed rule states that submissions must be in writing, clarifies that the Bureau will provide an electronic option for submitting preclearance requests, and explains the process for public comment.
- **Notification of administrative determinations.** The Bureau will issue a report and determination for all

preclearance decisions. If preclearance is denied, this report will explain the basis for denial and advise the submitting authority about the appeals process.

- **Standard for preclearance.** The rule provides that changes will not be precleared if (1) “the individuals who will be burdened by the change are disproportionately likely to be members of one or more protected classes,” and (2) “the change imposes a burden material enough that it will likely cause some reasonable members of such protected classes not to vote or otherwise participate in the political process.” The covered entity bears the burden of proving that preclearance should be granted.
- **Covered entities.** The proposed rule clarifies the methodology for determining whether a political subdivision is a covered entity and explains that the Bureau will periodically publish a list of covered entities. It notes that the State of New York is not a covered entity.
- **Covered policies.** The proposed rule notes that “the preclearance requirement applies to any covered policy, even if it appears to be minor or indirect, returns to a prior practice or procedure, [or] purports to expand voting rights.”

Looking Ahead

Preclearance requirements under the NYVRA take effect in September. Public comments on the proposed rule must be submitted by August 12. Members of the public may submit comments to the Voting Rights Section, Civil Rights Bureau of the Office of New York Attorney General, by mail or email.

As the New York preclearance requirements take effect this fall, municipalities in New York will need to evaluate their current election practices and prepare to defend proposed changes.

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