HANDBOOK FOR JURISDICTIONS SUBJECT TO NYVRA PRECLEARANCE

Last Updated September 25, 2024

I. Introduction

The Civil Rights Bureau (the "CRB") of the Office of the New York State Attorney General ("OAG") has prepared this Handbook for Jurisdictions Subject to NYVRA Preclearance (the "Handbook"), to assist local jurisdictions[1] subject to the preclearance requirement of the John R. Lewis Voting Rights Act of New York, N.Y. Elec. Law § 17-200 *et seq*. (the "NYVRA").

The Handbook provides an overview of:

- the NYVRA's administrative preclearance process, including the statutory provisions and the implementing preclearance regulations issued by the OAG; and
- the standard by which the CRB will approve or deny administrative preclearance submissions.

This Handbook covers only administrative preclearance. Judicial preclearance, an alternative way to obtain preclearance approval, is handled separately in New York State Supreme Court. *See* N.Y. Elec. Law § 17-210(5).

This Handbook will be updated over time. This first edition contains general information on the topics outlined above. Updated editions will be made available to covered entities, other interested parties, and the general public.

The information in this Handbook is general in nature and not a substitute for legal advice from a jurisdiction's attorney. In addition to consulting this Handbook, jurisdictions and their attorneys should consult the text of the NYVRA and OAG's implementing preclearance regulations.

[1] While this Handbook uses the term "jurisdiction" for ease of reference, the NYVRA uses the term "political subdivision," defined as "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." N.Y. Elec. Law § 17-204(4). Federal and state legislative districts, such as Congressional, State Senate, and State Assembly Districts, are not "political subdivisions" under the NYVRA.

The CRB reviews preclearance submissions on a case-by-case basis. For each preclearance submission, the CRB will analyze the specific facts and make determinations that are consistent with the standards described in this Handbook, the NYVRA, and the preclearance regulations. We encourage you to discuss any proposed preclearance submissions in advance with the Voting Rights Section of the CRB.

Questions?

If you have any questions about administrative preclearance, please feel free to contact us at **votingcompliance@ag.ny.gov**, our dedicated email address for covered entities. You can also visit OAG's **New York Voting Rights Act page** on our website, where we provide updates about the NYVRA and the voting rights of New Yorkers.

If you would like to receive notifications of preclearance submissions, determinations, and other important updates, please sign up for our preclearance notification registry **here**.

II. NYVRA & Preclearance Background

The NYVRA is a landmark state law enacted in 2022 that protects voting rights. The NYVRA:

- **Prohibits practices** that harm the right to vote, including voter suppression, vote dilution, and voter intimidation.
- **Introduces new requirements** for some local jurisdictions in New York, such as counties, cities, towns, villages, and school districts, including preclearance of voting- and election-related changes and, effective June 20, 2025, expanding language-related support for voters with limited English proficiency.

This Handbook focuses on the NYVRA's "preclearance" requirement. Preclearance requires all local jurisdictions (for example, a county, city, town, village, or school district) and local boards of elections ("BOEs") that are covered under the NYVRA's preclearance coverage formula to submit election- and voting-related changes for review before they can take effect. The purpose of this review is to prevent changes that make it more difficult for voters to participate in the electoral process or elect their preferred candidates to office. A local jurisdiction or BOE that is covered under the NYVRA's preclearance coverage formula is referred to in the NYVRA as a "covered entity."

Covered entities only need to submit for review a voting- or election-related change that qualifies as a "covered policy." A change to a covered policy made by a covered entity on or after September 22, 2024, must therefore be submitted to either the CRB or a designated court for review before that change can be made.

On December 19, 2023, OAG published a document entitled: "The New York Voting Rights Act: Preliminary Identification of Covered Entities and Covered Policies Subject to

Preclearance (To Take Effect on September 22, 2024)" (the "December 2023 Guidance").[2] The December 2023 Guidance provided an overview of the NYVRA's administrative and judicial preclearance provisions, explained the CRB's analysis that preliminarily identified 34 local jurisdictions in New York that qualify as "covered entities," and provided examples of voting- and election-related changes that qualify as "covered policies." OAG invited public comments on the December 2023 Guidance through February 20, 2024. The comments and our responses were published on OAG's website.[3]

In January 2024, the CRB conducted two webinars with representatives of jurisdictions identified as covered entities, to provide information regarding the NYVRA's preclearance requirement and the December 2023 Guidance. In addition, the CRB separately obtained additional information from officials who administer elections for the jurisdictions identified as covered entities, to better understand their election administration practices.

Following these efforts, the CRB published a Notice of Proposed Rulemaking for regulations related to preclearance. The proposed rule was published on OAG's website on May 28, 2024, and in the New York State Register on June 12, 2024. The CRB invited public comment on the proposed rule through August 12, 2024. The comments and our responses were published on OAG's website.[4] The final rule was published on OAG's website on August 27, 2024, and in the New York State Register on September 11, 2024, and will take effect on September 22, 2024. In September 2024, the CRB conducted two additional webinars with representatives of covered entities, to explain the new regulations and provide other information regarding the preclearance submission and review process. The regulations can be found on OAG's website.

III. Overview of the NYVRA's Administrative Preclearance Process

Covered entities may preclear their changes by submitting them to the CRB for review. We refer to the submission of a covered policy for CRB review (rather than judicial review) as "administrative preclearance." Below is a step-by-step breakdown of the administrative preclearance process:

- **Step 1**: The local jurisdiction submits the proposed change in writing to the CRB.
    - Submissions may be made electronically using the NYVRA Portal (see Section VI(d), "NYVRA Portal," below) or by postal mail.
    - The submission is considered submitted on the day the CRB receives it.
        - For submissions made through the Portal, the submission date will be displayed on the Portal once the covered entity completes the submission.

[2] https://ag.ny.gov/sites/default/files/regulatory-documents/nyvra-preliminary-identification-of-covered-entities-and-covered-policies-subject-to-preclearance.pdf.
[3] https://ag.ny.gov/preliminary-guidance-comments-and-responses.
[4] https://ag.ny.gov/resources/organizations/new-york-voting-rights-act#nyvraregulations.

        - For submissions made by postal mail, the CRB will separately confirm the date of receipt with the covered entity by email.

    - A covered entity may withdraw a submission at any time before a final determination is made by communicating the withdrawal in writing to the CRB, including by email.

- **Step 2**: As soon as practicable but no later than within ten days of receipt of the submission, the CRB publishes the proposed change on OAG's website.

- **Step 3**: A period for public comment takes place. All proposed changes submitted for administrative preclearance must go through a public comment process. The period for public comment runs concurrently with the time provided for the CRB's review (see Step 4 below).

    - During the public comment period, members of the public and other interested parties may provide feedback to the CRB on whether preclearance should be granted or denied.

    - Public comments can be submitted by postal mail, email, or through the Portal. For public comments to be considered, the CRB must receive them before the end of the public comment period.

    - The length of the public comment period depends on the type of proposed change.

        - For changes concerning the selection of poll sites or the assignment of election districts to poll sites, the period for public comment is **five business days**, running from the date the proposed change is published on OAG's website.

        - For all other changes, the period for public comment is **ten business days**, running from the date the proposed change is published on OAG's website.

    - To facilitate public comment, members of the public and other interested parties may sign up to receive email notifications whenever an administrative preclearance request is submitted.

- **Step 4**: The CRB reviews the proposed change and issues a public determination within the time frame set forth in the NYVRA.

    - Like the public comment period, the length of time for the CRB's review depends on the type of proposed change.

        - For changes concerning the selection of poll sites or the assignment of election districts to poll sites, the CRB will review the change and issue a public determination on its website **within 15 calendar days** of receipt.

- For all other changes, the CRB will review the change and issue a public determination on its website **within 55 calendar days** of receipt.

- If the CRB determines that additional information is needed to complete its review, it may request such information from the covered entity. If the covered entity does not comply with the request in a timely manner, preclearance may be denied.

- The CRB may grant preclearance only if it determines that the proposed change "will not diminish the ability of protected class members to participate in the political process and to elect their preferred candidates to office." More information on this legal standard is provided below (see Section VII(a), "Retrogression," below).

- If the CRB grants preclearance, the local jurisdiction may put the proposed change into effect immediately.

- If the CRB denies preclearance, the change cannot take effect. The CRB will provide the covered entity with a public determination letter, which will explain the basis for the denial.

  - The covered entity may appeal a preclearance denial in the Supreme Court for the county of New York or the county of Albany in a proceeding commenced against the CRB, pursuant to Article 78 of the New York Civil Practice Law and Rules.

- In some instances, the CRB may grant "preliminary" preclearance. This is a temporary determination, and within **60 calendar days** from the date it receives the submission, the CRB may deny preclearance of the covered entity's proposed change.

- If the CRB fails to respond within the required time frame, the change is deemed precleared.

IV. Covered Entities

Not all local jurisdictions and BOEs within New York are subject to preclearance. The requirement applies *only* to a "covered entity" seeking to enact or implement a "covered policy." As noted above, a "covered entity" is a local jurisdiction or BOE that falls within the NYVRA's preclearance coverage formula.

While the preclearance coverage formula determines which local jurisdictions and BOEs are subject to preclearance, and the NYVRA does not require the CRB to identify those jurisdictions and BOEs, greater clarity as to which jurisdictions and BOEs fall within the coverage formula supports the law's implementation. Therefore, the CRB published a preliminary list of jurisdictions it identified as subject to preclearance in its December 2023 Guidance. This section

provides information regarding the NYVRA's coverage formula and the CRB's analysis to identify covered entities. Additional detail can be found in the December 2023 Guidance.

A list of jurisdictions identified by the CRB as subject to preclearance can be found on OAG's website.

The State of New York does not qualify as a covered entity under the NYVRA. Therefore, state actors like the Governor and State Legislature are not required to submit covered policies for preclearance.

a. Coverage Formula

The preclearance coverage formula, located in section 17-210(3) of the NYVRA, contains four key components, paragraphs (a) through (d), each of which can independently trigger a local jurisdiction's obligation to submit a proposed change for preclearance review. In addition to these four components, the preclearance coverage formula contains two other provisions, paragraphs (e) and (f), that may trigger preclearance coverage.

i. Paragraphs (a) and (b)

Paragraphs (a) and (b) of the NYVRA's preclearance coverage formula cover local jurisdictions with voting or civil rights violations within the past 25 years.

Paragraph (a) states that the following is a "covered entity":

> 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[.]

Paragraph (b) states that the following is a "covered entity":

> 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[.]

A "government enforcement action" is further defined as "a denial of administrative or judicial preclearance by the state or federal government, pending litigation filed by a federal or state entity, a final judgment or adjudication, a consent decree, or similar formal action."

Section 501.3(b) of OAG's regulations provides more information about how the CRB applies paragraphs (a) and (b). For example, a "finding of any violation" includes a judicial

determination on the merits of a claim. In addition, preliminary relief (such as a preliminary injunction or temporary restraining order) that a court grants based on a likelihood of success on the merits and/or a weighing of relative harms does not constitute a "finding of any violation" on its own.

A consent decree or other written agreement is considered based on a "finding of any violation" if:

- It contains a finding of noncompliance with one of the laws or constitutional provisions listed in paragraph (a) or (b), and
- It does not contain a statement that the jurisdiction denies liability as to those laws or provisions.

Examples of a "similar formal action," as provided in the definition of "government enforcement action" above, include:

- A settlement agreement in which a federal or state government entity (for example, the United States or New York State government) is a party, if the agreement contains a finding of noncompliance with one of the laws or constitutional provisions listed in paragraph (a) or (b), and does not contain a statement that the jurisdiction denies liability as to those laws or provisions; and
- A public report or other written document issued by a federal or state government entity, if the document contains a finding of noncompliance with one of the laws or constitutional provisions listed in paragraph (a) or (b).

There are two key differences between paragraphs (a) and (b). The first relates to the number of violations necessary for coverage. Paragraph (a) requires only one court order or government enforcement action within the past 25 years for a local jurisdiction to be subject to preclearance, whereas paragraph (b) requires three within the past 25 years.

The second difference relates to the types of violations relevant for coverage. Local jurisdictions are covered under paragraph (a) if the violation arises from the NYVRA, the federal Voting Rights Act, the 15th Amendment, or a voting-related violation of the 14th Amendment. By contrast, local jurisdictions are covered under paragraph (b) if each of the three violations arises from a state or federal civil rights law or the 14th Amendment involving discrimination against a "protected class." "Protected class" is defined in the NYVRA as "a class of individuals who are members of a race, color, or language-minority group . . . ."[5] The CRB therefore includes within the scope of our paragraph (b) analysis court orders and government enforcement actions concerning discrimination against individuals on the basis of race, color, or language-minority status.

To identify jurisdictions covered under paragraphs (a) and (b), the CRB conducted an extensive review of litigation and resolutions involving local jurisdictions within New York for

[5] "Language minorities" or "language-minority group" is further defined in the NYVRA as "persons who are American Indian, Asian American, Alaskan Natives or of Spanish heritage." N.Y. Elec. Law § 17-204(5-a).

the preceding 25 years, reviewing matters identified through legal database searches, available filings on public litigation dockets, and other records.

For local jurisdictions covered only under paragraph (a) or (b), once it has been more than 25 years since a jurisdiction's most recent violation, that jurisdiction will no longer be a covered entity. (See Section IV(b), "Effective Date of Coverage," below.)

ii. Paragraph (c)

Paragraph (c) states that the following is a "covered entity":

> any county[6] in which, based on data provided by the division of criminal justice services, the combined misdemeanor and felony arrest rate of voting age 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 the proportion that the protected class constitutes of the citizen voting age population of the county as a whole by at least twenty percentage points at any point within the previous ten years[.]

To identify covered entities under paragraph (c), the CRB must use data from the New York Division of Criminal Justice Services ("DCJS") to compare a county's arrest rate for a protected class with that protected class's proportion of the citizen voting age population of the county. The NYVRA initially defined "protected class" as "a class of eligible voters who are members of a race, color, or language-minority group." Because DCJS data contains arrest counts for all adult members of various groups, with no identification of who among these individuals is an "eligible voter," the CRB's December 2023 Guidance did not identify any counties covered for preclearance under paragraph (c). On August 6, 2024, the NYVRA's definition of "protected class" was amended to change "eligible voters" to "individuals."[7] This change will allow for covered entities to be identified under paragraph (c) in the future.

iii. Paragraph (d)

Paragraph (d) states that the following is a "covered entity":

> any political subdivision in which, based on data made available by the United States census, the dissimilarity index of 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 of the political subdivision, is in excess of

[6] While paragraphs (a), (b), and (d) of the preclearance coverage formula all apply to any type of local jurisdiction, including counties, cities, towns, villages, and school districts, paragraph (c) applies only to counties.

[7] These amendments also limit the arrest rate calculation to individuals of voting age, which further facilitates identification of covered entities under paragraph (c), as the DCJS data used to perform the calculation does not track all juvenile arrests.

> fifty with respect to non-Hispanic White individuals within the political subdivision at any point within the previous ten years[.]

For more information on the CRB's calculation of dissimilarity index scores, please see pages 10-17 of our December 2023 Guidance. On August 6, 2024, the NYVRA was amended to clarify that while the first part of the two-step dissimilarity analysis (to determine whether the jurisdiction has a large enough population of protected class members to perform the calculation) remains limited to citizen voting age population, the second part of the analysis (calculating the dissimilarity index itself) applies to all members of the population, regardless of age and citizenship status.

Section 501.3(c) of OAG's regulations provides more information about how the CRB applies paragraphs (c) and (d). For example, the CRB will use "rational methodologies" in measuring and analyzing data for the purpose of identifying covered entities. The CRB will also often use data provided by the U.S. Census Bureau and may look to other sources to perform calculations. Furthermore, the CRB may make other data-based decisions to ensure accurate calculations, such as selecting the appropriate spatial units (like census tracts or block groups) for a particular analysis.

iv. Paragraph (e)

Paragraph (e) states that "any political subdivision in which a board of elections has been established, if such political subdivision contains a covered entity fully within its borders[,]" is a covered entity.

The CRB identified several counties that are local jurisdictions "in which a board of elections has been established," and which also "contain[] a covered entity fully within [their] borders[.]" Those counties that fully contain covered entities, along with New York City, are subject to preclearance under this paragraph. However, for any county that is covered only under this paragraph and no other sections of the preclearance formula, only election changes that affect the covered entity within its borders will be subject to preclearance.

As an example, assume that Doe Village is a covered entity. Jones County contains Doe Village fully within its borders, along with four other villages that are not covered entities, and Jones County itself is not a covered entity under any of the other paragraphs of the coverage formula. If Jones County intends to make a change that affects all villages within its borders, that change is subject to preclearance *only as to its application in Doe Village*.

v. Paragraph (f)

Paragraph (f) states that "any board of elections that has been established in a political subdivision that is a covered entity pursuant to paragraph (a), (b), (c), (d), or (e)" is a covered entity.

Each county identified as a covered entity, as well as New York City,[8] qualifies as a local jurisdiction "in which a board of elections has been established[.]" Therefore, the BOE of each of those counties, and the New York City BOE, are also covered entities. Because the NYVRA designates BOEs for coverage separately from their associated counties or cities, any changes in a covered policy concerning elections administered by those covered BOEs are also subject to the preclearance requirement.

b. Effective Date of Coverage

The specific factors that trigger preclearance (paragraphs (a) through (f) listed above) determine the date when preclearance coverage goes into effect, and how long the coverage will last.

For violations under paragraph (a) (one or more voting rights violations within the past 25 years), the date of the most recent relevant court order or government enforcement action that triggered preclearance coverage will be the effective date for coverage. For example, if a court order containing a finding of a relevant voting rights violation was issued against Doe County on January 10, 2000, then Doe County would be a covered entity through January 10, 2025.

NOTE: If a covered entity enacts or implements a covered policy without seeking preclearance, or if a covered entity is denied preclearance but puts the policy in place anyway, the covered entity may be subject to litigation. *See* N.Y. Elec. Law § 17-210(6). A lawsuit may result in an order preventing the covered policy from being adopted and sanctions against the defendants. Failure to seek preclearance or abide by a preclearance denial may also result in an extension of the jurisdiction's coverage designation, because a violation of the NYVRA is a basis for coverage under paragraph (a). **If you have questions about whether a change needs to be submitted for preclearance, please contact the CRB at votingcompliance@ag.ny.gov.**

For violations under paragraph (b) (three or more civil rights violations within the past 25 years), the date of the earliest of the three court orders or government enforcement actions that triggered preclearance coverage will be the effective date for coverage. For example, if Doe County has civil court orders sufficient for coverage under paragraph (b) dated January 1, 2020, January 2, 2021, and January 3, 2022, the effective date of coverage would be calculated from January 1, 2020. Assuming no additional violations, Doe County would therefore be a covered entity through January 1, 2045.

NOTE: All local jurisdictions, regardless of whether they are currently covered entities, are required to send the CRB a copy of any court order or government enforcement action that may subject them to coverage under paragraph (a) or (b) within 30 days of the relevant order or action. You may email the documents to votingcompliance@ag.ny.gov or mail them to our offices at ATTN: Voting Rights Section, Civil Rights Bureau, Office of the New York State Attorney General, 28 Liberty Street, New York, NY 10005.

[8] New York City is composed of five counties (Bronx, Kings, New York, Richmond, and Queens), but the city is a "political subdivision in which a board of elections has been established." As a result, the New York City Board of Elections is a covered entity under paragraph (f).

For violations under paragraph (c) (arrest rate of protected class members within the past 10 years), the effective date for coverage is the most recent year in which annual data collected by DCJS shows that a county's arrest rates meet the standard set forth in the law. For example, if a county has a qualifying arrest rate based on 2020 data, it would be covered through 2030.

For violations under paragraph (d) (rate of housing segregation as measured by the dissimilarity index exceeds 50 percent within the past 10 years), the effective date for coverage is the most recent year in which a jurisdiction had a dissimilarity index score above .5. For example, if data published by the United States Census Bureau's American Community Survey ("ACS")[9] for the year 2021 showed that a jurisdiction has a dissimilarity index score of .6, that jurisdiction would be a covered entity through 2031.

The CRB will periodically update its list of jurisdictions and BOEs identified as covered entities and publish the updated list on OAG's website.

V. Covered Policies

As noted above, covered entities need not submit every election change for preclearance review, only those changes that are considered "covered policies." A "covered policy" is a change concerning any of the topic areas listed in the NYVRA's preclearance section. *See* N.Y. Elec. Law § 17-210(2). Below, the CRB lists the topics of covered policies set forth in the NYVRA.

a. Types of Covered Policies

Under the NYVRA, a covered policy includes "any new or modified voting qualification, prerequisite to voting, law, ordinance, standard, practice, procedure, regulation, or policy concerning" any topic listed in section 17-210(2) of the NYVRA. Those topics are:

- **Method of Election.**
  - *Method of election example*: Doe County has a "first past the post" election system, in which voters cast a single vote for a single candidate for each office, and the candidate with the most votes for each office wins. Doe County seeks to switch to a "ranked choice voting" system. If Doe County is a covered entity, the change to ranked choice voting must be precleared.
- **Form of Government.**
  - *Form of government example*: Doe County has a 5-person legislative county board. Doe County intends to add two seats to its board. If Doe County is a covered entity, this change must be precleared.
- **Annexations, incorporations, consolidations or divisions 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 with respect to special elections.**

[9] As discussed in the December 2023 Guidance, the CRB uses ACS 5-year data to calculate dissimilarity index scores for paragraph (d) coverage. The CRB assigns each ACS 5-year dataset to the final year of that survey. For example, to analyze dissimilarity index scores for the year 2021, the CRB used the ACS 5-year dataset with a final survey year of 2021, which contains survey data collected from 2017 through 2021.

- **Registration of voters.**
- **Assignment of election districts to election day or early voting poll sites.**
- **Assistance offered to members of a language-minority group.**

As provided in the NYVRA, the CRB may designate additional topics for covered policies by rule.

Redistricting is not subject to preclearance under the NYVRA. Therefore, when a local jurisdiction redraws the districts in which its officials are elected following the decennial census, the resulting map does not require preclearance. However, there are certain circumstances in which a local jurisdiction's district lines will require preclearance because they are a part of another change that constitutes a covered policy. For example, if a local jurisdiction switches from at-large to district-based elections, that change concerns a method of election, and thus the proposed change, including the newly proposed map, must be precleared. Similarly, annexations, consolidations, and divisions of political subdivisions are covered policies under the NYVRA, and therefore any corresponding district line changes must be precleared.

Consolidation of election districts is subject to preclearance only if it implicates a covered policy, for example, if it results in any district or voter being assigned to a different poll site.

Special elections. While changes concerning the dates and calendars governing special elections are not subject to preclearance, changes made to practices or procedures regarding the conduct of special elections *are* subject to preclearance if they qualify as covered policies.

b. Scope of Coverage

The preclearance requirement applies to any covered policy, even if the change seems be minor or indirect, returns to a prior practice or procedure, appears to expand voting rights, or is designed to address an issue that caused the CRB to deny preclearance to a prior change.

The preclearance requirement applies to changes made by the executive, legislative, or judicial branches of government. However, the following exceptions are not subject to preclearance:

- State and federal laws and regulations
- Changes made to comply with state or federal law, if the change does not require the use of discretion by the covered entity making the change
- Changes made to comply with a local law, if the local law itself was precleared and if the change was specifically described in the preclearance submission for that local law
- Changes that require approval by a state or federal court, if the change was not proposed by and has not thereafter been adopted or modified by the covered entity
- Changes that are ordered by a state or federal court, if the court itself prepared the change and the change was not proposed by and has not thereafter been adopted or modified by the covered entity

NOTE: A court-ordered change is subject to preclearance if it is implemented in a way

that is not required or authorized by the court, or if the covered entity otherwise exercises discretion or policy choices in making the change. In addition, even in instances where a court-ordered change is not subject to preclearance review, if a covered entity can exercise discretion in implementing changes necessitated by the court order, those subsequent changes are still subject to preclearance review. For example, assume that a court orders that Doe County, a covered entity, switch from an at-large to a ward system for electing its county legislature. The conversion to a new ward system is itself not subject to preclearance. However, if the new system requires Doe County to designate new poll site locations, then those poll site changes would be subject to preclearance review.

VI. Preclearance Submission Process

a. Submission Content

Requirements for the content of preclearance submissions are detailed in section 501.1(a) of OAG's regulations. Additional information regarding those requirements is provided in this section.

Covered entities may use the administrative preclearance submission form appended to this Handbook to facilitate their submission requests.

i. General Requirements

Preclearance submissions are subject to the following general requirements:

- Submissions must identify the source of any information they contain.
- If a submission includes an estimate rather than precise statistics, it must also include the name, position, and qualifications of the person responsible for the estimate, and a brief explanation of the basis for the estimate.
- Submissions must be no longer than necessary.
- If a covered entity would like the CRB to consider information included in an earlier submission, it may identify the earlier submission and the relevant information.
- The submission must note any relevant information that is not known or available. The covered entity may need to demonstrate that it was not able to obtain the information despite exercising due diligence.
- Data provided as part of a submission must be from the U.S. Census Bureau or of comparable quality.

ii. Specific Required Contents

All preclearance submissions must include the following:

- **A copy or written description of:**
  - The proposed change.
  - The existing policy that would be repealed, amended, or otherwise changed.
- **A statement identifying each covered policy being proposed that explains the difference between the proposed policy and the policy currently in effect.** A description

of the change will aid CRB's review, which requires us to compare the existing and new policies (see Section VII(a), "Retrogression," below).

- **The name, title, email address, telephone number, and mailing address of the person making the submission.** Each local jurisdiction should authorize specific officials to make submissions on its behalf. Local jurisdictions must notify the CRB of the names and contact information of those officials, to ensure all submissions are properly authorized.
- **The name of the submitting authority (and, if different, the name of the person or body responsible for enacting and implementing the covered policy, and any political subdivision whose elections are affected by the policy).**
    - A "submitting authority" is the jurisdiction or jurisdictional representative authorized to make the submission. In many cases, this will be the covered entity itself. However, counties or county boards of elections that administer elections for jurisdictions within their borders may act as a submitting authority for such jurisdictions. (See Section VI(c)(i), "Submitting Authority," below.)
    - Jurisdictions must also identify the person or body responsible for enacting and implementing the covered policy (in most instances, the local officials charged with administering an election, such as a county board of elections or local clerk), and the elections affected.
- The name of the county where the covered entity is located (if the submission does not come from the county or the county BOE).
- **A statement identifying the legal or other authority for the change, and a description of the procedures the local jurisdiction was required to follow in deciding to undertake the change**. For example, if a town adopts a change by local law or resolution, this statement should include a description of the town board's voting procedures and laws that authorize the town to make that type of change.
- **If the covered entity is legally bipartisan (such as a board of elections), a statement attesting that the proposed change has been approved by authorized members of both political parties**.
- **A statement that the change has not yet been enforced or administered.** Jurisdictions must confirm that they have not yet implemented the proposed change.
- **An explanation of the geographic scope of the change (if the change will not affect the entire political subdivision)**. A jurisdiction may also provide shape-files, maps, and other information to clarify a change's geographic scope.
- **A statement of the reason(s) for the change**. For example, a jurisdiction could submit a brief statement explaining that it is relocating certain poll sites because the prior sites are under construction.
- **A statement of the anticipated effect of the change on members of protected classes.** This statement should be based on an analysis consistent with the statutory and regulatory standards for approving or denying preclearance requests.
- **A statement identifying any pending litigation, or past litigation within the coverage period, in which the covered entity is a party**, **that concerns the change or any related voting practice**. For example, if a change to poll sites is the result of a new district map

that was adopted as part of a court-ordered settlement, this statement should reference that litigation and include a copy of the settlement as well as the map.

- **A statement that the policy currently in effect, and the procedure for adopting the change, have both been precleared (or an explanation of why that statement cannot be made)**. In addition to the underlying change, many procedures for adopting changes may also be covered policies. If they are, they should be precleared. This statement should confirm that the current policy and the procedure adopting it were both precleared or should state the reason why they were not. For example, if the existing practices were in effect prior to September 22, 2024, a statement attesting to this fact is sufficient.
- **A statement identifying any other change that interacts with the covered policy (even if the other change is not itself subject to preclearance)**. This information provides the full context of the change being made. For example, if poll sites are being assigned to different election districts because of a recent redistricting, this statement should note that and include the new maps, even though redistricting is not itself a covered policy.
- **A sworn attestation that the information is true and accurate to the best of the submitter's knowledge**. If the submission comes from a bipartisan BOE, the attestation must be signed by an authorized representative of each party.

iii. Supplemental Contents

The CRB may require covered entities to submit additional information relevant to its preclearance review. This additional information may include, but is not limited to:

- **Demographic information for the affected area by race, color, and language-minority group.** In addition to the "statement of the anticipated effect of the change on members of race, color, or language-minority groups" which is required for all submissions, the CRB may request underlying demographic information needed to analyze the submission.
- **Maps.** The CRB may request maps where relevant.
- **Election returns.** Election returns, showing the number of votes each candidate received in an election, can play a critical role in understanding electoral behavior. The CRB may in some instances request relevant returns.
- **Racially polarized voting.** Like election returns, an analysis of whether racially polarizing voting ("RPV") exists within a jurisdiction may be relevant. The CRB may in some instances request RPV data or analysis.
- **Publicity and participation.** The CRB encourages jurisdictions to engage all communities, including members of impacted race, color, and language-minority groups, as they consider whether to pursue a change for which preclearance is required. While community engagement may take many forms, it is essential that covered entities provide adequate notice of public events and a meaningful opportunity for community members to be heard. If a jurisdiction conducted such outreach in connection with a change, the CRB may request relevant information, including the public notice, minutes or other records.
- **Changes enacted by local law or resolution**. For changes enacted by local law or resolution, the CRB may request legislative history materials where relevant.

- **Community group contacts**. The CRB may request contacts for community groups to obtain additional information where relevant.

b. Timing Considerations

Considerations relevant to the timing of preclearance submissions are detailed in section 501.1(b) of OAG's regulations. Additional information regarding timing of submissions is provided in this section.

i. Emergency Preclearance Review

In some instances, local jurisdictions may have an emergency or exigent circumstance occurring shortly before an election that warrants expedited preclearance review. If a covered entity needs to make a change within 35 days of the start of voting as a result of a fire, earthquake, tornado, explosion, power failure, act of sabotage, enemy attack, other disaster, or other exigent circumstances, it may seek emergency preclearance.

If the covered policy involves designation or selection of poll sites or the assignment of election districts to poll sites, the CRB will issue a determination within 48 hours of receipt of the submission, or as soon after that as is reasonably practicable.

For any other covered policy, the CRB will issue a determination within 72 hours of receipt of the submission, or as soon after that as is reasonably practicable.

A grant of an emergency preclearance request is considered preliminary. This is a temporary determination, and within **60 calendar days** from the date it receives the submission, the CRB may deny preclearance of the covered entity's proposed change. Any public comments received within 10 business days after a preliminary grant of emergency preclearance will be considered during this 60-day period.

ii. Extension of Review Period

Additional information may extend the review period. The review period pauses if the CRB requests additional information necessary for its review. If the CRB receives new information that is material to a pending submission (a "resubmission"), or if the CRB receives a new submission that must be considered alongside a pending submission ("related submissions"),[10] the time periods for public comment and CRB review restart on the date that the CRB receives the new information or the last related submission. These provisions ensure that the public has an adequate opportunity to consider all relevant information when commenting, and that the CRB can consider all relevant information before making a determination.

For example, if the 55-day deadline for the CRB to issue a determination on a pending submission is May 1, and the CRB requests additional information on March 15, the time period for review pauses on March 15. If the covered entity submits the requested information on April

[10] A related submission is one that cannot be independently considered because the impact of the change can only be assessed in relation to the impact of another covered policy. For example, relocations of multiple early voting poll sites within the same area, if submitted as separate requests, could be related submissions.

1, the CRB's new review deadline becomes May 26 (55 days from April 1). The CRB will also post the new information to its website within ten days of April 1 and start a new public comment period beginning on the date of posting.

Consistent with the NYVRA, the CRB may also extend the review period for a preclearance submission if necessary to complete its review. For changes concerning the designation of poll sites or the assignment of election districts to poll sites, the CRB may extend the review period by up to 20 days. For all other changes, the CRB may extend the review period by up to 180 days.

If the CRB recalculates the time period for review, it will notify the covered entity in writing.

iii. When to Submit Changes

In general, covered policies must be submitted for preclearance review as soon as possible after they become final. A change is considered to be made when the decision to make the change, and the discretion involved in that decision, is finalized, even if the change does not take effect until the next election.

For example, county boards of elections exercise their discretion to designate poll sites for primary and general elections. *See* N.Y. Elec. Law § 4-104; *id.* § 8-600. Once new sites are selected, the change has been "made" and should be submitted for preclearance review. Jurisdictions should plan ahead by submitting changes and allowing time for administrative preclearance review in advance of the deadlines in the Election Law.

Changes made by local law or resolution are considered final after the law or resolution has been enacted. Consistent with the NYVRA, implementation of the local law or resolution must await preclearance review.

In addition, changes that require approval by referendum, by a court, or by a state agency must be submitted before that approval is received, if:

- The content of the proposed change itself is set and would not be amended by that final approval, and
- All other action necessary for approval has been taken.

c. Other Procedural Information

Requirements for preclearance submission procedures are detailed in section 501.1(c) of OAG's regulations. Additional information regarding those requirements is provided in this section.

i. Submitting Authority

Preclearance submissions must be made by the chief legal officer of the covered entity or someone authorized to act on the covered entity's behalf. Covered entities must notify the CRB of

any change in the name or contact information of the person(s) responsible for making preclearance submissions within 30 days of the change.

A county or its BOE has authority to submit on behalf of any covered entities fully contained within the county's borders whose elections are administered by the county or its BOE, or any covered entities for which other circumstances warrant submission by the county or BOE (the submission must explain what those circumstances are).

ii. Improper or Incomplete Submissions

If a submission does not include all the required information, or is not submitted in the proper format, it may be deemed improper or incomplete. *See* section 501.1(c)(4)(i) of OAG's regulations for examples of submissions that may be deemed improper.

If a submission is deemed **improper**, the CRB will inform the submitter and explain why. If new information renders the submission appropriate for review, a new submission must be made, including a description of the changed circumstances (for example, a notification that a covered policy previously determined to be premature has since been formally adopted).

A submission may be deemed **incomplete** if it does not include information required for the CRB to complete its review. If a submission is deemed incomplete, the CRB may request additional information. Preclearance may be denied if the information is not provided in a timely manner. As detailed above in the Timing Considerations section (see Section VI(b)), the CRB's time for review and the public comment period will pause when additional information is requested, and will restart when the information is received. If a sufficient response has not been received within 60 days of the request, preclearance may be denied.

NOTE: if you have questions regarding whether an anticipated submission or response to a request for additional information may be improper or incomplete, please contact the CRB at votingcompliance@ag.ny.gov.

iii. Preclearance Determinations

The CRB will issue a determination granting or denying preclearance within the review period for the submission. If preclearance is denied, the determination will include the basis for the denial. These determinations will be posted on OAG's website.

If preclearance is denied, the determination may be appealed under Article 78 of the Civil Practice Law and Rules. Determinations granting preclearance are not reviewable.

d. NYVRA Portal

The New York Voting Rights Act Portal is an online tool that facilitates submission of administrative preclearance requests, public comments, and copies of judicial preclearance submissions.

The Portal can be accessed at https://nyvra-portal.ag.ny.gov/.

The CRB will provide additional materials to assist users with navigating and using the NYVRA Portal.

VII. Preclearance Review

Administrative preclearance review will be based on a review of the information and analysis provided by the covered entity, any relevant information provided by third parties such as public comments, and any independent analysis conducted by the CRB.

The NYVRA sets the standard used to determine whether the CRB will approve or deny an administrative preclearance submission. The statute states that the CRB will grant preclearance only if a covered entity demonstrates that:

- The covered change will not **diminish** the ability of **protected class members** to **participate in the political process**; and
- The covered change will not **diminish** the ability of **protected class members** to **elect their preferred candidates** to office.

a. Retrogression

The CRB applies the "diminish" standard above by analyzing whether the proposed change will lead to "retrogression" in the position of members of one or more protected classes. For purposes of the CRB's preclearance review, "retrogression" means that a change will make members of a group worse off than they had been before the change. A covered change will be considered "retrogressive" where it will negatively impact protected class members' "ability to participate in the political process," or their "ability to elect their preferred candidates to office." Retrogression as to either the ability to participate in the political process, or the ability to elect preferred candidates, will result in a denial of preclearance.

Importantly, because preclearance review only considers whether a change leads to retrogression and therefore meets the standard above, a grant of preclearance does not necessarily mean that the change complies with all other laws, including other provisions of the NYVRA.

i. Participation in the Political Process

Participation in the political process generally refers to voters' ability to obtain a ballot and cast it freely and fairly. It also includes other activities beyond casting a ballot that are integral to the voting process, such as registering to vote.

With respect to changes that affect participation in the political process, retrogression occurs when members of one or more protected classes are likely to be burdened by the change, and when that burden is sufficiently material that it will likely cause some protected class members not to vote or otherwise participate in the political process. For example, if a covered entity moves a poll site in such a way that will likely cause voters who are members of a protected class to not exercise their right to vote, that change can be said to "retrogress" their ability to participate in the political process.

ii. Ability to Elect Preferred Candidates

Retrogression in the ability to elect preferred candidates refers to electoral structures and practices that diminish representational strength. For example, a covered entity may elect its legislative body using five single-member districts, two of which allow members of a protected class to elect their preferred candidates to that legislative body. If that covered entity wishes to convert to an at-large system, and this switch would reduce the ability of voters of that protected class to elect their preferred candidates to office (for example, by reducing from two to one the number of seats to which they can elect their preferred candidate), then that change can be said to "retrogress" the protected class's ability to elect its preferred candidates.

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While a protected class's ability to participate in the political process and its ability to elect preferred candidates can be related, a covered change may be relevant to one issue, but not both. For example, conversion from a district-based to an at-large electoral scheme could affect a protected class's ability to elect its preferred candidates. However, it may not, by itself, be a change that relates to a protected class's ability to participate in the political process, as it would not impact the ability to obtain a ballot and cast it freely and fairly.

b. Conducting the Retrogression Analysis

Preclearance submissions should include a statement of the anticipated effect of the change on members of race, color, or language-minority groups within the jurisdiction, supported by analysis. To evaluate the anticipated effect of a change, local jurisdictions beginning the preclearance process will need to identify and collect relevant information, and then use this information to support their position that the change will not be retrogressive. **Covered entities with any questions regarding this aspect of a preclearance submission should feel free to contact the CRB at votingcompliance@ag.ny.gov.**

i. Understanding the Proposed Change and Identifying Your Benchmark

Preclearance review starts with a covered entity's intention to enact and implement a proposed change that falls within one of the NYVRA's covered policy categories. It is therefore critical for a jurisdiction to clearly understand the change for which it seeks preclearance, and to clearly describe that change in its submission, including any information relevant to its scope and effects.

A covered entity's proposed change must be compared to the "benchmark." The benchmark is the status quo, i.e., "qualification, prerequisite to voting, law, ordinance, standard, practice, procedure, regulation, or policy" that is in force or effect at the time the change is to take place.

The benchmark will often be the policy used in connection with the most recent election of the same type held in the jurisdiction. However, identifying the appropriate benchmark will require careful consideration of the type of change and type of election. For example, in some instances, it may be appropriate to draw distinctions between primary, general, and special

elections to identify a more appropriate benchmark and ensure an accurate comparison between the benchmark and covered change.

Covered entities should carefully consider these issues when evaluating the anticipated effect of a change and contact the CRB if they are uncertain about the appropriate benchmark to use for the analysis.

ii. Collecting Information to Understand the Impact of the Proposed Change

As a local jurisdiction considers a proposed change and prepares it for preclearance review, along with identifying the appropriate benchmark, it should also collect and analyze information relevant to assessing the impact of the change on protected classes.

Demographic information will often be critical for this purpose. For example, if a covered entity is relocating its poll sites, it should be aware of the protected classes living in the affected areas, to consider the impact on members of those groups. As a useful starting point, a covered entity may look to publicly available census tract or block group data produced by the United States Census Bureau. Other types of information may be necessary depending on the context. For example, in relocating poll sites, information such as distance for members of protected classes to their poll site and their access to vehicles may be relevant for preclearance review. Similarly, public transit routes may also be important for preclearance review.

In some instances, additional anlaysis using data provided by the United States Census Bureau or other sources may provide more tailored demographic information.[11]

Input from stakeholders will also be crucial. In considering a proposed change, the CRB encourages covered entities to solicit feedback from voters and community groups.

In addition to the above, covered entities should consider what additional information, if any, could enhance their evaluation of a proposed change's impact, and seek to obtain and analyze that information.

We recognize that these types of analyses may be new to some jurisdictions. The CRB encourages all covered entities anticipating the need to submit preclearance requests to contact us at votingcompliance@ag.ny.gov to discuss those proposed changes and any anticipated challenges in obtaining relevant information.

[11] As an example, one method of determining the demographic makeup of voters within a smaller geography, such as an election district, is to conduct an analysis called Bayesian Improved Surname Geocoding ("BISG"). "In broad strokes, BISG can provide a probability assessment of an individual's race based on the individual's surname and location. BISG does this by using Census Bureau data to determine what percentage of the national population with the individual's surname is black, white, Latino, Asian, or other. That national data is then combined with Census Bureau data pertaining to the individual's geographic 'block' (which covers the geographic distance of roughly one city block) to see what percentage of the residents in that block area is black, white, Latino, Asian, or other. Combining these datapoints provides a probabilistic prediction of individual ethnicity." *Clerveaux v. E. Ramapo Cent. Sch. Dist.*, 984 F.3d 213, 225 (2d Cir. 2021). This data can be aggregated up to the election district level, or higher (for example, up to the county level), to estimate the demographic makeup of that geography.

iii. Standard of Review & Burden of Proof

Preclearance review is highly fact-specific and contextual.[12] Each submission will require a case-by-case review of the circumstances.

Analyzing retrogression for changes involving participation in the political process is a two-part test. A change is retrogressive as to the ability to participate in the political process where:

(i) the individuals who will be burdened by the change are disproportionately likely to be members of one or more protected classes; and
(ii) the change imposes a burden material enough that it will likely cause some members of such protected classes not to vote or otherwise participate in the political process.

At the first step of the analysis, covered entities must consider the effect of a change on the relevant protected classes. Doing so begins with identifying the pool of individuals who are implicated by the change.[13] If the change imposes a burden on one or more protected classes, it satisfies the first step of this analysis.

At the second step of the analysis, we consider the nature of the burden and whether it is sufficiently "material." A burden satisfies this test if it will likely cause some members of a protected class to not vote or otherwise participate in the political process. For example, as discussed in further detail below, a protected class may be materially burdened if a change in poll sites would significantly increase the distance a typical voter of that protected class would need to travel to vote.

In assessing materiality, political subdivisions may properly consider mitigating and exacerbating circumstances. For example, if a political subdivision is relocating a poll site along a major thoroughfare, it may be a mitigating factor that affected protected class members have high rates of vehicle ownership. Conversely, a poll site relocation that may not be materially burdensome in an area with high rates of vehicle ownership or robust public transportation, may be materially burdensome in areas that lack such characteristics.

In contrast to analyzing retrogression for changes involving participation in the political process, analyzing retrogression for changes involving the ability to elect involves comparing the extent to which members of a protected class are currently able to elect their preferred candidates to office, and the extent to which they would be able to do so under the proposed change. This will often involve an analysis of the number of seats to which a protected class is currently able to elect its preferred candidates, as compared to the number of seats to which a protected class would likely be able to elect its preferred candidates if the proposed change were to take effect.

The covered entity bears the burden of proof to demonstrate that a covered change will not lead to retrogression and that preclearance should therefore be granted.

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[12] *See, e.g.*, *Texas v. United States*, 831 F. Supp. 2d 244, 260 (D.D.C. 2011) ("[A]ssessing retrogression is a multifaceted, fact-specific inquiry.").

[13] If a protected class is not represented within a jurisdiction, no analysis as to that protected class is necessary.

c. Illustrative Examples

This section provides simplified, illustrative examples of changes analyzed for preclearance review, based on fictional cases. It describes covered changes involving the location of poll sites, for both early voting and Election Day.

As noted above, preclearance review is highly contextual and done on a case-by-case basis. While this section provides covered entities with important considerations when evaluating the potential retrogressive effect of these changes, it is not intended to provide a fully comprehensive list of the types of issues that may be relevant.

i. Early Voting Poll Site Change

Doe County is a covered entity and subject to preclearance. Doe County has three early voting poll sites: Poll Sites 1, 2, and 3. Consistent with the Election Law, any voter within Doe County may vote early at any of the three sites. Doe County seeks preclearance to move Poll Site 2 to a new location, from 456 B Boulevard to 1010 D Avenue.

Table 1 describes the benchmark plan and proposed plan.

Table 1

Benchmark Early Voting Plan	Proposed Early Voting Plan
Poll Site 1: 123 A St.	Poll Site 1: 123 A St.
Poll Site 2: 456 B Blvd.	Poll Site 2: 1010 D Ave.
Poll Site 3: 789 C Rd.	Poll Site 3: 789 C Rd.

Because the locations of Poll Site 1 and Poll Site 3 are not changing, the designation of those poll sites is not subject to preclearance review.

Having identified the benchmark and proposed change, we now consider data relevant to assessing the impact of the change. We start with demographic data.

Table 2 below describes the demographics of Doe County. Doe County has a total population of 150,000 people, all of whom are members of either Protected Class "X" or Protected Class "Y." Out of its total population of 150,000 people, 100,000 are citizens of voting age, and 90,000 of those are registered voters.

Table 2

	County of Doe	Protected Class X	Protected Class Y
Total Population	150,000	82,500	67,500
Citizen Voting Age Population (CVAP)	100,000	55,000	45,000
Registered Voters	90,000	49,500	40,500

At the first step of the retrogression analysis, we identify any protected classes that may be implicated by the change. Here, because the potentially implicated population of Doe County consists of Protected Classes X and Y, only analysis as to these groups is necessary.

As noted above, changes in distance and travel time are important measures. Distance can be calculated in different ways, including: (1) "as the crow flies" (i.e., a straight line from point A to the poll site) and (2) transit distance (i.e., the actual distance traveled on the ground to get to a poll site). Because any voter within a county can vote early at any poll site, the distances between a voter and all other sites are potentially relevant, with a median used to identify the experience of the "typical" voter.[14]

Table 3 provides a snapshot of certain measures comparing the benchmark plan and the proposed change. As shown below, the change will require the typical voter in Protected Class X and Protected Class Y to travel further distances to vote at Poll Site 2.

[14] Additional calculations may also be relevant, such as the distance to a typical voter's *closest* poll site.

Table 3

	Benchmark (Old Site)	**Proposed Change (New Site)**
Protected Class X		
Median Distance	0.75 mi.	3 mi.
Median Transit Distance (Time by Public Transportation)	1 mi. (15 min.)	4 mi. (75 min.)
Median Transit Distance (Time by Vehicle)	.8 mi. (5 min.)	3.5 mi. (45 min.)
Protected Class Y		
Median Distance	1 mi.	1.2 mi.
Median Transit Distance (Time by Public Transportation)	1.5 mi. (30 min.)	1.6 mi. (40 min.)
Median Transit Distance (Time by Vehicle)	1.25 mi. (10 min.)	1.5 mi. (12 min.)

At the second step of the analysis, we consider whether any burden imposed on members of a protected class is material such that the change will likely cause some members of the protected class not to vote or otherwise participate in the political process. Generally, a poll site relocation is likely to be materially burdensome for voters of a protected class if it has moved meaningfully further away and is less accessible. However, considering the materiality of the burden also warrants consideration of other circumstances that may mitigate or exacerbate the burden of a proposed change.

The relocation of Poll Site 2 may impose a material burden on Protected Class X. As shown in Table 3, the overall median distance to the poll site has quadrupled from 0.75 miles away from the typical voter in Protected Class X, to 3 miles away from the typical voter in Protected Class X. In addition, the distance a typical voter of Protected Class X must travel using public transportation has quadrupled from 1 to 4 miles, and it now takes five times longer to get to Poll Site 2 using public transportation (15 minutes to 75 minutes), and nine times longer by vehicle (5 minutes to 45 minutes). Other data may affirm the materiality of this burden. For example, U.S. Census Bureau data might indicate that members of Protected Class X generally have low access to vehicles, suggesting that members of Protected Class X may be more likely to rely on public transit, and would be forced to undertake materially more burdensome travel than is the case under the benchmark plan.

In contrast to Protected Class X, it is unlikely that members of Protected Class Y have been materially burdened by the change. While the distance that the typical member of Protected Class Y must travel has increased, the differences are marginal and, in the absence of any exacerbating factors, unlikely to be materially burdensome.

ii. Election Day Poll Site Change

Doe Village is a covered entity and therefore subject to preclearance. Doe Village has two poll sites, Poll Sites A and B, and two election districts ("EDs"), ED 1 and ED 2. ED 1 is assigned to Poll Site A while ED 2 is assigned to Poll Site B.

Doe Village seeks preclearance to move Poll Site A to a new location within ED 1. ED 1 remains assigned to Poll Site A, and ED 2 remains assigned to Poll Site B. Table 4 describes the population and demographics of ED 1 in Doe Village. Because only Poll Site A is moving, and therefore only voters in ED 1 are impacted, neither the location of Poll Site B nor the voters it serves is subject to or considered in our preclearance review.

Table 4

	Total Population (ED 1)	Protected Class X (ED 1)	Protected Class Y (ED 1)
Total Population	4,500	2,925	1,575
Voting Age Population (VAP)	3,500	2,275	1,225
Citizen Voting Age Population (CVAP)	2,800	1,820	980
Registered Voters	1,800	1,170	630

As with early voting, the first step of the retrogression analysis is to identify the protected class members that may be burdened by the change. Because members of Protected Class X and Protected Class Y live and are registered to vote in ED 1, we proceed by looking at how the relocation will change access for members of these groups specifically in ED 1.

As noted above, changes in distance and time traveled for these groups are important measures. Table 5 compares distance measures between the benchmark and the proposed change for each group. As shown below, the change will result in Poll Site A being closer to the typical voter of both protected classes, regardless of whether those voters walk, drive, or take public transit.

Table 5

	Benchmark (Old Site)	Proposed Change (New Site)
Protected Class X		
Median Distance	.5 mi.	.25 mi.
Median Transit Distance (Time by Public Transportation)	1.5 mi. (30 min.)	.8 mi. (10 min.)
Median Transit Distance (Time by Vehicle)	1.25 mi. (10 min.)	.8 mi. (5 min.)
Protected Class Y		
Median Distance	1.5 mi	.75 mi.
Median Transit Distance (Time by Public Transportation)	2 mi. (40 min.)	1 mi. (15 min.)
Median Transit Distance (Time by Vehicle)	1.75 mi. (35 min.)	1 mi. (10 min.)

Because the typical voters of both protected classes are required to travel a shorter distance under the proposed change, in the absence of any exacerbating factors, it is unlikely that members of either protected class would be materially burdened by this change. Moreover, while the materiality analysis should look beyond distance and consider any other context-specific factors that could be probative of whether the change would likely cause some protected class members to not vote, preclearance is more likely to be granted in the absence of any other concerns.

VIII. Conclusion

If you have any questions about administrative preclearance, please feel free to contact us at **votingcompliance@ag.ny.gov**, our dedicated email address for covered entities. You can also visit OAG's **New York Voting Rights Act page** on our website, where we provide updates about the NYVRA and the voting rights of New Yorkers.

If you would like to receive notifications of preclearance submissions, determinations, and other important updates, please sign up for our preclearance notification registry **here**.

NYVRA Administrative Preclearance Submission Form

Updated September 25, 2024

This form has been prepared by the Civil Rights Bureau ("CRB") of the Office of the New York State Attorney General ("OAG") to facilitate administrative preclearance submissions under the New York Voting Rights Act, N.Y. Elec. Law § 17-210(4); 13 NYCRR § 501.1(a). Use of this form is **optional**; covered entities may contact the CRB to discuss alternative submission formats. Please note that this form does not include any supplemental information that may be requested by the CRB.

For any questions or emergency requests, please contact votingcompliance@ag.ny.gov.

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1. Describe, or submit documents describing, the status quo and how it will change. If relevant, identify any specific elections or geographic areas affected. *Documents may be uploaded to the NYVRA Portal.*

2. Explain the reason(s) for the change(s).

3. Identify any legal provisions governing the change(s), and describe the process for undertaking the change(s) within such provisions.

4. Identify the person or body responsible for implementing the change(s).

5. Identify any other changes that are related to the change being submitted (even if not themselves subject to preclearance).

6. Describe the anticipated effect of the change(s) on members of protected classes, supported by any analysis, including sources. *For supporting anlaysis, you may submit separate files through the NYVRA Portal. If any relevant information cannot be obtained, please explain why, including any efforts to obtain it.*

7. Identify any past or pending litigation, in which the covered entity is a party, concerning the change(s) or any related voting practice. *If past, only identify litigation initiated or resolved within your coverage period.*

Please attest to the following statements by checking these boxes:

8. The policy currently in effect, and the procedure for adopting the proposed change, have both previously been precleared. Yes ☐ No ☐

9. If no, explain why (for example, because the policy currently in effect and the procedure for adopting the change were both in place prior to September 22, 2024):

10. The proposed change has <u>not</u> yet been enforced or administered. Yes☐ No☐

11. If unable to attest that the change has not been enforced or administered, explain why:

12. If the covered entity is legally bipartisan: **The proposed change has been approved by authorized members of both political parties. Yes☐ No☐**

* * * * *

I affirm this _____ day of _____, _____, under the penalties of perjury under the laws of New York that the information in this submission is true and accurate to the best of my knowledge, and I understand that the file(s) in this submission may be filed in an action or proceeding in a court of law.

If the covered entity is legally bipartisan, representatives of both parties must complete the below. Digital, PDF signed, or "s-slash" (/s/ John Doe) signatures are all acceptable.

SIGNATURE

NAME

TITLE

EMAIL

TELEPHONE #

MAILING ADDRESS

SIGNATURE

NAME

TITLE

EMAIL

TELEPHONE #

MAILING ADDRESS