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The Federal Voting Rights Act

Meeting the Standards

A Compliance Handbook for Cities, Boroughs & Other Local Jurisdictions

PREPARED AND DISTRIBUTED BY

STATE OF ALASKA

Office of the Lieutenant Governor

Division of Elections

Department of Community and Regional Affairs

Municipal and Regional Assistance Division

Department of Law

Bill Sheffield, Governor

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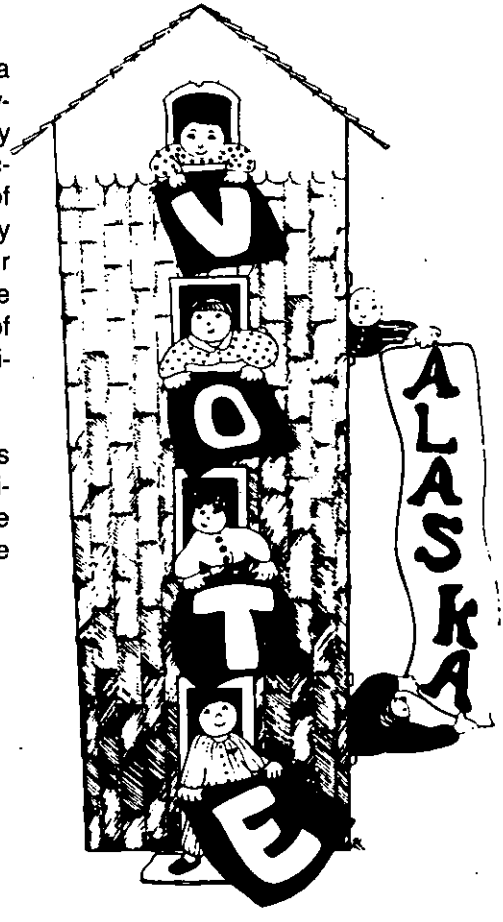
Getting Acquainted . . . !

There are few individual rights held more sacred, or considered more basic to our American way of life, than the right to vote! As officials charged with the administration of elections, we are entrusted with the responsibility of safeguarding that right . . . for everyone . . . equally and fairly.

The Voting Rights Act serves as a beacon to light our way in achieving this goal, for it was enacted by the U.S. Congress to end practices that prevented members of racial and language minority groups from voting. Through our compliance with the Act, we are able to assure that no feature of the election process is discriminatory.

The purpose of this handbook is to offer a simple guide for compliance; one that takes away the mystery and shows how to make compliance manageable.



What's it all about . . . ?

IN A NUTSHELL

There are three crucial provisions of the Voting Rights Act as it relates to the State of Alaska.

Those provisions:

1. Prohibit the use of any voting qualification, standard, practice, or procedure that results in denial or abridgement of the right to vote because of membership in a racial or language minority group;

2. Require the use of appropriate languages, in addition to English, for registration and voting materials in certain jurisdictions to which single-language minority criteria apply; and

3. Require certain jurisdictions, including Alaska and all of its political subdivisions, to secure preclearance from the U.S. Attorney General, Department of Justice (DOJ), or the U.S. District Court for the District of Columbia before implementing any change in a voting law, practice, or procedure.

Let's take a look at each of these provisions in more detail.

1. Voting Qualifications & Practices

The prohibition against use of any voting qualification, standard, practice or procedure that results in denial or abridgement of the right to vote on account of membership in a racial or language minority group applies to every state and political subdivision in the United States.

The reason for this prohibition is that voting qualifications and practices could weaken the voting rights of racial and language minority groups if they were not prohibited by law.

The classic example of a "voting qualification" that can affect the right to vote of racial and language minority voters is a literacy test as a requirement for registration and voting. Because there is substantial evidence that racial minority groups have historically been educationally disadvantaged, literacy tests could have the effect of excluding a greater proportion of members of those groups from voting than members of the majority population. Furthermore, literacy tests were purposefully applied to prevent registration and voting by members of racial minority groups.

An example of a "voting practice" that can affect the right to vote of racial minority voters is gerrymandering or manipulating election district boundaries in such a way that no person who represents the interests of a racial minority group can be elected.

In addition to these blatant examples, there are many more subtle qualifications, practices and procedures that could take away the effectiveness of the vote of members of racial minority groups.

It is the responsibility of every state and every local government in the United States to assure that no voting qualification, practice, or procedure discriminates against any racial or language minority group. Each local jurisdiction should examine its own election practices and procedures to determine whether the rights of racial and

language minority voters are protected. Each **must** consider the impact of proposed changes in its election practices and procedures on racial and language minority voters.

2. Bilingual Information & Voter Assistance

The State and each of its local governments are responsible for identifying areas in their respective jurisdictions where bilingual voting assistance is needed. Bilingual information and assistance must be provided at every stage of the election process. Voter registration assistance, election-related notices, information on issues and candidates, and assistance at the polling place must be provided bilingually wherever needed. Since Alaska Native languages are historically unwritten, this information and assistance must be provided orally.

The Division of Elections has appointed bilingual registrars and elections officials in every area of the State in which bilingual assistance is needed. Each local government should make certain that bilingual assistance is provided for its local elections as needed.

Every area of the State where large numbers of members of language minority groups reside is served by one or more public or commercial radio stations that are willing to broadcast public service announcements concerning election matters in Alaska Native languages. Many of these radio stations have bilingual staff members who will translate from English text provided to them. Others will broadcast prerecorded public service announcements provided to them in Native languages. Of course, there are also rural newspapers which, although printed in English, are invaluable resources for publication of election-related notices and information, since they are widely read in rural Alaska and are translated for non-English-speaking Alaska Natives by bilingual Alaska Natives. Each municipal clerk and election official should become familiar with the U.S. Department of Justice (DOJ) regulations found at 28 C.F.R. Part 55, entitled "Implementation of the Provisions of the Voting Rights Act Regarding Language Minority Groups," that describe generally the requirements for provision of effective oral assistance.

Section 208 of the Act also provides that "any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write, may be given assistance by a person of the voter's choice." Include this information in your public service announcements and voter awareness campaigns. Voters who require special assistance will feel more confident knowing that they may bring someone with them to the polls, whom they know and trust.

3. Preclearance

The remainder of this handbook relates to Section 5 of the Voting Rights Act, which requires the State of Alaska and each of its local governments to submit to the U.S. District Court for the District of Columbia or to the U.S. Attorney General **any change** in election procedures or practices for a determination of any possible discriminatory features before the change may be enforced.

Why Us . . . ?

A QUICK LOOK IN THE REAR VIEW MIRROR

The Voting Rights Act was enacted in 1965. At that time certain standards were established to determine which jurisdictions would be included in the special preclearance requirements of Section 5. If DOJ determined that a state or political subdivision maintained a "test or device" **and** the Director of the Census determined either that less than 50 percent of the voting-aged residents of the jurisdiction were registered to vote or that less than 50 percent of the voting-aged residents actually voted in the presidential election of 1964, the state or political subdivision was covered. Congress found that, in many jurisdictions that fell below those standards, there was historically a pattern of discriminatory election practices.

"Test or device" was defined as "any requirement that a person as a prerequisite for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class."

Unfortunately, Alaska had low voter registration and turnout. DOJ also determined that Alaska maintained a literacy test. Therefore, in the beginning Alaska was included with the other states that fell below the standards, and was required to comply with the preclearance provisions of Section 5.

Alaska immediately took advantage of a provision of the Act that allowed a state to "bail out" of the preclearance requirements by filing a lawsuit alleging that the State had not applied a test or device with the prohibited discriminatory purpose or effect. DOJ agreed, and Alaska "bailed out."

When the Act was amended in 1970, Alaska was again covered by the preclearance requirements and again, with the agreement of DOJ, "bailed out."

In 1975, the Act was amended again. This time the Act identified as another prohibited "test or device" the conduct of elections only in the English language in states or political subdivisions in which five percent or more of the population were members of a single language minority. Because Alaska conducted most aspects of its elections in English and because all Native Alaskans were considered to be members of a single language minority, Alaska and all of its local governments were once again required to preclear all changes affecting voting before enforcing those changes.

Additionally, the requirement was made retroactive to cover any changes made after November 1, 1972, not only changes in use of English and other languages in the election process, but **every** change affecting voting. Our status under Section 5 remains unchanged to this day.

In the rest of this handbook, we will discuss in depth, the specific requirements of Section 5, and offer suggestions and tips on how to fulfill those requirements.

Who . . . ?

WHO IS SUBJECT TO PRECLEARANCE

You now know why the State of Alaska is covered under Section 5 of the Voting Rights Act. But we haven't discussed how it relates specifically to local jurisdictions.

The entire State of Alaska is a "covered jurisdiction" under Section 5. Additionally, the Act makes **all political subdivisions** of the State that conduct "registration for voting" subject to the preclearance provisions of the Act. You may be thinking that because your local government doesn't conduct registration you're off the hook. **BUT WAIT!**

Interpretation of the Act by the courts has broadened the scope of coverage to include **all** political subdivisions or "subunits" of the State, regardless of whether or not the political subdivision actually conducts voter registration.

To illustrate just how liberally the Act has been interpreted, in one case the U.S. Supreme Court held that a school district rule that required employees to take unpaid leave in order to run for elective office was subject to preclearance by the county board of education, even though the school board did not itself conduct voter registration, hold the election, or have control over any formal part of the election process. The reason for this decision was that such a personnel rule could have an impact on voting rights in that it could discourage employees from running for office.

This liberal approach to interpretation has been reflected in a DOJ regulation which states: "All political subunits within a covered jurisdiction (e.g., counties, cities, school districts) are subject to the requirement of Section 5."

28 C.F.R. §51.6.

And If We Don't . . . ?

Some local governments, particularly those in which there are no voters who speak Alaska Native languages, may think that preclearance is too burdensome and may be tempted to disregard the requirement. Disregarding this legal requirement could have serious results, not only for the local government, but for the State. Even if an unprecleared change is completely nondiscriminatory, and even if there are no minority voters residing in the jurisdiction who could be affected by the unprecleared change, any person could bring a legal action to stop enforcement of the change until the preclearance requirement is met. If a court order is issued that postpones an election, the local government could incur many thousands of dollars worth of extra expenses, including staff costs, costs of republishing notices, costs of reprinting ballots, etc.

A further consideration is that, if a political subdivision complies with preclearance, does not discriminate in its voting practices, and provides necessary bilingual voting assistance for 10 years, it may be able to "bail out" of the preclearance requirements. The State, on the other hand, cannot "bail out" until it **and** all its local governments have complied with the requirements of the Voting Rights Act for 10 years.

Like What . . . ?

TYPES OF CHANGES SUBJECT TO PRECLEARANCE

The Act provides that any change in "voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting" must be precleared. As in the question of what jurisdictions are covered, the courts have taken a broad view of the type of changes for which preclearance is required. **Any change** that **affects** or has the **potential to affect** voting rights must be precleared. This position by the courts has been reflected in a DOJ regulation which states:

> *"Any change affecting voting, even though it appears to be minor or indirect, even though it seems to expand voting rights, or even though it is designed to remove the elements that caused objection by the U.S. Attorney General to a prior submitted change, must meet the Section 5 preclearance requirement."*
>
> (28 C.F.R. § 51.11.)

TESTING THE WATERS

Any time you're unsure about whether a change must be precleared, just ask yourself the two questions in the following simple test:

> Does the change **directly** affect voting and/or the election process?
>
> Does the change have the **potential** to affect voting and/or the election process?

If the answer to either question is "yes," you know you must submit it for preclearance.

Changes that directly affect voting, are usually the easiest to identify.

Some examples of this type of change are as follows:

- Changes in voter qualifications or registration procedures;
- Changes in balloting and voter assistance procedures;
- Reapportionment of election districts;
- Changes in polling places and precinct boundaries;
- Changes in the way issues, propositions, initiatives or referenda are offered;
- Changes in provisions relating to publicity about voting or registration;
- Changes in the use of languages other than English in any aspect of the electoral process;
- Changes in dates or the scheduling of elections;
- Changes in the length of terms of office or candidacy requirements;
- Changes in the method of determining the outcome of an election (i.e., by requiring run-off elections or allowing election by plurality);
- Changes in ballot counting procedures.

Some examples of changes which have the potential for affecting voters' rights are the following:

- Enabling legislation that allows a local jurisdiction to enact or implement covered changes;

- Annexations and detachments;
- Incorporations and dissolutions of municipal governments;
- Procedural changes in annexation, detachment, incorporation, or dissolution processes;
- Changes in municipal status;
- Creation by a local jurisdiction of a new elective entity such as a neighborhood council;
- Dates of special elections.

(**See** 28 C.F.R. § 51.12.)

Some of these changes may not be immediately identifiable as affecting voting. For instance, an annexation may not require an election at all, and one may not think such an action would be covered. However, an annexation usually adds a new population to a municipality that, in effect, changes the voting constituency. This could potentially affect the voting strength of members of racial minority groups. For example, in a jurisdiction in which there has traditionally been bloc voting by race, an annexation, through the inclusion of new nonminority voters, could dilute the strength of that bloc vote. As a result, racial minority voting strength could be affected. Likewise, through a detachment, a municipality could eliminate the voting rights of minority voters who reside within the detached territory.

Another example of a change that has potential impact on minority voting rights is a change from **district** to **at-large** voting. A system of voting by district may help racial minority voters to elect representatives of the minority community if there is a high proportion of minority voters in the district. If the municipality changes to an at-large election system in which all voters in the municipality vote for all seats on the council or assembly, racial minority voting strength could potentially be weakened.

Other changes that might not immediately appear to affect voting are changes in municipal status, such as change from second to first class city status, or change to home rule status. These changes

do result in various voting changes. For example, the referendum power of voters, the make-up of the city council and the manner of selection of the mayor, and the power to adopt ordinances prescribing election procedures other than those set out in certain provisions of AS 29.26 are affected by certain changes in a municipality's status.

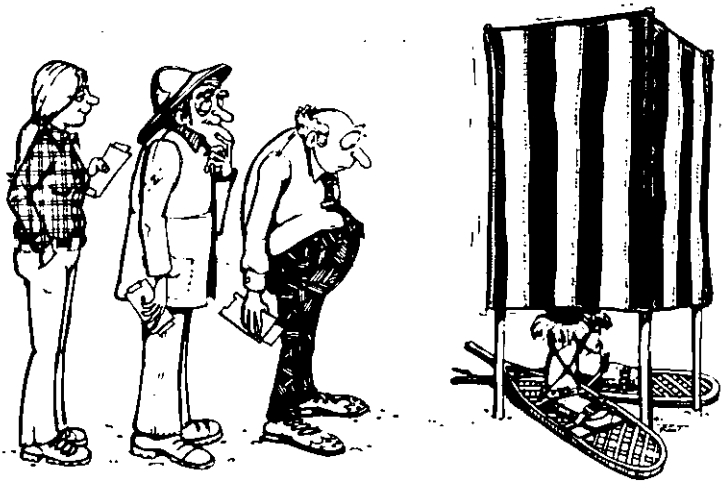
Finally, let's assume that an ordinance is passed that addresses the scheduling of special elections. Again, the municipality would have to preclear the ordinance. However, take note! **The municipality would also have to preclear each special election DATE with DOJ before holding the election.** This is because the special election is just that . . . special . . . a one-time event. This specific, single election for a special purpose will not occur in a regular, periodic manner and is not a "recurrent practice." Furthermore, it is possible that a state or political subdivision could choose a date for a special election that would somehow abridge or deny the voting rights of racial minority voters.

The good news is that once a change that establishes a practice intended to be permanent, ongoing, or "recurring" has been precleared, that preclearance is sufficient to cover all subsequent occasions in which the change is actually utilized or enforced.

28 C.F.R. § 51.13.

Now that we have a handle on the types of changes that have to be precleared, we're ready to go on.

Getting Down to Business . . . !



The purpose of this section of the handbook is to show you that handling the preclearance requirements of the Act needn't be as difficult as it might seem. It just takes a little planning and smart timing, and once it becomes part of your normal routine, you'll have no trouble at all keeping your community on target with the preclearance requirements of the Voting Rights Act.

The basic message that must be remembered is that we cannot put into effect any change in law, policy, or procedure that affects voters until the change is precleared by the U.S. District Court for the District of Columbia or by the U.S. Attorney General (DOJ). Because preclearance by the U.S. District Court requires filing of a lawsuit in Washington, D.C., a very time-consuming and expensive process, we only address preclearance by DOJ in this handbook. DOJ regulations related to Section 5, 28 C.F.R. Part 51, tell us **HOW** to preclear.

Preclearance is not to be confused with "approval." In reality "preclearance" by DOJ means that DOJ has reviewed the proposed changes and, based on the evidence you have submitted, DOJ raises no objection at the current time. It is important to understand that at a later time, if new compelling evidence or litigation emerges showing that the change may have a prohibited effect on voting rights after all, DOJ could choose to raise an objection by filing or joining in a lawsuit.

The key element in complying with Section 5, is known as:

THE PRECLEARANCE REQUEST

Actually, the preclearance request is simply a letter . . . a letter that does three things.

> The letter **EXPLAINS** the change being made.
>
> The letter **OFFERS EVIDENCE** to show that the change will not deny or abridge voting rights of any person on account of race or membership in a language minority group.
>
> The letter **ASKS FOR PRECLEARANCE** of the change by DOJ.

With these three things in mind, we will discuss all the elements that need to be included in your preclearance letter. Remember, we mentioned that keeping on top of preclearance responsibilities took a "little planning" and "smart timing." As we go through the steps in writing an appropriate preclearance letter, we will also offer some tips on how to plan and how to coordinate your timing to make the process as simple and efficient as possible.

Who's Responsible?

Responsibility for submitting a request for preclearance of a change affecting voting is spelled out in DOJ regulations. The request is to be submitted by the "chief legal officer or other appropriate official of the submitting authority or by any other authorized person on behalf of the submitting authority." 28 C.F.R. § 51.21.

Of course, any state legislation or "other changes undertaken or required by the State shall be submitted by the State." This includes actions, for instance, by the Division of Elections in regard to new election regulations, changes of polling places, and so on. It also includes dates of special elections required by law to be set by the Lieutenant Governor. Additionally, it includes preclearance of changes for which the State is primarily responsible, such as the incorporation of a **new** municipality.

Preclearance of changes made by the authority or initiative of the local community or jurisdiction, however, is the responsibility of that jurisdiction. It would be wise, therefore, to assign responsibility for preparing actual requests to a specific official who is in the best position to monitor activity that would require preclearance. In the case of a city or borough, submission might best be made, as the municipality determines to be appropriate, by the municipal attorney, the mayor, the manager, administrator, city clerk, or private contractor.

Writing the Preclearance Request

WHERE TO SEND YOUR REQUEST

In sending your preclearance letter to DOJ, address your envelope in the following manner:

Assistant Attorney General
Civil Rights Division/Voting Section
Department of Justice
Washingon, D.C. 20530

Submission under Section 5 of
the Voting Rights Act

★ TIP ★

Repeat the phrase "Submission under Section 5 of the Voting Rights Act" in a subject line before you begin the body of your letter, and follow it with a few key words that identify the change you are submitting.

★ EXAMPLE ★

Subject: Submission under Section 5 of the Voting Rights Act—
Amended Signature Requirements for Nominating
Petition

This may prove helpful since the preclearance letter you will generally receive from DOJ is a very brief form letter. Only the first sentence or two relates specifically to your letter. Sometimes it may be difficult to recognize the specific change for which you are receiving preclearance, especially if you have made several preclearance requests in a short time period. If DOJ is given a key phrase with which to identify the change, it is likely to include it in the response.

WHEN YOU SHOULD MAKE YOUR REQUEST

We indicated that "smart timing" is an important ingredient in successful preclearance requests. There are three important considerations to be kept in mind when planning a change.

Changes cannot be submitted until they are in final form and have been enacted or adopted.

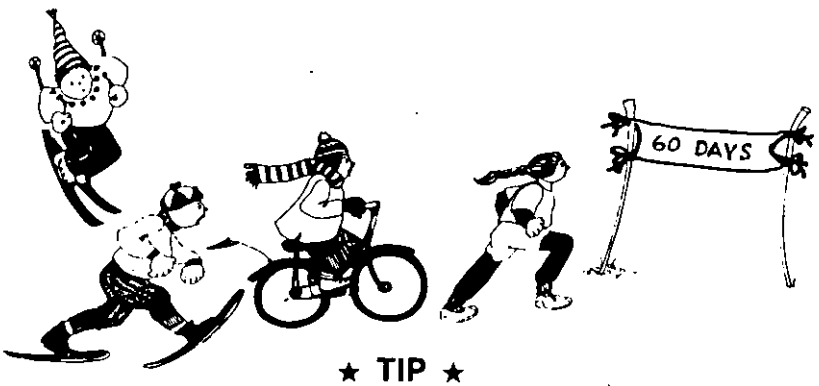
Once adopted or enacted, changes cannot BE ENFORCED until they have been precleared.

By law, DOJ is allowed a full 60 days to review your submission. (The clock starts ticking on the 60 days when DOJ receives your request, NOT when you mail it.)

In a nutshell, this means that you and your local officials must think ahead. Plan your changes and the date upon which you want to enforce them, keeping this 60-day delay in mind.

It may not be quite as difficult as it appears. For the most part, we target changes that affect voting to be in place by election day. Except for special elections which crop up randomly, we know well in advance when our major elections are going to occur each year. With this as our guide, we can plan major changes such as reapportionments, annexations, and comprehensive changes in our election ordinances to be finalized early in the year and well in advance of our major elections. Focus this work during periods of the

year when **NO ELECTION is IMMINENT**, so that once the change is adopted you have more than 60 days in which to acquire your preclearance in advance of the election for which you want the change to be in effect.



★ TIP ★

Prepare an election calendar that shows the dates on which the major elections are to take place. When you are anticipating a change being made that will have to be precleared, count backward from the date of the election in which you want the change to be effective. You will then be able to plan the date on which your submission will have to be in Washington. Continuing to count backward, you can then plan the best time frame in which your preliminary work must be done in enacting the change.

★ EXCEPTIONS ★

There are a few exceptions to these basic ground rules that deserve special attention:

1. While changes must actually be adopted or enacted before seeking preclearance, under certain circumstances there are provisions to by-pass this requirement of finality. Changes that may be excepted from the rule include those that are approved and finalized by the appropriate local body, but that then require only a vote of the people or action by a court or a federal agency to be enacted. As long as the change is not subject to alteration

in the final approving action, and if all other action necessary for approval has been taken, you may seek preclearance before the final act takes place. 28 C.F.R. § 51.20.

An example of such a change is an annexation that has been approved by the Local Boundary Commission (LBC), and only requires approval by a vote of the people to become effective. The request for preclearance of such an annexation may be submitted to DOJ immediately after approval by the LBC. We also believe that the request for preclearance of an annexation that has been approved by the LBC and submitted to the legislature may be submitted to DOJ immediately after approval by the LBC. Although legislative review annexations do not fall strictly within the language of this exception, they are very similar, since those annexations are not subject to alteration by the legislature and all other actions necessary for approval have been taken.

2. Although DOJ has 60 days to respond to your preclearance request, it must be noted that it is not uncommon for DOJ to notify you on or near the 60th day after it receives a request that more information is required to enable it to determine whether a change should be precleared. In most cases, you'll be able to provide the additional information over the phone causing no delay in DOJ's review. However, in the case of major changes such as reapportionments and controversial annexations or incorporations, the additional information requested may be complex and require time to gather. In these exceptional cases, if DOJ requests additional information, or if you submit supplemental information, a **new** 60-day period for DOJ review begins on the day it receives the information. 28 C.F.R. § 51.35. Therefore, there will be times when it is advisable to allow 130 days or longer for preclearance of complex or particularly controversial changes.

3. DOJ regulations also allow for **expedited** consideration of a preclearance request, if "a submitting authority is required by state law or local ordinance or otherwise finds it necessary to implement a change" before the 60-day period expires. 28 C.F.R. §

51.35. The need for expedited consideration typically arises in connection with changes involving dates of special elections and changes in locations of polling places. We recommend that, if you find it necessary to request **expedited preclearance** of a change, call on the day you mail your request to alert DOJ to expect it. To assist DOJ in identifying the request for which expedited consideration is needed, the words "**Expedited Consideration Requested**" should be typed or clearly written on the envelope that contains the request. If you have access to overnight mail delivery services such as DHL, Federal Express or Express Mail, you may choose to use one of these methods of delivery to avoid additional delay for regular mail.

There is a special address that should be used when sending a submission by overnight mail service.

U.S. Department of Justice
Civil Rights Division/Voting Section
320 First Street, N.W., Room 932
Washington, D.C. 20001

4. If **DOJ does not respond** to a request for preclearance after 60 days, the change is considered precleared and may be enforced. If you have any questions about the enforceability of a change after the 60 days has passed, call DOJ directly to check on the status of the request. The number to call is (202) 724-8388.

What you should include in your request

Remember the three things we talked about early in this section that the Preclearance Request should do?

> *Explain*
> *Offer Evidence*
> *Ask for Preclearance*

Of course, **ASKING FOR PRECLEARANCE** is the easiest . . . just a simple request stated in the first paragraph will do. It takes a little more thought for the other two elements. But DOJ regulations for implementing Section 5 of the Voting Rights Act give us a good road map for getting there. It's all outlined in a concise list of contents that are to be included, complete . . . from (a) to (p). You'll find that each of these items either **EXPLAINS** or **OFFERS EVIDENCE.**

EVERYTHING DOJ WANTS TO KNOW . . . AND ISN'T AFRAID TO ASK!!

Here is a list of the required elements DOJ wants included in your letter. As you review the elements, you'll notice that some of them merely require a simple statement . . . and some are more easily answered with an enclosure that illustrates or clarifies the point you wish to make more clearly than trying to respond through a lengthy narrative. It should also be noted that while you should make every attempt to include **ALL** the elements described in (a) through (p) of 28 C.F.R. § 51.25, not all are relevant in every case. Therefore, there

may be occasions when one or two might be eliminated on that basis. While such omissions of irrelevant data rarely interrupt normal processing it certainly wouldn't hurt to include a statement noting the reason for such an omission in your letter, to be on the safe side.

REQUIRED CONTENTS . . . FROM (a) TO (p)

(a) **A copy of the ordinance, enactment, order or regulation in which the change affecting voting is contained.**

(b) **If the change is not immediately clear in the ordinance, order or regulation, EXPLAIN the difference between the new procedure and the old procedure, in your own words.**

★ TIP ★

It might be easier to enclose copies of both the old and the new, clearly marking which is which, and underlining the wording changes you want DOJ to preclear.

(c) **The name, title, address, and telephone number of the person making the submission.**

Most of this is probably in your letterhead, and of course, you'll sign your letter.

(d) **The name of the submitting authority and the name of the jurisdiction, if different.**

For the most part, the submitting authority and jurisdiction will be the same . . . your borough, city, or village. That's probably on your letterhead, too.

(e) **If the request is not from the State, or county** (of course, there are no counties in Alaska), **the name of the state (or county) in which your jurisdiction is located.**

This simply means, be sure to let DOJ know the State in which your community is located. A city located in a borough should also identify the borough.

(f) **Identification of the person or body responsible for making the change, and how the decision was made.**

★ EXAMPLES ★

PERSON OR BODY	METHOD
City Council	By Ordinance
City Clerk	By Administrative Decision

(g) **A statement identifying the statutory or other legal authority that allows the change to be made, and a description of the procedures required to be followed in deciding to undertake the change.**

This element can be handled quite simply by referring to the ordinance, statute, or regulation that authorizes the body or individuals to make the change, and referring to other ordinance, statutory, or regulatory sections that list required procedures or activities. A copy of the ordinance should be provided. A clear statement that the provisions of the laws have been adhered to satisfies the basic requirement. You may also OFFER EVIDENCE that you have complied with the law by adding enclosures that prove your compliance.

★ EXAMPLES ★

Copies of ads that were placed to give public notice; minutes of assembly meetings at which action on the change was taken.

(h) **The date of adoption of the change.**

(i) **The date on which the change is to take effect.**

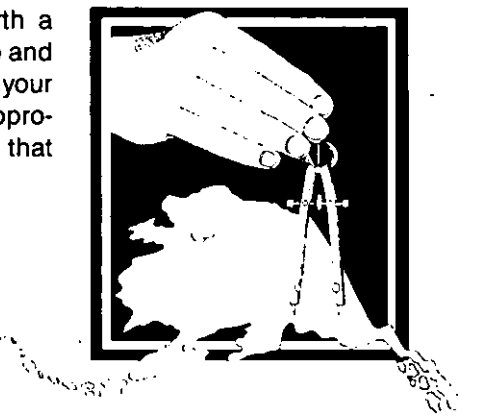
Remember the 60-day review period allowed DOJ for preclearance. The change cannot be enforced until preclearance is obtained, even if the change is considered "effective" under your ordinances or state law.

(j) **A statement that the change has not yet been enforced or administered, OR, if such a statement cannot be made, EXPLAIN the circumstances that required enforcement before preclearance.**

YOUR INSURANCE POLICY . . . it covers you if an emergency has arisen, or if local ordinances or state statutes simply do not allow for DOJ's full 60-day review period. Now, we all know these circumstances exist. For example, if two weeks before an election your usual polling place burns to the ground, you obviously can't wait for approval of the new location by DOJ. You must respond to the emergency. We also know that statutes often require a special election to be scheduled for fewer than 60 days from a given event. In these kinds of cases we **must still seek preclearance,** however, the compelling reasons often carry the weight for "premature" enforcement. Remember that you may request EXPEDITED REVIEW . . . as often as possible, DOJ will meet your deadline.

(k) **Where the change will affect less than the entire jurisdiction, EXPLAIN the scope of the change.**

Again, "a picture is worth a thousand words." Refer to and use an enclosure to make your point. For example, if appropriate, enclose a map that marks the affected area.



(l) **EXPLAIN the reasons for the change.**

Write a brief paragraph that EXPLAINS why the change is being made. Describe the circumstances that prompted consi-

deration of the change. Was it requested by petition? Was the change intended to solve a recurring administrative problem? Does it promote greater efficiency?

(m) **A statement of the anticipated effect of the change on members of racial or language minority groups.**

> *Here is the crux . . .*
>
> *The real purpose of the Voting Rights Act is to protect the voting rights of racial and language minority groups.*

Obviously, your real goal is to be able to state clearly in your letter that, "The change will not deny or abridge the voting rights of any individual on the basis of race or of language spoken by the individual." OFFER EVIDENCE that proves it.

★ EXAMPLES ★

For changes such as reapportionment or annexations:

1. Provide demographic information showing the number of Alaska Natives or members of other minority groups in your community and in the reapportioned districts or annexed territory. (You can use 1980 census figures, or your own community's figures if a local survey has been done. The Alaska Department of Labor may be able to provide you with information, or the Department of Community and Regional Affairs, Division of Municipal and Regional Assistance may have figures for your jurisdiction. You may even offer your best estimate; just be sure to state that it is only an estimate.)
2. Include the name of and any information about Alaska Native or other minority leaders in the community who can be contacted by DOJ for input. (This is a key element that you should automatically make part of **every** submission.)

★ TIP ★

Create a mailing list of minority organizations and prominent Alaska Native and other minority leaders in your community and routinely send them copies of proposed changes and ask for their input. You'll then be able to include with your submission copies of any responses you receive. Even if you do not get a response, you can document the fact that your provided information about the proposed change and asked for input.

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3. Provide a list of Alaska Native or other minority individuals who participated in proposing and enacting the change. This may include a list of the minority members of your council or assembly.

4. Sometimes you may be faced with a change that may have an impact on minority voters. For example, it may be necessary to schedule a special election during a period of the year when many Alaska Native voters are engaged in subsistence activities distant from their polling places. In such a case, explain the necessity for holding the election at that time and the possible impact on Alaska Native voters. Describe procedures available for absentee voting. If you utilize a special procedure to facilitate absentee voting, that procedure must also be precleared.

(n) **A statement identifying any past or pending litigation concerning the change or related voting practices.**

In the vast majority of cases, there will have been no lawsuit initiated regarding the change for which you are seeking preclearance. Just saying so in a simple sentence will satisfy the requirement.

(o) **A statement that the prior practice and procedure for adopting the change have been precleared (with the date), or are not subject to preclearance, or EXPLAIN why you cannot make such a statement.**

This can get a little tricky if you are just beginning, but here's how!

1. If you are preclearing a change in an election ordinance or practice that has been in effect since before November 1, 1972, simply state that the prior practice was not subject to preclearance.

2. If the ordinance or practice was enacted or changed on or after November 1, 1972 and the enactment or change was precleared, you can state that the prior practice has been precleared and provide the date of the preclearance.

3. If you discover that you are changing an election ordinance or practice that was enacted or changed on or after November 1, 1972 and that the enactment or change was not precleared, you must state that the prior practice was not precleared. Before DOJ will preclear the change you are submitting, it must be satisfied that the original enactment and/or change to the ordinance or practice did not have the prohibited discriminatory effect. You must provide DOJ with information to show this. In essence, you must retroactively preclear the past enactment or change in order to preclear the proposed new change.

   This may be difficult in some cases. For example, you may wish to preclear an annexation, but find that a previous annexation that occurred a number of years ago and about which you no longer have much information was not precleared. In such a case, you should identify the previous annexation and provide DOJ with the best information you have to show that the annexation did not result in discrimination prohibited by the Voting Rights Act. If you have little or no information concerning the previous annexation, you should explain this to DOJ and provide information so it can determine that the rights of racial minority voters within the jurisdiction as it will exist after the proposed annexation is approved are protected.

(p) **Other information that the Attorney General determines is required for evaluation purposes or that you think DOJ will need.**

This sounds pretty ominous but it's really not! It simply lets you be flexible. Here's where you get to choose ways to **OFFER EVIDENCE** not included in the other required contents. Almost every other kind of evidence you want to provide can be handled as an enclosure similar to the kinds of things we've offered as examples all along the way. Here are some ideas.

1. Copies of posters and public notice ads you placed to alert voters to the change;

2. News articles that have covered the change;

3. Minutes or accounts of public hearings on the change;

4. Letters you've received from the public regarding the change;

5. Maps;

6. Election returns; and

7. **BILINGUAL VOTING ASSISTANCE.**

   Whenever you request preclearance of a change in voting, you should describe what bilingual assistance or notices in Alaska Native languages have been provided or are planned in connection with the change. Remember, the **reason** we are covered by the preclearance requirements is that Alaska has been found to have a large population of persons who are members of a single-language minority. We **must** assure that our language minority voters are able to participate effectively in the electoral process.

Other suggested supplemental contents are set out in 28 C.F.R. § 51.26.

Some Tricks of the Trade

1. Do your best . . . DOJ will do the rest!

   Obviously, you should attempt to submit a preclearance letter that is complete, clear, and to the point. But . . . if by chance you omit something DOJ feels is pertinent . . . DOJ won't be shy . . . it will let you know, and you'll have an opportunity to cover a forgotten base.

2. An up-to-date file . . . puts you ahead by a mile!

   As soon as you know a change is coming . . . start a file. Then as the change is discussed, and any action is taken, slip a copy or a notation in the file. If you receive a letter about the change, put it in the file. If you print a poster, put a copy in the file. If a map gets altered, put it in the file. Then when it comes time to write your request, most of the work will already be done. Your cover letter can be brief because your enclosures will vividly tell the story.

3. **FINALLY, TAKE A HINT FROM DOJ REGULATIONS!**

   "Submissions should be no longer than is necessary for the presentation of the appropriate information and materials."

   28 C.F.R. § 51.24(c)

And there you have it . . . the Section 5 road map from (a) to (p) leading to a successful preclearance!

In the pages that follow you'll find a sample preclearance request which illustrates how to put it all together . . . complete with notations identifying the required contents (a) to (p) as they appear, and the few which, in this case, were not applicable. We've also included a sample of a DOJ response, showing that the request was favorably reviewed and that the change has been successfully precleared.

Sample Letters

c e
ALASKA CITY

(907) 555-6413

Office of the Mayor
P.O. Box 100
Alaska City, AK
99999

February 14, 1985

Assistant Attorney General
Civil Rights Division/Voting Section
Department of Justice
Washington, D.C. 20530

SUBJECT: Request for Preclearance under Section 5, Voting Rights Act—Date of Special Liquor Option Election

Dear Sir or Madame:

Preclearance is hereby requested for the April 29, 1985 date selected for a special liquor option election to be held in Alaska City which is located in the unorganized borough of Alaska. The purpose of this election will be to vote on the question, "Shall the sale and importation of alcoholic beverages in Alaska City be prohibited? (Yes or No)." This election was ordered by the city council on February 11, 1985 under the authority of Local Ordinance 84-6002, and pursuant to AS 014.11.502 which provides that "whenever a number of registered voters equal to at least 35% of the number of votes cast at the last regular municipal election petition the local governing body to do so," the question shall be placed before the voters at the next regular or special election. On February 3, 1985, such a petition was filed with the city clerk, and subsequently certified as having the required number of qualified signatures with 684 of 1896 registered voters signing.

As consistent and recurring practice, and in accordance with AS 29.26.170, regarding special local elections resulting from the petition process, local liquor options are scheduled not less than 45 nor more than 75 days from certification of the petition. April 29, 1985 was selected with no objection by the prime sponsor of the petition. All registered voters residing within the municipal boundaries shall be eligible to vote in this election.

The selection of this date will in no way deny or abridge any voter's right to vote on the basis of membership in a race or language minority. According to 1980 U.S. Census Data, the population of the Census Area in which our community is located, is approximately 24% Caucasian and 76% Alaska Native. We estimate, however, that in Alaska City the percentage of Alaska Natives is somewhat lower than in the general Census Area, based on student enrollment data compiled by race by the Department of Education. English is widely spoken, however public service announcements regarding the election will be broadcast on radio in the Native language, and bilingual assistance will be available at the polls. The April 29 date will not conflict with subsistence activities of Alaska City's Native voters.

The election and public notice procedures prescribed in AS 29.26.010 - AS 29.26.070 and Local Ordinance 81-1204, as amended, shall be implemented in the conduct of this election. Election Ordinance 81-1204 was amended in June of 1983 and precleared on September 14, 1983, your reference #M9999. No past or pending litigation concerns this change or related election practices.

The following individuals may be contacted for further information.

Alex Nikolai, City Councilman
P.O. Box 421
Alaska City, Alaska 99999
(907) 555-3451

Alice Krupeanof, Secretary
Alaska City Native Council
P.O. Box 9-4
Alaska City, Alaska 99999
(907) 555-2000

Sincerely,

Judy Herrmann

Judy Herrmann
City Clerk

Enclosures: Certified Petition
Order of Election
Public Service Announcements
Sample Ballot
Minutes of City Council Meeting 2/11/85

b NA
d NA
k NA

U.S. Department of Justice

WBR:RSB:PRD:dvs:gmh
DJ 166-012-3
M0639

Washington, D.C. 20530

April 17, 1985

Ms. Judy Herrmann
City Clerk
P.O. Box 100
Alaska City, AK 99999

Dear Ms. Herrmann:

This refers to the procedures for conducting the April 29, 1985 liquor option election for the Village of Alaska City, Alaska, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on February 18, 1985.

The Attorney General does not interpose any objection to the change in question. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change. In addition, as authorized by Section 5, the Attorney General reserves the right to reexamine this submission if additional information that would otherwise require an objection comes to his attention during the remainder of the sixty-day review period. See also 28 C.F.R. 51.42 and 51.48.

Sincerely,

John Smith
Assistant Attorney General
Civil Rights Division

By: Gwen Johnson
Chief, Voting Section