13 N.Y.C.R.R. Part 500

Chapter X. Regulations of the New York Voting Rights Act

Last Updated September 22, 2024

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Part 500. General provisions

500.1. The Election Law, sections 17-200 *et seq.*, shall be referred to herein as the "New York Voting Rights Act" or the "Act."

500.2. The Civil Rights Bureau of the Office of the New York State Attorney General shall be referred to herein as the "civil rights bureau" or "CRB."

500.3. "Protected class" as used herein shall mean "protected class" as defined in section 17-204 of the Election Law.

500.4. Severability. The provisions of this Part shall be severable, and if any item, subclause, clause, sentence, subparagraph, paragraph, subdivision, section, or subpart of this Part, or the applicability thereof to any person or circumstances, shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, nor the application thereof, but shall be confined in its operation to the item, subclause, clause, sentence, subparagraph, paragraph, subdivision, section, or subpart thereof, or to the person or circumstance directly involved in the controversy in which such judgment shall have been rendered.

Part 501. Preclearance

501.1. Submission and review procedures

(a) Content of submissions

(1) General

(i) A submission must identify the source of any information contained therein.

(ii) Where an estimate is provided in lieu of more precise statistics, the submission must identify the name, position, and qualifications of the person responsible for the estimate and must briefly describe the basis for the estimate.

(iii) Submissions must be no longer than is necessary for the presentation of the appropriate information and materials.

(iv) Where information requested pursuant to this section is relevant but not known or available, or is not applicable, the submission must so state and, except as to information that is not applicable, must demonstrate, in such form and manner as the CRB may require, that the submitting authority exercised due diligence and was unable to obtain the information.

(v) Data provided as part of a submission must consist of information provided by the United States Census Bureau or data of comparable quality.

(2) Each submission must be made in such form and manner as the CRB may require, and must contain the following information or documents to enable the CRB to make the

required determination pursuant to section 17-210 of the Election Law with respect to the covered policy:

(i) A copy or written description of, as applicable:

(a) the new or modified voting qualification, prerequisite to voting, law, ordinance, standard, practice, procedure, regulation, or policy embodying the change for which preclearance is being requested; and

(b) the voting qualification, prerequisite to voting, law, ordinance, standard, practice, procedure, regulation, or policy that is proposed to be repealed, amended, or otherwise changed.

(ii) A statement that identifies with specificity each covered policy for which administrative preclearance is requested and that explains the difference between the current voting qualification, prerequisite to voting, law, ordinance, standard, practice, procedure, regulation, or policy that is in force or effect as of the time of submission, and the proposed covered policy.

(iii) The name, title, email address, telephone number, and mailing address of the person making the submission.

(iv) The name of the submitting authority and, if different:

(a) the name of the person or body responsible for enacting and implementing the covered policy; and

(b) any political subdivision whose elections are affected by the covered policy.

(v) If the submission is not from a county or a county board of elections, the name of the county in which the submitting authority is located.

(vi) A statement identifying the statutory or other authority under which the political subdivision undertakes the change and a description of the procedures the political subdivision was required to follow in deciding to undertake the change.

(vii) For covered entities with elections required by law to be administered on a bipartisan basis, a statement attesting that the proposed change has been approved by the authorized members of both political parties.

(viii) A statement, made by someone with authority to make such statement, that the change has not yet been enforced or administered, or an explanation of why such a statement cannot be made.

(ix) Where the change will affect less than the entire political subdivision, an explanation of the geographic scope of the change.

(x) A statement of the reasons for the change.

(xi) A statement of the anticipated effect of the change on members of protected classes, as determined according to the legal standards detailed in the Act and this title.

(xii) A statement identifying:

(a) any pending litigation to which the covered entity is a party concerning the change or related voting practices, and

(b) any past litigation to which the covered entity was a party concerning the change or related voting practices, if such litigation was initiated or resolved on or after the date from which the entity's current coverage status is measured pursuant to section 17-210(3) of the Election Law.

(xiii) A statement that both the prior practice and the procedure for the adoption of the change have been precleared, with the date of such preclearance, or that such prior practice and procedure were not subject to the preclearance requirement, or an explanation of why such statements cannot be made.

(xiv) A statement identifying any other proposed change to a practice or policy, regardless of whether that practice or policy constitutes a covered policy in its own right, that may interact with the submitted covered policy.

(xv) If the submitting authority is requesting that the CRB consider information that was supplied in connection with an earlier submission, the later submission must identify the earlier submission and the relevant information.

(xvi) Other information that the CRB determines is required for an evaluation of the change, which may include items listed in paragraph 501.1(a)(3) of this subdivision. When such information is required, but has not been provided, the CRB shall notify the submitting authority.

(xvii) A sworn attestation that all of the information included in the submission is true and accurate to the best of the submitter's knowledge, signed by an individual with authority to make preclearance submissions on behalf of the covered entity.

(a) In a submission made by a board of elections, the sworn attestation must be signed by the authorized representative of each political party.

(3) Supplemental contents. The CRB may require the following information, where relevant to a preclearance application, in addition to that required by paragraph 501.1(a)(2) of this subdivision. The information must be provided in such form and manner as the CRB may require.

(i) Demographic information for the affected area (including, if relevant, both before and after the proposed change), by race, color, and language-minority group. If such information is contained in publications of the United States Census Bureau, reference to the appropriate volume and table is sufficient.

(ii) Maps. For a change that revises the constituency that elects any office or affects the boundaries of any geographical area defined or employed for voting purposes, or that affects voting or elections, including but not limited to election district boundaries, polling place locations, or voter registration sites, maps of the area to be affected, containing the following information:

(a) The prior and new boundaries of the political subdivision;

(b) The prior and new boundaries of election districts;

(c) The location of members of protected classes;

(d) Any natural boundaries or geographical features that influenced the selection of boundaries of the prior or new political subdivision;

(e) The location of prior and new polling places; and

(f) The location of prior and new voter registration sites.

(iii) Election returns

(a) Returns of primary, general, and special elections conducted by or in the political subdivision, containing the following information:

(1) The name of each candidate;

(2) The race, color, or language-minority group of each candidate, if known;

(3) The position sought by each candidate,

(4) The number of votes received by each candidate, by election district;

(5) The outcome of each contest; and

(6) The number of registered voters, by race, color, and language-minority group, for each election district for which election returns are furnished.

(b) Election-related data that cannot be accurately presented in terms of statistical areas and statistical subdivisions produced by the United States Census Bureau (*e.g.*, census blocks or census tracts) may be identified by county and by election district.

(iv) Racially polarized voting. Analysis indicating the extent to which voting in the political subdivision is racially polarized, as defined in section 17-204(6) of the Election Law, between and among relevant protected classes, or a statement of why such analysis is impossible or impracticable.

(v) Publicity and participation. If the political subdivision provided public notice that it intended to enact or implement a covered policy, conducted a public hearing concerning the covered policy, or otherwise provided the public with an opportunity to be heard regarding the covered policy, evidence of, as applicable:

(a) Such public notice(s).

(b) The opportunity for members of the public to participate in the decision to adopt the proposed change and an account of the extent to which such participation, especially by protected class members, in fact took place.

(c) Materials sufficient to demonstrate public notice or participation, which may include:

(1) Copies of newspaper articles or other media coverage discussing the proposed change;

(2) Copies of public notices that describe the proposed change and invite public comment or participation in hearings and statements regarding where such public notices appeared (*e.g.*, newspaper, radio, or television, posted in public buildings, sent to identified individuals or entities);

(3) Minutes or accounts of public hearings concerning the proposed change;

(4) Statements, speeches, and other public communications concerning the proposed change; and

(5) Copies of public comments received.

(d) Where a political subdivision has provided the public with notice of the ability to inspect or copy a preclearance submission, or an invitation to provide public comments for consideration of the CRB in connection with its preclearance review, copies of the relevant public notices or invitations and statements regarding where such public notices or invitations appeared.

(e) Any other evidence demonstrating the extent to which protected class members were provided an opportunity to engage in the decision-making process and the extent to which any comments or concerns voiced in that process were considered.

(vi) For covered policies enacted by local law or resolution, legislative history materials, including, but not limited to:

(a) Hearing transcripts and minutes;

(b) Committee reports; and

(c) Fiscal impact statements.

(vii) Community group contacts. Where relevant, the names, email addresses, telephone numbers, and organizational affiliations of groups that do work in the political subdivision and serve the political subdivision's residents, who can be expected to be familiar with the proposed change or who have been active in the political process.

(b) Timing

(1) Computation of time

(i) Except where otherwise provided, time periods for submission and review shall be counted in calendar days, with the day of receipt of a submission not counted, and with the final day of a period ending at 11:59 p.m. Eastern Time of that day.

(ii) If the final day of a period should fall on a Saturday, Sunday, or any day designated as a holiday by the President or Congress of the United States or by the Governor or the State of New York, or any other day that is not a day of regular business for the Office of the New York State Attorney General, the next full business day shall be counted as the final day of the period.

(iii) The date of a submission shall be the date on which it is received by the CRB. The CRB will confirm the date of receipt of a submission to the covered entity.

(iv) The date of the CRB's response shall be the date on which it is transmitted to the submitting authority by any reasonable means, including placing it in a postbox of the U.S. Postal Service or a private mail carrier, sending it by email or other electronic means, or delivering it in person to a representative of the submitting authority.

(2) Emergency review. In the event that a covered entity needs to enact or implement a covered policy after the thirty-fifth day prior to the first day of voting, as a result of a fire, earthquake, tornado, explosion, power failure, act of sabotage, enemy attack, other disaster, or other exigent circumstances, the time periods for public comment, CRB review, and the determination to grant or deny preclearance shall be as follows:

(i) For any covered policy concerning the designation or selection of poll sites or the assignment of election districts to poll sites, the CRB shall review the covered policy and make a determination to deny or grant preclearance within 48 hours following receipt of the covered policy, or as soon thereafter as is reasonably practicable.

(ii) For any other covered policy, the CRB shall review the covered policy and make a determination to deny or grant preclearance within 72 hours following receipt of the covered policy, or as soon thereafter as is reasonably practicable.

(iii) Preliminary determination

(a) Any preclearance granted on an emergency basis shall be designated preliminary, and the CRB may thereafter deny preclearance within 60 days following receipt of the covered policy.

(b) Any public comments received within 10 business days after a preliminary grant of preclearance shall be considered during this 60-day period.

(3) Extension of review period

(i) The time periods for public comment, CRB review, and the determination to grant or deny preclearance, as provided in section 17-210(4)(f) of the Election Law, shall recommence upon receipt of a resubmission or a related submission.

(a) **Resubmission.** When a submitting authority provides, or the CRB otherwise obtains, information during the review period that the CRB determines materially supplements a pending submission, either at its own instance or in response to a CRB request for additional information, this shall be deemed a resubmission of the preclearance request, and the time periods for public comment, CRB review, and the determination to grant or deny preclearance, as provided in section 17-210(4)(f) of the Election Law, will be recalculated from the CRB's receipt of the resubmission. In the event of a CRB request for additional information, such time periods will toll beginning on the date on which such request is issued.

(b) **Related submissions.** When the CRB receives multiple related submissions during the review period for a submission that cannot be independently considered, the time periods for public comment, CRB review, and the determination to grant or deny preclearance, as provided in section 17-210(4) of the Election Law, shall be recalculated from the CRB's receipt of the last related submission.

(1) A submission that cannot be independently considered is one for which the potential retrogressive impact can only be assessed in relation to the impact of another covered policy. Submissions that cannot be independently considered may include, but are not limited to, relocations of multiple poll sites in coterminous or neighboring districts.

(ii) The CRB will notify the submitting authority in writing when the time periods for public comment, CRB review, and the determination to grant or deny preclearance, as provided in section 17-210(4)(f) of the Election Law, are recalculated due to the CRB's receipt of a resubmission or a related submission.

(iii) Notice of the CRB's receipt of a resubmission or a related submission will be given to interested parties registered under subparagraph 501.1(c)(11)(i) of this section.

(4) Covered policies must be submitted for preclearance review as soon as possible after they become final; provided, however, that changes requiring approval by referendum, by a court, or by a State agency must be submitted prior to such approval if the change is not subject to alteration in the final approving action and if all other action necessary for approval has been taken.

(i) A local law or resolution is considered to have become final after it has been enacted, and such law or resolution shall not be implemented until such time as preclearance is granted.

(ii) A political subdivision conducting a referendum election to ratify a covered policy may submit the change to be voted on in the referendum at the same time that it submits any covered policies related to the conduct of the referendum election.

(c) Procedures

(1) Submissions must be in writing and in such form and manner as may be required by the CRB. The CRB shall provide an electronic option for submitting preclearance requests.

(2) The most current information on addresses for, and methods of making, preclearance submissions shall be available on the Office of the New York State Attorney General's website.

(3) Submitting body

(i) Preclearance submissions must be made by the chief legal officer or other appropriate official of the submitting authority, or by another person authorized to act on behalf of the submitting authority.

(ii) A county, including its board of elections, has authority to submit a covered policy on behalf of any covered entities fully contained within the county's borders whose elections are administered by the county or the county board of elections, or where other circumstances may warrant submission by the county or its board of elections, provided that the submission must include an explanation of such circumstances.

(iii) A change to a covered policy that results from a court order, as provided in section 501.4(a)(5) of this Part, must be submitted by the jurisdiction or body that is to implement or administer the change.

(iv) Any individual or entity may send to the CRB public comment or other information concerning a covered policy in a covered entity within the public comment periods stated in section 17-210(4)(f) of the Election Law, as applicable.

(a) Communications may be in the form of a letter stating the name, email address, and telephone number of the individual or entity, describing the proposed change and setting forth information regarding whether the proposed change will or will not diminish the ability of protected class members to participate in the political process and to elect their preferred candidates to office.

(b) Comments must be sent to the Section Chief, Voting Rights, Civil Rights Bureau at the address or email address specified on the Office of the New

York State Attorney General's website. The first page and the envelope or email subject line should be marked: "Comment under section 17-210 of the New York Voting Rights Act." Where available, comments should include the name of the covered entity in the subject line.

(v) Any individual or entity may bring to the attention of the CRB the fact that a covered policy has been enacted or implemented without preclearance approval. If a preclearance submission concerning a covered policy that is subject to preclearance has not been received, the CRB shall advise the appropriate political subdivision of the preclearance requirement with respect to the change in question.

(4) Improper or incomplete submissions. A submission that is not eligible for preclearance review, does not include all required information, or is not submitted in the proper format may be deemed improper or incomplete.

(i) Improper submissions

(a) The CRB will not consider on the merits, among other things:

(1) Submissions concerning standards, practices, or procedures for which no change is being proposed;

(2) Submissions concerning changes that previously have received preclearance;

(3) Submissions concerning changes for which a determination is premature;

(4) Submissions by political subdivisions that are not covered entities as defined in section 17-210(3) of the Election Law and therefore not subject to the preclearance requirement;

(5) Submissions concerning changes that do not constitute a covered policy as defined in section 17-210(2) of the Election Law or this Part;

(6) Submissions concerning changes that were enacted and implemented prior to September 22, 2024;

(7) Submissions concerning changes submitted prior to final enactment or approval, except with respect to changes requiring approval by referendum, by a court, or by a State agency, as provided in paragraph 501.1(b)(4) of this section;

(8) Submissions directly related to another change that is subject to, but has not been submitted for, preclearance, if the CRB determines that the two changes cannot be substantively considered independently of each other;

(9) Submissions concerning changes whose enforcement has ceased and been superseded by a standard, practice, or procedure that has received

preclearance or that is otherwise legally enforceable under section 17-210 of the Election Law; or

(10) Submissions that fail to describe the subject change in sufficient particularity to satisfy the minimum requirements of subparagraph 501.1(a)(2)(i) of this section.

(b) When the CRB determines that a response on the merits of a submitted change is improper, the CRB may waive the procedural requirements stated in section 17-210(4) of the Election Law and notify the submitter that the submission will not be considered on the merits. Such notification shall be given within the review period that would have commenced for a determination on the merits and shall include an explanation of the reason why a response is improper.

(c) If, following a notification by the CRB that a submission was improper for consideration on the merits, new information or a change in circumstances renders the covered policy appropriate for review on the merits, such covered policy must be submitted for preclearance review. Such submission must include a description of the new information or circumstances, such as a notification from the submitting authority that a covered policy previously determined to be premature has been formally adopted. Notice of the resubmission will be given to interested parties registered under subparagraph 501.1(c)(11)(i) of this section.

(ii) Incomplete submissions

(a) The CRB will deem incomplete and not review, among other things:

(1) Submissions that do not include all information required pursuant to subdivision 501.1(a) of this section or all information material to the CRB's review; and

(2) Submissions that are improperly formatted, illegible, or otherwise do not comply with the technical requirements set by the CRB.

***(b)* Requests for additional information**

(1) If the CRB determines that a submission does not satisfy the requirements of subdivision 501.1(a) of this section, the CRB may request, orally or in writing, any omitted information necessary for the evaluation of the submission. The request shall advise the covered entity that preclearance may be denied if the information is not provided in a timely manner.

(2) The CRB shall notify the submitting authority that the review period for the submission is tolled as of the date of the request, and that a new review period will commence upon the CRB's receipt of a response from the submitting authority that provides the information requested or

demonstrates, as determined at the sole discretion of the CRB, that the submitting authority exercised due diligence and was unable to obtain the information.

(3) An oral request for information shall not limit the authority of the CRB to make a written request for information.

(4) If the request was in writing, a copy of the request, and notice of the CRB's receipt of information pursuant to such request, will be given to any party who has commented on the submission, and to interested parties registered under subparagraph 501.1(c)(11)(i) of this section.

(5) Where the response from the submitting authority neither provides the information requested nor demonstrates, as determined at the sole discretion of the CRB, that the submitting authority exercised due diligence and was unable to obtain the information, such response will be deemed insufficient and shall not commence a new review period. The CRB shall notify the submitting authority that its response is insufficient. Such notification shall be provided as soon as possible within the review period that would have commenced had the response been sufficient.

(6) If, after a request for further information is made pursuant to this clause, the CRB receives the requested information from a source other than the submitting authority, the CRB shall promptly notify the submitting authority, and the new review period shall commence the day after the information is received by the CRB.

(7) If after 60 days the submitting authority has not provided a sufficient response to a request made pursuant to this section, the CRB, absent extenuating circumstances and consistent with the burden of proof under section 17-210 of the Election Law and as described in section 501.2(e) of this Part, may deny preclearance.

(iii) Other interested parties

(a) The CRB may at any time request relevant information from governmental jurisdictions and from interested individuals and entities and may conduct any independent analysis that it deems appropriate in its discretion in making a determination.

(b) The CRB shall have the discretion to call to the attention of the submitting authority or any interested individual or entity information or comments related to a submission.

(5) Preclearance report and determination

(i) The CRB shall, within the review period provided in section 17-210(4)(f) of the Election Law and as further provided in this title, issue a written report and

determination as to whether preclearance of the covered policy should be granted or denied.

(ii) If preclearance is denied, the report and determination shall include an explanation of the basis for the denial and shall advise the submitting authority that it may institute a special proceeding in the Supreme Court of New York for the County of New York or Albany to appeal the denial, pursuant to Article 78 of the CPLR.

(iii) If preclearance is granted, the report and determination shall state that the CRB's grant of preclearance does not bar subsequent litigation by other parties to enjoin the enactment or implementation of the covered policy.

(iv) The decision of the CRB to grant preclearance is not reviewable.

(v) A copy of the report and determination shall be sent to any party who has commented on the submission, and to interested parties registered under subparagraph 501.1(c)(11)(i) of this section.

(6) Withdrawal

(i) A covered entity may withdraw a submission at any time prior to a final decision by the CRB. Notice of the withdrawal must be made in writing, addressed to the Section Chief, Voting Rights, Civil Rights Bureau. The submission shall be deemed withdrawn upon the CRB's receipt of the notice.

(ii) Notice of withdrawals will be given to interested parties registered under subparagraph 501.1(c)(11)(i) of this section.

(7) Failure to respond. Pursuant to section 17-210(3)(e)(iii) of the Election Law, the failure of the CRB to provide a report and determination within the prescribed review period constitutes preclearance of the submitted change, provided that such review period had commenced after receipt by the CRB of a complete submission that is appropriate for a response on the merits.

(8) File maintenance; record retention. The CRB shall maintain copies of preclearance submissions, reports, and determinations in compliance with applicable record retention requirements, including but not limited to the Freedom of Information Law, N.Y. Public Officers Law § 84 *et seq.*

(9) Special elections

(i) As stated in section 17-210(2)(h) of the Election Law, any discretionary setting of the date for a special election is not subject to the preclearance requirement.

(ii) The conduct of a special election is subject to the preclearance requirement to the extent that the political subdivision makes changes in the practices or procedures to be followed during the conduct of such special election.

(10) Notification

(i) Notification of litigation relevant to preclearance coverage must be made in such form and manner as the CRB may require.

(ii) Covered entities must notify the CRB of any change in the name or contact information of the individual responsible for making preclearance submissions, in such manner as may be required by the CRB, no later than 30 days after the date of the change.

(11) Notification registry

(i) The CRB shall establish and maintain a notification registry, which shall contain the name and mailing or email address of any individual or entity that wishes to receive notifications regarding preclearance.

(ii) Notice of administrative preclearance submissions, resubmissions, related submissions, requests for additional information, withdrawals, and reports and determinations will be given to the individuals and groups who have registered for this purpose under subparagraph (i) of this paragraph. Such notice will also be given when a request for judicial preclearance has been filed in the Supreme Court of New York, provided that the covered entity has complied with the requirement pursuant to section 17-210(5)(b) of the Election Law to contemporaneously provide the CRB with a copy of such request.

501.2. Legal standard

(a) Grant or denial of preclearance. The CRB shall grant preclearance to a covered policy only if the CRB is able to determine that the covered policy will not diminish the ability of members of a protected class to participate in the political process or to elect their preferred candidates to office. Absent such a determination, preclearance will be denied and the covered policy shall not be enacted or implemented.

(b) Basis for the CRB determination. The CRB shall base a preclearance determination on a review of material presented by the covered entity, relevant information provided by interested individuals and groups or otherwise obtained by the CRB, and the results of any independent analysis conducted by the CRB.

(c) Standard of review. A covered policy will be precleared only if it will not diminish the ability of members of any protected class to participate in the political process and to elect their preferred candidates to office.

(1) A covered policy will not diminish the ability of members of a protected class to participate in the political process and to elect their preferred candidates to office if it will not lead to a retrogression in the position of members of a protected class (*i.e.*, it will not make members of such a group worse off than they had been before the change) with respect to their ability to participate in the political process and to elect their preferred candidates to office.

(2) A change will be deemed retrogressive as to a protected class's 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.

(3) Retrogression is assessed with respect to all impacted protected classes.

(d) Benchmark

(1) In determining whether a covered policy submission is retrogressive, the CRB will compare the submitted change to the voting qualification, prerequisite to voting, law, ordinance, standard, practice procedure, regulation or policy (hereafter "policy") in force or effect at the time of the submission.

(2) If the existing policy at the time of the submission was not in force or effect on the covered entity's applicable date for coverage, it cannot serve as a benchmark, and the comparison shall be with the policy most recently in force or effect.

(3) In determining the appropriate benchmark, the CRB will evaluate the proposed change in light of all relevant conditions existing at the time of the submission, including whether an electoral contest other than the most recent one held provides a more appropriate benchmark. In making this determination, the CRB may consider, among other factors, the offices on the ballot and whether the proposed change involves a primary, general, or special election.

(4) The implementation and use of a covered policy that has not been precleared does not operate to make that practice a benchmark for any subsequent covered policy submitted by the covered entity.

(e) Burden of proof

(1) Although information dispositive of whether preclearance should be granted or denied may be provided by third-party individuals or entities or obtained by the CRB's own independent analysis, the burden of demonstrating that preclearance should be granted rests at all times with the covered entity submitting the proposed change.

(2) The covered entity must provide:

(i) sufficient information by which the CRB can determine the benchmark against which to compare the proposed covered policy; and

(ii) information sufficient to demonstrate that, as compared with that benchmark, the ability of any protected class present in the political subdivision to participate in the political process and to elect their preferred candidates to office will not be diminished as a result of enactment or implementation of the proposed change.

501.3. Covered entities

(a) The CRB will periodically publish a list of covered entities and may update such list at any time based on new information that is relevant to coverage determinations.

(b) For purposes of sections 17-210(3)(a) and (b) of the Election Law:

(1) A "finding of any violation" shall include a determination on the merits of a claim.

(2) A "finding of any violation" shall not include preliminary relief granted based on a likelihood of success on the merits and/or a weighing of relative harms.

(3) A consent decree or other executed written agreement shall be deemed to be based upon a finding of a violation, and thus may subject the political subdivision to preclearance coverage, if the agreement contains a finding of noncompliance with one of the laws or constitutional provisions enumerated in sections 17-210(3)(a) and (b) of the Election Law, and contains no provision denying liability with respect to such laws or constitutional provisions.

(4) "Similar formal action" as provided in section 17-204(9) of the Election Law includes, but is not limited to:

(i) A settlement agreement to which a federal or state entity is a party, if such agreement contains a finding of noncompliance with one of the laws or constitutional provisions enumerated in sections 17-210(3)(a) and (b) of the Election Law, and contains no provision denying liability with respect to such laws or constitutional provisions; and

(ii) A public report or other written document issued by a federal or state entity, if such report or document contains a finding of noncompliance with one of the laws or constitutional provisions enumerated in sections 17-210(3)(a) and (b) of the Election Law.

(c) In assessing covered entity status pursuant to sections 17-210(3)(c) and (d) of the Election Law, the CRB:

(1) Shall utilize rational methodologies, which may include information provided by the United States Census Bureau, or data of comparable quality; and

(2) May make such methodological decisions as may be reasonable and appropriate, including but not limited to:

(i) setting minimum population thresholds, for dissimilarity index score calculations or other measures;

(ii) selecting the appropriate spatial units (*e.g.*, census tracts or block groups) to conduct any part of its analysis;

(iii) determining which tabulations of racial and ethnic data, as produced by the United States Census Bureau or a comparable body, are best suited to the CRB's analysis; and

(iv) excluding or including institutionalized persons and other group housing populations, or similarly situated individuals, from population totals.

(d) A political subdivision that is deemed a covered entity solely on the basis of containing a covered entity fully within its borders, pursuant to section 17-210(3)(e) of the Election Law, shall be required to submit covered policies for preclearance only to the extent that such policies affect elections held in the covered entity that is contained within such political subdivision's borders.

(e) The State of New York shall be deemed not to constitute a political subdivision as defined in section 17-204(4) of the Election Law. Accordingly, State actors, including the Governor and State Legislature, are not required to submit covered policies for preclearance.

501.4. Covered policies

(a) Scope of coverage

(1) The preclearance requirement applies to any covered policy, even if it appears to be minor or indirect, returns to a prior practice or procedure, purports to expand voting rights, or is designed to remove the elements that caused the CRB to deny preclearance to a prior submitted change.

(2) The preclearance requirement applies to changes enacted by or implemented through the Executive, Legislative, or Judicial branches.

(3) State or federal law

(i) State and federal laws and regulations are not subject to preclearance.

(ii) Covered policies enacted or implemented in order to comply with State or federal law are exempt from preclearance review only where such enactment or implementation does not require the use of discretion by the covered entity.

(4) A grant of preclearance by the CRB with respect to local legislation that requires, permits, or enables a political subdivision to implement a covered policy (hereinafter the "parent legislation") does not exempt the implementation of the particular covered policy that is enabled, permitted, or required from the preclearance requirement, unless such implementation was explicitly included and described in the submission of the precleared parent legislation. Such parent legislation may include:

(i) Local legislation authorizing a political subdivision to institute a covered policy described in section 17-210(2) of the Election Law or designated by this title;

(ii) Local legislation requiring a political subdivision that chooses a certain form of government to follow specified election procedures;

(iii) Local legislation requiring or authorizing political subdivisions of a certain size or a certain location to institute specified changes; and

(iv) Local legislation requiring a political subdivision to follow certain practices or procedures, unless the political subdivision's charter or local laws specify to the contrary.

(5) Court-ordered changes

(i) Covered policies for which approval by a state or federal court is required, or that are ordered by a state or federal court, are exempt from preclearance review only where the court prepared the change and the change was not proposed by, and has not been subsequently adopted or modified by, the relevant covered entity.

(ii) Where a court-ordered change at its inception is not subject to preclearance review, a subsequent adoption or ratification of the change, implementation in a manner not explicitly required or authorized by the court, or other action by the covered entity involving the use of discretion by such covered entity renders the change subject to preclearance review with regard to any future implementation.

(iii) Where a court-ordered change is not itself subject to preclearance review, subsequent changes necessitated by the court order but which reflect the use of discretion by the covered entity are subject to preclearance. For example, election district and polling site changes made necessary by a court-ordered redistricting plan, but which are determined through discretion exercised by the covered entity, are subject to preclearance review.

(6) A change is considered to be made when the determination to make the change, and the discretion involved in the decision, is finalized, even if the change is not made operative until the next applicable election. After a previously enacted covered policy has been precleared, implementation of that policy may be required to be precleared separately if it requires discretion to implement.

(7) A grant of preclearance by the CRB with respect to a procedure for instituting a covered policy does not exempt the substantive change from the preclearance requirement. For example, if the procedure for the approval of an annexation is changed from City Council approval to approval in a voter referendum, preclearance of the new annexation procedure does not exempt an annexation accomplished under the new procedure from the preclearance requirement.

(8) A "poll site" shall be construed to include any location at which a vote may be cast in accordance with State law, including but not limited to ballot drop boxes.

(b) Recurring practices

(1) Where a political subdivision implements a policy periodically or upon certain established contingencies, a change is deemed to have occurred upon any of the following circumstances:

(i) The first time the policy is implemented by the political subdivision;

(ii) When the manner in which the policy is implemented by the political subdivision is changed; and

(iii) When the rules for determining when the policy will be implemented are changed.

(2) A grant of preclearance by the CRB with respect to a recurrent policy constitutes preclearance of the future use of the policy if its recurrent nature is clearly stated or described in the submission or is expressly recognized in the report and determination of the CRB on the merits of the submission.