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## January 22 Roundtable Update

Jeffrey M. Wice



## **WE ARE NEW YORK'S LAW SCHOOL**

### **N.Y. CENSUS & REDISTRICTING ROUNDTABLE UPDATE**

#### **N.Y. VOTING RIGHTS ACT**

#### **New York Voting Rights Act (NYVRA): Office of the New York State Attorney General's preliminary guidance on the entities and practices covered by preclearance.**

On December 19, the Office of the New York Attorney General (OAG) released guidance on the NYVRA's "preclearance" requirement. The NYVRA requires certain local jurisdictions and local boards of elections (BOEs) that are covered under the statute's preclearance coverage formula ("covered entities") to submit voting and election changes for review before those changes can take effect. The guidance notes that OAG's Civil Rights Bureau (the CRB) has preliminarily identified the jurisdictions and BOEs that will be subject to preclearance which will take effect on September 22, 2024. The CRB has also preliminarily identified a non-exhaustive list of voting- and election-related changes that would be considered "covered policies," meaning they are subject to preclearance.

The guidance explains that covered entities that make changes to a covered policy (one that concerns any of the topic areas listed in the NYVRA's preclearance section) on or after September 22, 2024, must submit the change to the CRB or a designated court for review before that change can be implemented. Furthermore, if a covered entity makes a change in a covered policy without seeking preclearance, the CRB or any party with standing may bring a lawsuit to prevent the change from taking effect.

The guidance also emphasizes that the identification of covered entities and covered policies is *preliminary* and subject to change prior to September 22, 2024. Additionally, the guidance invites jurisdictions, voters, and other stakeholders to submit questions and feedback to the CRB by emailing [preclearancefeedback@ag.ny.gov](mailto:preclearancefeedback@ag.ny.gov). Feedback will be accepted until **February 20, 2024**, at which point the CRB will "publish all applicable comments, respond to relevant issues and, where necessary, reconsider its analysis."

The guidance includes the following:

1. Step-by-step breakdowns of the preclearance review processes for covered entities to either submit policy changes to the CRB or to a designated court for review.

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2. A detailed explanation of the NYVRA's coverage formula and the CRB's process and analysis used in its preliminary identification of covered entities.
3. A list of the NYVRA's covered policy topics and examples of policy changes related to each topic that would constitute covered policies under the VRA.

OAG also invites the public to visit their Voting Rights pages for **individuals** (<https://ag.ny.gov/resources/individuals/civil-rights/voting-rights>) and **local jurisdictions** (<https://ag.ny.gov/resources/organizations/elections>) on their website, where they will provide updates.

**LEGISLATION****State Senate Passes Election Reform Bills**

For the sixth year in a row, the State Senate has opened the legislative session by passing election laws intended to reform current measures and counteract disenfranchisement. The new nine bills include:

1. **S.263**: "Deceptive Practices and Voter Suppression Prevention Act," creates a new electoral crime of voter suppression and/or forcing others to vote for or against a particular candidate. Under new § 17-151, knowingly spreading deceptive information aimed at interfering with others' right to vote is a misdemeanor offense.
  - a. Any individual convicted of the misdemeanor of deceptive practices a second time will be guilty of a class E felony, and any subsequent convictions of the same crime will result in a class D felony.
2. **S.371**: "Democracy Preservation Act," would ban political spending by foreign-influenced business entities in N.Y.'s local and state elections through election law § 14-116(a). Business entities that make political expenditures or contributions must file with the N.Y.S. Board of Elections certifying that they are not a foreign-influenced business entity as per the date the expenditure or contribution was made.
  - a. Copies of the statement of certification must also be provided to any campaign or committee to which they contribute upon request.
  - b. This bill takes effect 180 days after it is signed into law.
3. **S.616**: This bill amends election law § 17-140, which prohibits any individual connected to an election from providing items during voting hours on a general, special, or primary election day to voters. Under

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the bill, polling places will be able to provide items that have nominal value, such as water or snacks, to voters waiting in line.

4. S.657A: Enacts the “Doctor John L. Flateau Voting and Elections Database and Academic Center of New York Act,” which will regulate public data maintained by county and city boards of elections through a statewide database. This database and the academic center will compile N.Y.’s election and voting data and use it for research and to provide election operation. N.Y. will also provide specialized assistance to localities and the public with this data.
  - a. This bill takes effect on April 1, 2026.
5. S.6675: Amends the election law to require that public-facing websites paid for, hosted, and/or operated by political committees include a disclaimer that identifies the political committee responsible for the website. This disclaimer must be clearly displayed on each navigable page of the website.
6. S.610: Authorizes local Boards of Elections to establish absentee ballot drop-off locations. Absentee ballot envelopes can be deposited in absentee ballot drop boxes established by the local Boards of Elections. Any absentee ballots received by a local Board of Elections will be counted if it is deposited in an absentee ballot drop box before the close of polls on election day. Local Boards of Elections must close absentee ballot dropboxes at the close of polls and collect ballots deposited therein.
7. S.242: Allows counties the option to establish 2 or more locations for portable polling places for early voting, which must be operative for no fewer than 3 consecutive days and that will not replace or decrease the mandated number of regular early voting polling places. The locations must be determined no more than 14 days prior to the election and must be part of the communication plans developed by the local Boards of Elections.
8. S.5943: Creates a standard order for candidates to appear on the ballot. Executive candidates will be listed first, such as President of the United States and Governor. Other federal and state offices will follow next. The order of other offices at each level will be listed in descending order according to the size of the electorate. Parisian offices will be listed before non-partisan officers and before judicial candidates.
  - a. This bill takes effect on January 1, 2025.
9. S.6173B: Authorizes the New York State Board of Elections to join a multistate voter list maintenance organization, such as the Electronic

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Registration Information Center (ERIC), and share relevant information with this organization.

- a. This bill takes effect immediately. New York State must complete its registration to this organization on or before July 31, 2025.

Unless noted otherwise, all bills would become effective upon approval by the Governor.

**REDISTRICTING****Maloney Indicates Another Congressional Run?**

In today's New York Post, Carl Campanile informs readers that former Congress Member Carolyn Maloney would be interested in running for Congress again if a new map presents her with a favorable district to run in. For that to happen, she would have to run against another incumbent Member, another Member would have to retire and create a vacancy. Maloney's old district, merged with that of Rep. Jerry Nadler (who defeated her in a primary) is bordered mostly by minority districts.

**REDISTRICTING AROUND THE NATION**

**Louisiana:** the state legislature passed a new congressional map with two majority-Black districts. The map would increase the Black population of Louisiana's 6th Congressional District from 23% to 54% and would span more than 200 miles. The Louisiana legislature was ordered to redraw state maps with a second majority-Black district in June 2022 due to the previous maps violating Section 2 of the Voting Rights Act. The decision had been paused for a year until June 2023, and the 5th U.S. Circuit Court of Appeals subsequently set January 30, 2024, as the deadline for a new map.

**Michigan:** On January 18<sup>th</sup> the Michigan Independent Citizens Redistricting Commission (MICRC) voted to appeal a federal decision to redraw 13 state House and Senate districts in Detroit. A panel of 3 federal judges found on December 21, 2023, that the MICRC diluted Black voting power in Detroit with 2021 state redistricting maps and violated Section 2 of the Voting Rights Act. The MICRC vote to appeal the decision was 8-1. If the ruling stands, the MICRC faces an aggressive timeline before the filing deadline (April 23, 2024) for the 2024 election. The MICRC will hold its next meeting in the Detroit area in mid-January or early February.

**North Dakota:** On January 8<sup>th</sup>, the U.S. District Court for the District of North Dakota ordered fair maps into place that will end the illegal dilution of Native American votes. In November 2023, the court found that 2021 North Dakota Legislative District maps dilute Native American voters in violation of Section

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2 of the Voting Rights Act. The court also denied the legislature's latest attempts to delay implementation of new state legislative maps. These attempts also caused the legislature to miss the deadline to propose a remedial plan of its own. The redistricting plan proposed by North Dakota Tribes will now be instituted for the 2024 election.

**Washington:** Last August, the U.S. District Court for the Western District of Washington ruled in *Palmer v. Hobbs* that the state redistricting map for the 15th Legislative District violated Section 2 of the Voting Rights Act by diluting Latino votes. The court will lead an alternative process to prepare a map for the 2024 election because the legislature did not reconvene the redistricting commission. The plaintiffs submitted 5 proposed maps by the deadline. The court aims to adopt a new redistricting map by March 25, 2024. Republican intervenors plan to appeal the court's decision on a new redistricting plan and consolidate it with their appeal of the *Palmer* ruling. Intervenors also have an appeal of *Palmer* before the U.S. Supreme Court. A separate request for a related case, *Garcia v. Hobbs*, was also appealed to the U.S. Supreme Court. Justices are expected to consider both requests when they decide which cases to review this Friday.

**CENSUS****New York City Census Count Increases**

As a result of the NYC Planning Department's submission of a Post Census Group Quarters Review request (PCGQR), New York City's population has increased by 1,090 people over the initial 2020 decennial count. According to the Associated Press, "City officials estimated the adjustment by comparing changes in numbers that are released annually with population estimates from the Census Bureau, said officials in the city's Department of City Planning.

"New York City officials believed hundreds of inmates and students at Hunter College, Pace University and Wagner College were missed in its 2020 count. The issue is moot at this point since apportionment is off the table when it comes to adjusting the numbers, but New York State [wouldn't have lost a congressional seat](#) if an additional 89 people had been counted during the 2020 census."

## Census Bureau Begins Posting Public Comments on Proposed Changes to 2025 American Community Survey

**From the Census Bureau** “The U.S. Census Bureau has begun posting the public’s feedback on proposed changes to the 2025 American Community Survey (ACS) and Puerto Rico Community Survey (PRCS) to [regulations.gov](https://www.regulations.gov). In October, the Census Bureau published a [Federal Register notice](#) inviting the public to comment on proposed changes to the survey covering several topics, including household roster, educational attainment, health insurance coverage, disability, and labor force questions.

[Read More](#)

The Census Bureau received more than 12,000 comments. The majority of the comments cited concerns with changing the disability questions to a set based on the [Washington Group Short Set on Functioning](#).

The Census Bureau is currently reviewing and considering the public’s feedback as part of the [process for making changes to the ACS](#). The Census Bureau, in consultation with the Office of Management and Budget and the Interagency Council on Statistical Policy Subcommittee on the ACS, will decide on what 2025 ACS content will be submitted to OMB for final approval, in accordance with the Paperwork Reduction Act of 1995. The Census Bureau will keep the public informed throughout the process.”

### EVENTS

#### APA Voice Redistricting Task Force

The Task Force will be discussing the state Independent Redistricting Commission and additional public input into the congressional line drawing process in an online event on Tuesday, January 30 from 6:00 to 7:30 PM. RSVP at [bit.ly/apavoice-2024-democracy](https://bit.ly/apavoice-2024-democracy)