Chapter 10

An Assessment of the Bailout Provisions of The Voting Rights Act

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The marches, protests, struggles, and sacrifices of the civil rights community and the nation culminated in 1965 with the passage of the Voting Rights Act—the crown jewel of civil rights laws. Prior to 1965, case-by-case adjudication of voting disputes had proven ineffective in securing for minority citizens an equal opportunity to register to vote and cast their ballots, so Congress took a fresh and unique approach in enacting the Voting Rights Act of 1965 (VRA or "the act"). Sections 4 and 5 combined to establish a formula subjecting certain jurisdictions to administrative or judicial preclearance of all changes affecting voting. This ensured that each and every change made by a covered jurisdiction was free of a racially discriminatory purpose and effect *before* it was implemented. Recognizing the coverage formula most likely reached some jurisdictions that had not employed racially discriminatory voting practices, Congress set up a means for those jurisdictions to "bail out" from coverage if they could prove that any tests or other devices they had used as a prerequisite to registering to vote had not been used with the purpose or effect of discriminating on the basis of race or color.

This chapter will address the bailout provisions of the Voting Rights Act. In addition to providing background and explanation of the bailout provisions themselves, the chapter examines whether the bailout provisions have worked effectively and whether they should be changed. My experience indicates that the standards for establishing bailout eligibility that currently exist have proven to be both workable and practical. Since Congress amended the act in 1982, twelve jurisdictions have sought and obtained bailout, and one bailout request is pending. As explained below, jurisdictions governed by the act's special remedial provisions,

[1] I served as legal counsel to all of the jurisdictions that have bailed out since the 1982 amendments were enacted, and I also serve as legal counsel to the one jurisdiction that is presently seeking a bailout.

such as the preclearance provisions, have an effective opportunity to bail out if they can prove nondiscrimination. Moreover, the bailout provisions are tailored in such a way as to require a covered jurisdiction to prove nondiscrimination in voting on the very issues that Congress intended to target when it enacted the special remedial provisions in the first place. The act's special provisions target those jurisdictions with a long history of discrimination. The bailout provisions require those jurisdictions to show not only that those practices have been abandoned, but also that they have no lingering effects. The current bailout provisions, by granting state and local governments with a history of discrimination an alternative to some of the act's more intrusive requirements, ensure that the act remains consistent with sound principles of federalism.

The first part of this chapter will identify the goals that Congress had in mind when it amended the Voting Rights Act in 1982, and whether the bailout provisions as amended have fulfilled those goals. Second, I look at the jurisdictions that have taken advantage of the bailout provisions and the three phases required for obtaining a bailout. Part B examines whether the bailout process has been shown to be cost-effective, timely, and efficient. Part C examines whether the current bailout option is a realistic and fair opportunity to exempt jurisdictions from coverage. This part will also review what has worked and what has not worked with the legislation and offer some explanations as to why more jurisdictions have not yet pursued the option. The final part of this chapter will discuss whether Congress should make any changes to the bailout formula and what those changes might be.

A. History of the Bailout Provisions

A jurisdiction is "covered" for purposes of Section 5 of the Voting Rights Act, meaning that it is required to preclear all changes affecting voting with the Department of Justice or the United States District Court for the District of Columbia, if, as of November 1, 1964: (1) it maintained a racially discriminatory test or device as a prerequisite to voting or casting a ballot; and (2) either less than 50% of its voting age residents were registered to vote or less than 50% of its voting age residents actually voted at the time of the 1964, 1968, or 1972 presidential elections.[2] Currently, twelve townships and fifty-seven counties in seven states, as well as nine states in their entirety, are covered under this formula.[3]

When the VRA was first enacted in 1965 and again when the act was amended and extended in 1970, 1975, 1982, and 2006, Congress gathered extensive information and data, including vast evidence on voter discrimination that justified the act's strong remedial provisions. In 1970, for example, the act was

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[2] 42 U.S.C. § 1973b(b) (2005).

[3] Voting Section, Civil Rights Division, U.S. Department of Justice, Section 5 Covered Jurisdictions, http://www.usdoj.gov/crt/voting/sec_5/covered.htm (last visited Sept. 8, 2006).

extended because while there had been a significant increase in black voter registration in the covered states,[4] there was strong evidence that racial discrimination in the electoral process continued (e.g., switching from single-member districts to at-large elections, redrawing boundaries to harm minority voters, preventing minority candidates from running, denying assistance to illiterate voters, racially discriminating in the selection of poll officials, and harassing or intimidating minority voters).

Similarly, at the time of the 1975 extension, minority voter registration rates had continued to improve, but still lagged behind whites (Anglos). Furthermore, minority voters' and minority candidates' ability to participate in the political process free of interference or intimidation still had not been achieved.[5]

1. The Bailout Provisions Since 1965

Between 1965 and 1982, covered jurisdictions could bail out from coverage by demonstrating in an action for a declaratory judgment before a three-judge panel of the United States District Court of the District of Columbia that no test or device had been used since passage of the act in 1965 in a manner that was racially discriminatory in either purpose or effect. The burden of proof was placed on the state or local government. Political subdivisions within a covered state, such as counties, were prohibited from bailing out separately.[6]

The constitutionality of the Voting Rights Act was immediately challenged in *South Carolina v. Katzenbach*.[7] The Supreme Court upheld the act in its entirety as an "appropriate" exercise of congressional power under the Fifteenth Amendment.[8] With respect to the bailout provisions, the Court found the burden on a covered jurisdiction seeking a bailout "quite bearable, particularly since the relevant facts relating to the conduct of voting officials are peculiarly within the knowledge of the States and political subdivisions themselves."[9] Furthermore, in response to *amici curiae* Alabama's argument that the trigger formula used to determine coverage was arbitrary because the Department of Justice's finding of coverage could not be appealed, the Court stated, "[i]n the event that the formula is improperly applied, the area affected can always go to court and obtain termina-

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[4] Voter registration rates for black voters, however, still lagged behind the rates for white voters. Paul F. Hancock and Lora L. Tredway, *The Bailout Standard of the Voting Rights Act: An Incentive to End Discrimination*, 17 URB. LAW. 379, 393–94 (1985).

[5] *Id*. at 397, fn.93–98.

[6] City of Rome v. United States, 446 U.S. 156, 167–69 (1980).

[7] South Carolina v. Katzenbach, 383 U.S. 301 (1966).

[8] *Id.* at 337.

[9] *Id.* at 332.

tion of coverage under § 4(b). . . . This [bailout] procedure serves as a partial substitute for direct judicial review."[10]

The bailout provision in the 1965 act only applied to those covered jurisdictions that, in the preceding five years, had not used a test or device with the purpose or effect of discriminating on the basis of race. For most covered jurisdictions, this meant that they would not be eligible for bailout until 1970. However, from 1965 to 1970, the attorney general consented to the bailout of Alaska; Apache, Coconino, and Navajo Counties, Arizona; Elmore County, Idaho; and Wake County, North Carolina; because those localities proved that they had not used a test or device with a racially discriminatory purpose or effect within the previous five years.[11] The attorney general opposed bailout for Gaston and Nash Counties, North Carolina, however, because those jurisdictions were unable to prove their use of literacy tests was free of nondiscriminatory purpose or effect.[12] Since each jurisdiction had maintained historically inferior segregated schools, the use of literacy tests had the proscribed effect, and these two counties were denied bailouts.

In 1970, the special provisions of the Voting Rights Act were extended for five years. The Section 5 coverage formula was amended to include registration and participation rates for the 1968 presidential election, and the bailout provision was revised to require a jurisdiction to demonstrate a ten-year record of not using any test or device with the purpose or effect of racial discrimination. From 1970 to 1975, a few more jurisdictions attempted to bail out. New York and Alaska, parts of which became covered again under the expanded coverage formula imposed by the 1970 amendments, each successfully obtained bailouts in 1972 on behalf of their covered jurisdictions.[13] In 1974, the New York jurisdictions were re-covered after court findings were made that those counties had used discriminatory tests or devices. Additionally, in 1974, Virginia attempted a bailout, but the court denied the state's petition, finding that Virginia could not show that it had employed a test or device free of a racially discriminatory effect since its maintenance of inferior schools for minorities hindered their ability to pass Virginia's literacy test.[14]

The act was again extended and revised in 1975. The definition of tests or devices was expanded to include providing forms, materials or assistance related to elections only in English when at least 5% of the population was of a single language-minority group. Furthermore, in order to bail out, covered jurisdictions now had to prove that no test or device had been used for a racially discriminatory purpose or effect within the past *seventeen* years.

From 1975 to 1982, there were several bailout actions brought by jurisdictions that sought to demonstrate that no test or device, under the now expanded

[10] *Id.* at 333.
[11] Hancock and Tredway, *supra* note 4, at 392.
[12] *Id.* at 392–93.
[13] *Id.* at 396.
[14] *Id.*

definition, had been used in a racially discriminatory manner. In Maine, eighteen municipalities that had been covered under the 1970 formula successfully bailed out.[15] Additionally, in Oklahoma and New Mexico, counties covered under the 1975 minority-language amendments bailed out because it was found that members of the language group spoke fluent English.[16] However, bailout was denied for the city of Rome, Georgia, because the Supreme Court found that a political subdivision lacked authority to bail out independently when Georgia was covered statewide.[17] During this time, the Department of Justice opposed the bailouts of Alaska; Yuba County, California; and El Paso County, Colorado.[18] These jurisdictions dismissed their lawsuits rather than litigate against the federal government in a contested bailout.

Finally, when the bailout provisions were revised in 1982, as discussed *infra*, the new provisions did not go into effect until 1984 in order to give the Department of Justice time to prepare for an anticipated increase in litigation. During the two-year delay in implementation of the 1982 amendments, the existing bailout standard was temporarily extended from seventeen to nineteen years.[19] From 1982 to 1984, a few more jurisdictions sought and obtained bailout under the "old" formula. These included: Elmore County, Idaho; Campbell County, Wyoming; Groton, Mansfield and Southbury, Connecticut; El Paso County, Colorado; and Honolulu County, Hawaii.[20]

2. Bailout Provisions As Established in 1982

In 1982, the U.S. Commission on Civil Rights prepared a detailed report that documented continued resistance by individuals and local jurisdictions to increased minority participation in elections and to compliance with the Voting Rights Act. However, absent a change in the bailout criteria, almost all of the then-covered jurisdictions would have been able to show that they had not used a test or device in a discriminatory manner since 1965.[21] Congress thought it "wholly unwarranted" to allow such a mass bailout at that time given "the continuing prob-

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[15] *Id.* at 403.

[16] *Id*.

[17] City of Rome, 446 U.S. at 167–69.

[18] Hancock and Treadway, *supra* note 4, at 403.

[19] *Id*. at 411.

[20] *Id.* at 412–15. Although the Department of Justice had opposed El Paso's bailout in the 1970s, the department consented to it in 1984 when the county showed that most of its citizens of Spanish origin were fluent in English and that the county had implemented an effective program for Hispanics who were not.

[21] *See* Senate Judiciary Committee Report on the Voting Rights Act Amendments of 1982, S. Rep. No. 97–417, 97th Cong, 2d Sess. 16, 43 (1982), *reprinted in* 1982 USCCAN 177, 222.

lems of discrimination and widespread failure to comply with the Voting Rights Act in the covered jurisdictions."[22] At the same time, Congress wanted to "provide incentives to jurisdictions to attain compliance with the law and increas[e] participation by minority citizens in the political process of their community."[23]

With these two goals in mind, Congress enacted two major revisions to the bailout provisions. First, political subdivisions within a covered state were given the opportunity to bail out separately from the state. Second, the bailout criteria were changed to "recogniz[e] and reward[ ] their good conduct, rather than require[ ] them to await an expiration date which is fixed regardless of the actual record."[24] Recognizing the potential for a dramatic increase in bailout litigation, Congress delayed implementation of the new bailout standard until August 5, 1984.[25]

Before the 1982 amendments to the VRA, political subunits of a covered jurisdiction lacked the ability to bail out independently.[26] For example, if an entire state was a covered jurisdiction, a city or county within that state was unable to seek bailout. This was because in a state covered by the special provisions, no separate determination had been made that the political subunit was subject to the coverage formula.[27] After 1982, political subdivisions within a covered state were eligible to initiate a bailout.[28]

The amendments dramatically changed the bailout provisions themselves. They required covered jurisdictions seeking a bailout to demonstrate *both* a ten-year record of nondiscriminatory voting practices and current efforts to expand minority participation in all aspects of the political process. While this may seem onerous at first blush, in fact it is not. Specifically, covered jurisdictions had to demonstrate that *in the preceding 10 years*:

(1) No test or device has been used to determine voter eligibility with the purpose or effect of discrimination;

(2) No final judgments, consent decrees, or settlements have been entered against the jurisdiction for racially discriminatory voting practices;

(3) No federal examiners have been assigned to monitor elections;

(4) There has been timely preclearance submission of all voting changes and full compliance with Section 5; and

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[22] *Id.* at 44, *reprinted in* 1982 U.S.C.C.A.N. at 222.

[23] *Id.*

[24] *Id.*

[25] *Id.* at 59, 68–69, *reprinted in* 1982 U.S.C.C.A.N. at 237, 247.

[26] *City of Rome*, 446 U.S. at 167.

[27] *Id*. ("[T]he issue turns on whether the city is, for bailout purposes, either a 'State with respect to which the determinations have been made under the third sentence of subsection (b) of this section' or a 'political subdivision with respect to which such determinations have been made as a separate unit. . . . On the face of the statute, the city fails to meet the definition of either term, since the coverage formula of § 4(b) has never been applied to it.")

[28] 42 U.S.C. § 1973b(a)(1) (2005).

(5) There have been no objections by the Department of Justice or the District Court for the District of Columbia to any submitted voting changes.[29]

Jurisdictions seeking a bailout must also bear the burden of proving nondiscrimination in all aspects of their voting and electoral processes, including a showing that, *at the time bailout is sought:*

(1) Any dilutive voting or election procedures have been eliminated;

(2) Constructive efforts have been made to eliminate any known harassment or intimidation of voters;

(3) They have engaged in other constructive efforts at increasing minority voter participation such as expanding opportunities for convenient registration and voting, and appointing minority election officials throughout all stages of the registration/election process.[30]

3. Proving the Ten-Year Record of Nondiscrimination

First, as noted above, the jurisdiction must show that it has not used a test or device for the purpose or with the effect of denying or abridging the right to vote on account of race, color, or membership in a language-minority group.[31] Congress presumed this test would be relatively easy for covered jurisdictions to meet given the nationwide ban on such devices, a ban that had been made permanent in the 1970 amendments.[32] This requirement is directly linked to the Section 5 coverage formula and thus establishes a strong nexus between the bailout and coverage criteria.[33]

Second, the jurisdiction must show that it has not had a final judgment of racially discriminatory voting practices entered against it during the previous ten years.[34] This means that "any jurisdiction that has entered into a consent decree settlement or agreement resulting in the abandonment of a voting practice" is precluded from obtaining a bailout, because such settlement is an effective admission that the abandoned practice was unlawful and discriminatory.[35] Additionally, "a decree granting a bailout must await final judgment in any pending suit that alleges voting discrimination."[36] Voting rights litigation reached its peak in the 1970s and 1980s, and the number of lawsuits alleging racially discriminatory vot-

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[29] 42 U.S.C. § 1973b(a)(1)(A-E) (2005).

[30] 42 U.S.C. § 1973b(a)(1)(F) (2005).

[31] 42 U.S.C. § 1973b(a)(1)(A) (2005).

[32] S. Rep. No. 97–417, at 70, *reprinted in* 1982 U.S.C.C.A.N. at 248.

[33] *Id.*

[34] 42 U.S.C. § 1973b(a)(1)(B) (2005).

[35] S. Rep. No. 97–417, at 50, *reprinted in* 1982 U.S.C.C.A.N. at 228.

[36] S. Rep. No. 97–417, at 51, *reprinted in* 1982 U.S.C.C.A.N. at 229.

ing practices significantly decreased in the ten years from 1992–2002.[37] Thus, this provision has not proven to be a significant bailout hurdle to a covered jurisdiction.

The third requirement for bailout under the 1982 amendments, generally considered the most difficult to satisfy, requires a covered jurisdiction to show that for the last ten years, it has fully complied with the remedial provisions of Section 5, including timely submission for preclearance of any and all voting-related changes.[38] The covered jurisdiction "and *all governmental units within that jurisdiction*" must have: timely submitted all voting changes; not implemented any changes affecting voting without submitting them for preclearance; not submitted any changes to which an objection has been entered; and repealed all changes to which an objection has been entered.[39] This means that in a county seeking a bailout, the county must not only establish bailout eligibility for itself, but also for "all governmental units within [it]."

Importantly, the preclearance requirements serve to prevent new changes to voting procedures that might have a racially discriminatory purpose or effect. Thus, demonstrated compliance with Section 5 preclearance requirements is a central requirement for bailout. Compliance with the preclearance requirements by covered jurisdictions ensures that potentially discriminatory voting practices and procedures have not been implemented.

Fourth, within the past ten years, there must not have been any objections to administrative or judicial preclearance submissions.[40] In adopting this element of the bailout provision, Congress recognized what the Supreme Court found in *City of Rome*, namely that the number and nature of objections interposed by the attorney general is relevant to the need for continued coverage.[41] The number of objections interposed by the Department of Justice over the years has dropped.[42] For example, in Mississippi, between 1985 and 1994, the Department of Justice interposed fifty-eight objections; between 1995 and 2004, there were only eleven objections. In the same time periods, objections dropped from seventy-nine to three

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[37] *See, e.g.,* Ellen Katz, *Documenting Discrimination in Voting: Judicial Findings Under Section 2 of the Voting Rights Act Since 1982* 8 (2005) ("Courts identified violations of Section 2 more frequently between 1982 and 1992, than in the years since. Of the 86 total violations identified, courts found 61.6% of them during the first period, 38.4% since then.")

[38] 42 U.S.C. § 1973b(a)(1)(D) (2005).

[39] *Id.* (emphasis added); S. Rep. No. 97-417, at 71, *reprinted in* 1982 U.S.C.C.A.N. at 249–50.

[40] 42 U.S.C. § 1973b(a)(1)(E) (2005).

[41] *City of Rome*, 446 U.S. at 181. *See also* S. Rep. No. 97–417, at 48–49, *reprinted in* 1982 U.S.C.C.A.N. at 227.

[42] *See* Appendix B. During the last ten years, there has been little litigation in the D.C. Circuit Court brought by covered jurisdictions seeking a declaratory judgment under the VRA. Aside from a handful of post-2000 lawsuits seeking preclearance of redistricting plans, no covered jurisdiction has been denied a declaratory judgment.

in Texas, and thirty-five to two in Alabama. To some, this decrease may signal that Section 5 preclearance is no longer needed. But it is more likely caused in large measure by the fact that most covered jurisdictions are aware of the substantive proscriptions of Section 5 and now avoid them when making changes.

Another major bailout provision requires a covered jurisdiction to demonstrate at the time bailout is sought that in the past ten years it has: (1) "eliminated voting procedures and methods of election which inhibit or dilute equal access to the electoral process"; (2) "engaged in constructive efforts to eliminate intimidation and harassment of [minority voters]"; and (3) "engaged in other constructive efforts" such as those aimed at increasing the ability of minority voters to register to vote or participate in the election process.[43] In determining whether the jurisdiction employs any "procedures or methods [that] 'inhibit or dilute equal access,' the standard to be applied is the 'results' standard" of Section 2 of the Voting Rights Act.[44] Thus, a bailout under Section 4 of the act must be denied if the jurisdiction continues to utilize voting procedures that inhibit or dilute equal access to the political process in violation of Section 2.

For the most part, Section 2 litigation has been declining after a very active period in the 1980s where voting rights litigants filed numerous lawsuits to end dilution practices.[45] To date, none of the jurisdictions that has obtained a bailout have encountered any difficulty satisfying these requirements.

Finally, a covered jurisdiction cannot bail out if it has violated "any provision of the Constitution or laws of the United States or any State or political subdivision with respect to discrimination in voting on account of race or color" in the past ten years.[46] The legislative history anticipated that: "This safeguard will permit evidence to be presented of voting rights infringements which have not previously been the subject of a judicial determination. However, such violations would not bar bailout if 'the plaintiff establishes that any such violation were trivial, were promptly corrected, and were not repeated.'"[47] What this means in practice is that a jurisdiction that inadvertently failed to submit a voting change for preclearance but implemented the change anyway will not be barred from obtaining a bailout even though such failures are technical violations of the preclearance provisions. Such "violations," if inadvertent, would fall into the "trivial" category.[48]

[43] 42 U.S.C. § 1973b(a)(1)(F) (2005).

[44] S. Rep. No. 97-417, at 72, *reprinted in* 1982 U.S.C.C.A.N. at 251.

[45] *See* Katz, *supra* note 37, at 8.

[46] 42 U.S.C. § 1973b(a)(3) (2005).

[47] S. Rep. No. 97–417, at 53, *reprinted in* 1982 U.S.C.C.A.N. at 231.

[48] In addition to these requirements, it was formerly the case that a jurisdiction seeking to bail out had to show that no federal examiner or observer has been assigned to the state or political subdivision within the past ten years. 42 U.S.C. § 1973b(a)(1)(C)(2005). Section 6 of the Voting Rights Act (now repealed) provided for the appointment of federal examiners if the attorney general had received complaints from twenty or more residents alleging a denial of the right to vote or where the attorney general made a determination that the ratio of nonwhite voters to white registered voters could be reasonably

The current bailout formula was an important step towards achieving the goals of the Voting Rights Act. It gave covered jurisdictions an incentive to move beyond the *status quo* and improve accessibility to the entire electoral process for racial and ethnic minorities. As the 1982 Senate Judiciary Committee report stated, "the goal of the bailout . . . is to give covered jurisdictions an incentive to eliminate practices denying or abridging opportunities for minorities to participate in the political process."[49] There is evidence that the bailout provisions have done precisely that. As intended, the bailout provisions actually "provide[d] additional incentives to the covered jurisdictions to comply with laws protecting the voting rights of minorities, and . . . improve[d] existing election practices."[50]

B. What Jurisdictions Have Pursued Bailout and How

Twelve jurisdictions have bailed out since the 1982 amendments to the VRA took effect. All of them are in Virginia and are listed in Appendix A. These twelve jurisdictions worked cooperatively with Department of Justice officials in seeking a bailout to ensure that all of their voting "standards, practices, and procedures" were in full compliance with the act at the time they sought bailout. Each demonstrated a solid record of compliance with the Voting Rights Act over an extended period of time. This section provides the details of the process that each of the ten jurisdictions followed to ensure that the bailout option was cost-effective, to address any problems that arose *before* a bailout action was filed in court, and finally, to obtain their bailout.

Phase I: Research

The first phase of a bailout begins long before any papers are filed in federal court. The covered jurisdiction's bailout process begins by compiling voting and election data using its own records to assess its eligibility for bailout. The jurisdiction may lower the cost of bailout by compiling this information itself under the direction of its legal counsel.

Typical information that must be collected to assess bailout eligibility includes data on voter registration and voter turnout, the number of minority polling

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attributed to violations of the Constitution. 42 U.S.C. § 1973d (2005) *repealed by* P.L. 109-246, § 3(c), 120 Stat. 580 (July 27, 2006). In 2006, Congress amended the bailout provisions to preclude bailout in jurisdictions where federal observers had been assigned in the preceding ten years. *See* Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006, P.L. 109–246, § 13(d)(2), 120 Stat. 580 (July 27, 2006).

[49] S. Rep. No. 97–417, at 59, *reprinted in* 1982 U.S.C.C.A.N. at 238.

[50] S. Rep. No. 97–417, at 44, *reprinted in* 1982 U.S.C.C.A.N. at 222.

officials, the number of minority candidates (and whether they have been successful) and other similar information about minority electoral participation. Often the most important information relates to changes affecting voting. Section 5 submissions to the Department of Justice are easily retrievable under the Freedom of Information Act.[51] Jurisdictions typically request this information to see what the Department of Justice's records show with regard to the jurisdiction's own Section 5 activity, to make sure that the department's records are consistent with those of the jurisdiction. It is necessary to conduct this review to ensure that all changes affecting voting have actually been submitted for preclearance. DOJ records can be cross-checked by culling the minutes of the local government's meetings and hearings to see what changes were actually made.

After collecting information and getting a general idea of whether the jurisdiction is eligible for bailout, it is advisable to reach out to the leaders of the minority community and open a dialogue with them about the bailout process. If a jurisdiction learns that its minority community is adamantly opposed to bailout, it is best to try to ascertain the basis for those concerns. It is important to learn what minority leaders and the community think early on in the bailout process, not only to engage them in the process itself and to educate the community about bailout, but also because legitimate concerns about racially discriminatory voting practices would likely preclude any bailout. Jurisdictions save time and money by learning of any potential problems early in the process.

Phase II: Remedying any Flaws

If a jurisdiction discovers during the research phase that it is not immediately eligible for bailout, perhaps because it has inadvertently failed to make a preclearance submission, Phase II of the bailout process requires remedying those problems. Voting-related changes that were not submitted for preclearance should be promptly submitted for review in Phase II. If the Phase I review revealed any lack of minority participation in the election process, such as a lack of minority poll officials, the jurisdiction would want to review its practices to ensure that its processes are fair and that corrective action, if needed, is undertaken before filing a bailout complaint in court.

For example, Shenandoah County, Virginia, obtained a bailout in 1999. When it first began the process, the county found that a number of local towns within the county had made approximately two dozen voting changes without obtaining timely preclearance. Each town in the county promptly made a submission of the unprecleared changes, which were approved by the Department of Justice. This put the county and all political subunits in full compliance with the Section 5 preclearance provisions, and the Department of Justice consented to the bailout. Similarly, Kings County, California, advised the Department of Justice in 1999 that it

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[51] *See* 5 U.S.C. § 552 (2002).

intended to pursue a bailout but later withdrew its request when it discovered that there were numerous voting changes that had been implemented without preclearance by governmental subunits in the county, a number of which were no longer even in existence.

At this stage, the jurisdiction seeking bailout will want to engage officials at the Department of Justice in discussions about the jurisdiction's intention to seek a bailout, and it is often at this stage that the jurisdiction will want to bring any special circumstances to the attention of federal officials. For example, a jurisdiction may have inadvertently failed to submit some minor voting changes for Section 5 preclearance review. Such dialogue with the Department of Justice will enable the jurisdiction to learn whether, despite the failure of the jurisdiction to obtain timely preclearance of all its changes, the department will consent to the bailout once all changes are submitted and precleared. If the Department of Justice were to advise that it will oppose bailout, the jurisdiction is still free to pursue the bailout in court, but the financial cost of pursuing and ultimately obtaining a bailout would increase substantially in such circumstances.

Phases I and II generally can take up to two years to complete, especially if the jurisdiction has made a number of unprecleared changes and it is necessary to go back, identify the unprecleared voting changes, and submit them for Section 5 review *nunc pro tunc*. During the early bailouts, the Department of Justice was slow to process bailout requests, but recently it has responded more efficiently, reducing the processing time (and costs) of a bailout.

Phase III: The Judicial Process

Once the bailout fact-gathering and compliance assessment phases are complete, the jurisdiction is ready to pursue the bailout in court. In preparation for this stage, several documents need to be drafted: (1) Complaint; (2) Motion to Convene a Three-Judge Court; (3) Joint Motion For Entry of Consent Judgment and Decree (filed jointly with the Department of Justice); (4) Stipulation of Facts (signed by counsel for the jurisdiction and counsel for the United States); and (5) Consent Judgment and Decree.

Completion of these documents requires minimal legal resources, and this portion of the bailout takes the shortest amount of time. Although the first bailout filed in 1997 took thirteen months for the court to resolve after the initial court filing, the twelve bailouts filed since then have taken an average of roughly four months each from the time of the initial court filing to the court granting the bailout judgment.[52]

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[52] *See* Appendix A.

Phase IV: Conditions and the Ten-Year Rule

There is nothing in the bailout provisions of the Voting Rights Act that precludes the Department of Justice, the jurisdiction seeking bailout, or the minority community from entering into an agreement as part of the bailout judgment. As discussed above, every jurisdiction that is granted a bailout can be subjected to the special provisions of the Voting Rights Act once again if it adopts any retrogressive changes ten years from the date that the bailout is granted. If such a change occurs, the Department of Justice may reactivate the bailout case or an aggrieved person may file a motion to reactivate the case.

However, since the changes are no longer being submitted to DOJ for preclearance and are not always easy to monitor, it may be difficult to detect what changes have been made by a "bailed out" jurisdiction. How is the minority community going to be made aware of changes being adopted? How is the minority community going to ensure that voting changes adopted by a "bailed out" jurisdiction are not retrogressive? When the jurisdiction was covered and subject to preclearance, there was federal oversight to ensure nonretrogression. Federal authorities routinely contacted the minority community to obtain its views on proposed changes. One method by which the minority community can protect itself is to ask, as a precondition to their support of a bailout, that the jurisdiction agree to notify them of each and every voting change in the future (i.e., post-bailout). This is more notice than currently exists in most places. It is preferable if such notice can be given *before* the change is implemented. Local jurisdictions that I have represented have readily agreed to provide such advance notice.

In addition, a number of the bailout judgments have included reporting requirements. Jurisdictions have been required to file an annual report with the Department of Justice identifying changes they made affecting voting so the Department of Justice can monitor the jurisdiction's electoral activity.[53] This type of reporting provision has been imposed by the Department of Justice as a condition of their agreement to a bailout in those jurisdictions where a significant number of unprecleared changes were discovered during the bailout process. Additional information may be requested in such annual reports that measure minority participation in the election process.[54]

In addition to including reporting provisions in bailout agreements, jurisdictions have agreed to provisions that permit continued federal review of certain

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[53] For example, in *Shenandoah County v. Reno*, C.A. No. 1:99CV00992 (D.D.C. Oct. 15, 1999), Shenandoah County, Virginia, agreed in the Consent Judgment and Decree to submit annual reports for five years from the time of bailout documenting all voting changes adopted by or within the county.

[54] In *Greene County v. Ashcroft*, C.A. No. 03-–1877 (D.D.C. Jan. 19, 2004), Greene County, Virginia, agreed in its Consent Judgment and Decree, among other things, to include a tally of how many African Americans served as election officials and detail efforts to recruit African Americans as election officials.

voting changes for a period of years, even after bailout. For example, certain members of the minority community in Winchester City, Virginia, were concerned about the city seeking bailout because Winchester had been considering reducing the size of its large thirteen-member city council. The city had three multimember districts, each with staggered terms. The Department of Justice and the minority community opined that reducing the council from thirteen to a smaller number might diminish the ability of minority voters to single-shot vote and adversely impact their opportunity to elect a candidate of choice. City and DOJ officials thus agreed that as a condition of bailout, any changes in the form of government or method of election within three years of the bailout would have to be precleared by the Department of Justice.[55] The city chose not to make such changes within the prescribed period.

As noted in Appendix A, all of the twelve jurisdictions that have bailed out since 1982 have had relatively small minority populations. The jurisdiction with the highest minority (black and Hispanic) population to bail out thus far has been the city of Winchester, Virginia, with 15%. These relatively low minority population numbers, according to Department of Justice attorneys, have made it easier for the Department of Justice to assess bailout eligibility than in a jurisdiction with a larger minority population. Indeed, in Essex County, Virginia, with a combined black and Hispanic population total of 39% and whose bailout is currently pending, DOJ has informed the county that the substantial minority population in the county warrants a more searching and time-consuming review of bailout.

C. Does the Bailout Process Work?

In order to obtain a bailout, a jurisdiction must show that the entirety of its electoral process, from voter registration to the election system it and all governmental subunits within it use, does not deny minority voters an equal opportunity to participate. The burden is on the jurisdiction, as it properly should be, and is neither too light nor too onerous. Not a single jurisdiction that has sought a bailout has been denied one. That all twelve jurisdictions that have sought a bailout since 1982 have been able to do so illustrates that the bailout provisions are working. The bailout option has proven to be an incentive for jurisdictions to bring their procedures into compliance with the Voting Rights Act, and to maintain them for an extended period of time (i.e., ten years), just as Congress intended. Any jurisdiction that feels the preclearance process is too cumbersome or costly has a cost-effective alternative: to pursue exemption from coverage.

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[55] City of Winchester v. Ashcroft, C.A. No. 1:00CV03073 (D.D.C. May 31, 2001); *see also* City of Harrisonburg v. Ashcroft, C.A. No. 1:02CV00289 (D.D.C. April 17, 2002) (city agreeing "to record any complaints received by the City about voting . . . stemming from the city's efforts to make the precinct handicapped accessible").

Local jurisdictions with which I have worked have noted several advantages that derive from the current bailout formula. First, by requiring jurisdictions to prove a ten-year record of good behavior and demonstrate improvements to the elections process for minorities, the bailout provisions give jurisdictions a public opportunity to prove and publicize that their voting and election practices are fair and nondiscriminatory. Second, while bailouts come with some costs (on average around $5,000 for legal expenses), they are still less expensive than making Section 5 preclearance submissions indefinitely. While precise figures are hard to calculate, it has been estimated that a submission to the Department of Justice costs local governments, on average, more than $500.[56] Thus, the cost of a bailout is roughly equivalent to that of making ten Section 5 submissions to Department of Justice, and most jurisdictions have made dozens of submissions to the DOJ. Finally, once bailout is achieved, local jurisdictions enjoy much more flexibility and efficiency in making routine changes, such as moving a polling place or expanding voter registration opportunities.

For all of its advantages, however, only a few jurisdictions have bailed out. Some argue that Section 5 should be retained *because* jurisdictions have not been achieving bailout on a mass scale and that low rates of bailout may be proof of ongoing problems with the election processes in Section 5 covered jurisdictions.[57] To some extent, this assumes that jurisdictions are applying and being denied. Yet, as noted above, not a single jurisdiction that has sought bailout since 1982 has been denied a bailout. The real problem is that jurisdictions are just not applying.[58] Why is this?

One reason is that smaller localities simply do not know the bailout option is available to them. Officials in most of the jurisdictions that have bailed out thus far have said they were unaware of the bailout option until they learned of a neighboring jurisdiction that had exercised it. Other state and local officials in covered jurisdictions believed the bailout process was too complicated, time consuming, or costly.[59] Once local officials learn how relatively straightforward, easy, and cost-effective the process is, they are inclined favorably towards bailout.

Another explanation for why there have not been more bailouts is that many local governments undoubtedly have become accustomed to Section 5's preclear-

[56] For estimates on the financial costs of making a Section 5 submission and the financial savings that occur when a bailout is obtained, see Peter Hardin, *'Bailouts' from U.S. Voting Law*, RICHMOND TIMES DISPATCH, March 12, 2006, *available at* http://www.timesdispatch.com/servlet/Satellite?pagename=RTD%2FMGArticle%2FRTD_BasicArticle&%09s=1045855935264&c=MGArticle&cid=1137834663431&path=!news!politics

[57] *Cf.* Vernon Francis et al., *Preserving a Fundamental Right: Reauthorization of the Voting Rights Act,* Lawyers' Committee for Civil Rights Under Law, at 11 (June 2003) *available at* http://www.lawyerscomm.org/2005website/features/40thfeatures/PDF/40thpapers/vra.pdf (last visited Sept. 9, 2006).

[58] *See* Appendix A.

[59] *See* Francis et al., *supra* note 57, at 11.

ance requirements and do not consider them burdensome. Indeed, many jurisdictions subject to Section 5 consider making preclearance submission to DOJ so routine that they now factor the time it will take to obtain preclearance review of their proposed changes into their election calendar. Other jurisdictions explain that they have not considered bailout because it would take time to meet with the leaders of the minority community and convince them of the merits of the bailout. The author is aware of only two jurisdictions thus far that have seriously considered bailout, gathered all of the documentation necessary to establish bailout eligibility, and then decided not to pursue bailout: the cities of Alexandria and Danville, Virginia. Both cities developed extensive information demonstrating satisfaction of bailout conditions. In both cases, the cities eventually decided not to pursue bailout because of opposition from the minority community. In both cases, the minority communities' opposition was not based on any particular problem with voting or the election process. Rather, minority leaders were not convinced that the benefits of bailout outweighed the benefits of Section 5 preclearance review of each voting change to ensure nondiscrimination.

As noted above, another reason posited for the lack of bailouts is that the criteria are too difficult to meet. Again, that is not the case. Jurisdictions that do not discriminate in their voting practices can easily prove most of the factors to be demonstrated, as discussed above.

It is cost-effective for a jurisdiction to obtain a bailout, especially when the minority population is low and the local government is able to gather quickly the documentary proof that it meets the bailout criteria. In testimony to Congress in 2006, I estimated the total cost for obtaining a bailout is now less than $5,000 for jurisdictions I have represented. While the financial cost of making a Section 5 submission is usually rather modest, these costs accumulate over time and can easily exceed the cost of bailing out. Moreover, an especially controversial Section 5 submission can require a covered jurisdiction to expend considerable financial resources to obtain Section 5 preclearance. The perception that a bailout is too costly may be one explanation for the lack of bailouts thus far, but as shown above, affordability is really not an issue.

What this all shows, in my view, is that the requirements for bailing out are not too onerous, nor are the costs too high. Establishing bailout eligibility is not difficult and is cost-effective. The most plausible explanation for why jurisdictions have not bailed out is that officials within them are not aware of the process or the ease of obtaining a bailout. Thus, greater publicity about the process, rather than changes to the bailout criteria, is warranted. Wide discussion of the bailout process during the recent Voting Rights Act reauthorization should help in this regard. Whatever the reasons, jurisdictions have not bailed out to date, I recommend that the Department of Justice provide more information to covered localities about the availability of the bailout provisions.

One factor, proving Section 5 compliance, is often cited as the most difficult to meet because those who oppose bailout are likely to find one or more changes, however small, that were not precleared. However, as noted above, this has not

proven to be an insurmountable obstacle and thus should be retained as part of the bailout formula. The Department of Justice has allowed jurisdictions that inadvertently failed to submit a few minor changes to submit those changes for preclearance at the time bailout is being sought, provided that the jurisdiction's failure to submit changes for preclearance was inadvertent and not for the purpose of evading Section 5 review. In addition, the legislative history shows that Congress thought that for changes which "are really *de minimis*," the "courts and Department of Justice have used and will continue to use common sense."[60] While this process of going back and making these Section 5 submissions may be time-consuming and seem technical to some, it does ensure full compliance with the act. Equally important, it is faithful to the language and spirit of the law.

Most jurisdictions that have sought or obtained a bailout since 1982 have had to make a few submissions of previously implemented but unprecleared changes.[61] In some places, county officials are aware that political subdivisions, such as towns, cities, and school and special-use districts, have not made submissions. This failure, of course, affects the county's ability to obtain an expedited bailout. In Kings County, California, for example, which has informed DOJ of its desire to bailout, it was discovered that forty to fifty voting changes by governmental subunits had not been submitted for preclearance. The county has had to bear the expense and consequent delay of submitting these changes.[62] This has proven cumbersome, especially since some of these local governmental entities no longer exist and the submissions relate to changes that occurred years ago. Furthermore, Kings County's difficulty is even more pronounced because the county does not have authority to compel certain localities to make Section 5 submissions.

The issue of easing the bailout process was addressed at the time of the 1982 amendments. Several amendments to the bailout provisions were proposed that would have made it easier for states to bail out before each of the political subdivisions within them had bailed out. Each amendment was rejected.[63] In rejecting these amendments, the Senate report reasoned: (1) under the Fifteenth Amendment, states have the ultimately responsibility to enforce voting rights; (2) when states are involved in advising counties of their Voting Rights Act obligations, the counties exhibited greater compliance; and (3) most counties cannot or do not have independent authority to legislate in this area, such that the state may intervene and preempt local action with state legislation to enforce compliance.[64] The

[60] S. Rep. No. 97–417, at 48, *reprinted in* 1982 U.S.C.C.A.N. at 226.

[61] *See* Appendix A.

[62] King's County informed DOJ in 1999 that it desired a bailout, but later informed the Department of Justice that it no longer was interested in pursuing the bailout.

[63] H.Amdt. 266 to H.R. 3112, 97th Cong., 1st Sess., *offered* Oct. 5, 1981 would have allowed a state to bail out if two-thirds of its political subdivisions bailed out. H.Amdt. 272 to H.R. 3112, *offered* Oct. 5, 1981 and S.UP.Amdt. 1029 to S. 1992, *offered* Jun. 18, 1982, both would have allowed a state to bail out if it met all the criteria, even if its political subdivisions did not.

[64] S. Rep. No. 97–417, at 57–58, *reprinted in* 1982 U.S.C.C.A.N. at 235–36.

1982 reauthorization did allow counties to bail out independently of the covered states in which they may be located. However, Congress stated that, "this new opportunity for counties should not relieve a covered State of its fundamental responsible [sic] to protect the right to vote."[65] Thus, counties may bail out before its State does so, but the State may not bail out until each county within it has done so.

Similarly, the Voting Rights Act prohibits a county from bailing out until *all* of its governmental subunits are eligible. The 1982 Senate report did not provide any specific rationale for this aspect of the legislation, focusing instead on states attempting to bail out before each of its counties have done so. Clearly, counties have an interest in bringing local governments within their borders into compliance with the Voting Rights Act, especially since such compliance affects the county's eligibility for bailout. When counties become involved in advising political subunits about Voting Rights Act compliance, including preclearance obligations, it has the salutary effect of bringing those subunits into compliance with the law. While counties generally do not have the authority to force action by their political subunits, states often do, and it is reasonable to assume that state authorities could compel a political subunit that consistently refuses to meet its VRA obligations change its behavior. In any event, Congress in 1982 decided that counties should not be able to bail out until each of their political subunits is eligible. Thus, a county within a covered state may bail out, leaving the state still covered. All statewide voting changes still must be precleared, including those administered in the bailed-out county, but changes affecting voting solely within the bailed-out county do not need to be precleared. However, a town or some other governmental subunit within a county may not independently bailout of a covered county.

One proposed solution to improve efficiency for bailing out would allow towns, cities, and other local governmental units within a covered county to bail out independently. Once each locality had bailed out, the county could then pursue its own bailout without having to bear the time or expense of submitting changes inadvertently implemented by cities or towns without preclearance. If this were to become law, the town-county relationship under a new bailout law would mirror the existing county-state relationship under the current bailout law. Covered states now must continue to make submissions even though some of its counties have bailed out (Virginia being the only example). This has not caused any known administrative or enforcement problems for the state, the county, or the Department of Justice. Similarly, even if local governments within the county are allowed to bail out, counties would still be obliged to comply with Section 5 until such time as the county obtains a bailout for itself.

To consider the merits of this possible amendment to the bailout law, Congress should examine whether allowing jurisdictions within Section 5 covered states to bail out independently has proven problematic from an enforcement or compliance perspective. I am not aware of any such problems and doubt that any

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[65] *Id*. at 57, *reprinted in* 1982 U.S.C.C.A.N. at 235.

exist. In any event, such an inquiry would shed light on whether Congress should amend the bailout provisions to permit a local government within a covered county to bail out separately from the county.

Conclusion

In sum, the current standards for bailout are practical and drafted in such a way as to require covered jurisdictions to prove the absence of those conditions that led to Section 5 coverage in the first place. Jurisdictions subject to the act's preclearance provisions have an effective, reasonable, and cost-effective opportunity to bail out today. Moreover, the bailout provisions are tailored in such a way as to require a covered jurisdiction to prove nondiscrimination in voting and elections on the very issues that Congress targeted when it enacted the special remedial provisions. Congress, however, should examine the possibility of allowing local governmental subunits within a covered county to bail out.

The Supreme Court has found the VRA constitutional because its remedial provisions are proportional to the injury Congress sought to redress.[66] The bailout provisions help ensure the act's constitutionality because they provide a reasonable means by which covered jurisdictions can exempt themselves from the act's special (and more intrusive) provisions, and because the bailout provisions, like other parts of the act, relate so closely to the act's original purpose and the discrimination in voting it sought to eliminate. And finally, the bailout provisions serve the important function of insuring that state and local governments with a history of discrimination eliminate such practices and let minority voters take their rightful place as full participants in all aspects of the political process. The Voting Rights Act has made our democracy stronger, and the extension of the special remedial provisions will help bring about a day when discrimination no longer affects the ability of any person to register to vote or to cast their ballot.

[66] *See Katzenbach*, *supra* note 7; *City of Rome*, *supra* note 6.

Appendix A

Bailouts Filed Since 1982 Amendments to VRA (Chronological)

Name of Jurisdiction	Bailout Filed Date	Bailout Granted Date	% Black	% Hispanic	# of Unprecleared Changes (if any)	# of Years Post-Bailout Reporting Required
Fairfax City, VA	September 25, 1997	October 21, 1997	4.5%	5.2%	0	0
Frederick County, VA	April 19, 1999	September 9, 1999	1.7%	0.5%	0	0
Shenandoah County, VA	April 21, 1999	October 15, 1999	1.1%	0.7%	31	5
Roanoke County, VA	August 11, 2000	January 24, 2001	2.5%	0.5%	6+	4
Winchester City, VA	December 22, 2000	May 31, 2001	9.1%	5.9%	0	4
Harrisonburg City, VA	February 14, 2002	April 17, 2002	5.5%	7.2%	0	3 (If requested by the DOJ)
Rockingham County, VA	March 28, 2002	May 21, 2002	1.3%	2.7%	1	1
Warren County, VA	August 30, 2002	November 25, 2002	4.7%	1.5%	7	3
Greene County, VA	September 8, 2003	January 19, 2004	6.1%	1.1%	1	2
Augusta County, VA	September 30, 2005	November 30, 2005	3.9%	0.8%	3	0
Salem City, VA	May 25, 2006	July 27, 2006	5.9%	0.8%	0	0
Botetourt County, VA	June 8, 2006	August 8, 2006	3.5%	0.6%	0	0

Bailouts Currently Pending

Name of Jurisdiction	Bailout Filed Date	Bailout Granted Date	% Black	% Hispanic	# of Unprecleared Changes (if any)	# of Years Post-Bailout Reporting Required
Essex County, VA	September 21, 2006	N/A	39.0%	0.007%	0	N/A

Appendix A cont.

Bailouts Filed Since 1982 Amendments to VRA (Alphabetical)

Name of Jurisdiction	Bailout Filed Date	Bailout Granted Date	% Black	% Hispanic	# of Uncleared Changes (if any)	# of Years Post-Bailout Reporting Required
Augusta County, VA	September 30, 2005	November 30, 2005	3.9%	0.8%	3	0
Botetourt County, VA	June 8, 2006	August 8, 2006	3.5%	0.6%	0	N/A
Fairfax City, VA	September 25, 1997	October 21, 1997	4.5%	5.2%	0	0
Frederick County, VA	April 19, 1999	September 9, 1999	1.7%	0.5%	0	0
Greene County, VA	September 8, 2003	January 19, 2004	6.1%	1.1%	1	2
Harrisonburg City, VA	February 14, 2002	April 17, 2002	5.5%	7.2%	0	3 (If requested by the DOJ)
Roanoke County, VA	August 11, 2000	January 24, 2001	2.5%	0.5%	6+	4
Rockingham County, VA	March 28, 2002	May 21, 2002	1.3%	2.7%	1	1
Salem City, VA	May 25, 2006	July 27, 2006	5.9%	0.8%	0	0
Shenandoah County, VA	April 21, 1999	October 15, 1999	1.1%	0.7%	31	5
Warren County, VA	August 30, 2002	November 25, 2002	4.7%	1.5%	7	3
Winchester City, VA	December 22, 2000	May 31, 2001	9.1%	5.9%	0	4

Bailouts Currently Pending

Name of Jurisdiction	Bailout Filed Date	Bailout Granted Date	% Black	% Hispanic	# of Uncleared Changes (if any)	# of Years Post-Bailout Reporting Required
Essex County, VA	September 21, 2006	N/A	39.0%	0.007%	0	N/A

Appendix B

Alabama

Department of Justice Objections 1985-1994

Jurisdiction	Date	Status
Houston County (80-1180, 84-1513)	10/15/1985	
Greensboro (Hale Cty.) (85-1532)	10/21/1985	
Marengo County (86-2012; 86-2013)	2/10/1986	
Dallas County (86-1882)	6/2/1986	
Bay Minette (Baldwin Cty.) (85-1442, 85-1443, 85-1445)	10/6/1986	withdrawn 6/22/87
Alexander City (Tallapoosa Cty.) (86-2037)	12/1/1986	withdrawn 12/7/87
Prichard (Mobile Cty.) (86-2037)	2/3/1987	
Leeds (Jefferson, St. Clair, and Shelby Ctys.) (85-1578, 85-1579, 86-1960, 87-1615)	5/4/1987	
Marion (Perry Cty.) (87-1706)	5/5/1987	
Dallas County School District (87-1555)	6/1/1987	
Roanoke (Randolph Cty.) (87-1722)	3/15/1988	
Tallassee (Elmore and Tallapoosa Ctys.) (88-1891)	12/19/1988	
State (89-1469) and Dothan (Dale, Henry, & Houston Ctys.) (89-1285, 89-4040)	6/12/1989	
Foley (Baldwin Cty.) (86-1811)	11/6/1989	withdrawn 7/1/96
State Democratic Party (89-1264)	12/1/1989	
Dallas County (90-1693)	6/22/1990	
Valley (Chambers Cty.) (89-1242)	10/12/1990	withdrawn 7/27/92
Democratic Party (Perry Cty.) (90-1837)	12/3/1990	

Department of Justice Objections 1995-2004

Jurisdiction	Date
Tallapoosa County (97-1021)	2/6/1998
Alabaster (Shelby Cty.) (2000-2230)	8/16/2000
Total: 2	

Appendix B cont.

DOJ Objections 1985-1994 cont. (AL)

Valley (Chambers Cty.) (90-1663)	12/31/1990	withdrawn 12/9/91
Democratic Party (Lamar Cty.) (90-1769)	1/25/1991	
Democratic Party (Limestone Cty.) (90-1789)	1/28/1991	
State (91-0518)	11/8/1991	withdrawn 3/18/96
State (91-4215)	12/23/1991	
State (92-1176)	3/27/1992	
Dallas County (92-1001)	5/1/1992	
Dallas County (92-2503)	7/21/1992	
Selma (Dallas Cty.) (92-4187)	11/12/1992	
Greensboro (Hale Cty.) (92-3376)	12/4/1992	
Dallas County (92-4848)	12/24/1992	
Selma (Dallas Cty.) (93-0110)	3/15/1993	
Foley (Baldwin Cty.) (93-1106)	8/30/1993	withdrawn 7/1/96
State (93-3476)	11/16/1993	withdrawn 3/18/96
Greensboro (Hale Cty.) (93-4223)	1/3/1994	
State (89-1439)	1/31/1994	
State (93-3195-96) (93-2322)	4/14/1994	withdrawn 3/18/96

Total: 35

Appendix B cont.

Mississippi

Department of Justice Objections 1985-1994		
State (86-3683)	7/1/1986	
Yazoo County (84-3024)	7/7/1986	
Sunflower County (86-3763)	12/15/1986	
Pike County School District (83-2512)	2/9/1987	
Grenada County (87-3101)	6/2/1987	
Washington County (87-3308)	6/19/1987	
Quitman County (87-3225)	9/28/1987	
Belzoni (Humphreys Cty.) (86-3627)	10/1/1987	
Monroe County (87-3200)	1/12/1988	
Grenada Municipal Separate School District (Grenada Cty.) (87-3098-3099)	5/9/1988	
Greenville (Washington Cty.) (88-4074)	2/10/1989	withdrawn 2/14/90
State (87-3282)	3/31/1989	
Houston Municipal Separate School District (Chickasaw Cty.) (87-3067)	4/14/1989	
Chickasaw County (89-2646)	2/27/1990	
State (88-4035)	5/25/1990	
Cleveland Constitutional School District (Bolivar Cty.) (90-3474)	10/2/1990	
Simpson County (90-3602 & 90-3604)	10/5/1990	
Monroe County (90-3575)	4/26/1991	
Tate County (91-1137)	7/2/1991	

Department of Justice Objections 1995-2004		
Adams County (94-4463)	1/30/1995	
State (94-4538)	2/6/1995	
Monroe County (95-0118)	3/20/1995	
Chickasaw County (94-4316)	4/11/1995	
Union County (95-1234)	6/20/1995	
Aberdeen (Monroe Cty.) (95-1120)	12/4/1995	
Grenada (Grenada Cty.) (96-3225)	3/3/1997	
State (95-0418)	9/22/1997	
Grenada (Grenada Cty.) (96-2219)	8/17/1998	
McComb (Pike Cty.) (97-3795)	6/28/1999	withdrawn 9/20/1999
Kilmichael (Montgomery Cty.) (2001-2130)	12/11/2001	
Total: 11		

DOJ Objections 1985-1994 cont. (MS)

State (91-1402)	7/2/1991	
Bolivar County (91-1457)	7/15/1991	
Hinds County (91-1503)	7/19/1991	
Union County (91-0800)	8/2/1991	
Lee County (91-1096)	8/23/1991	
Bolivar County (91-2939)	8/23/1991	
Amite County (91-1504)	8/23/1991	
Tunica County (91-1438)	9/3/1991	withdrawn 12/16/91
Benton County (91-1097)	9/9/1991	
Harrison County (91-1401)	9/9/1991	
Jefferson Davis County (91-1559)	9/13/1991	
Montgomery County (91-1139)	9/16/1991	
Clarke County (91-1392)	9/24/1991	
Okibbeha County (91-1451)	9/30/1991	
Walthall County (91-1421)	9/30/1991	
Marshall County (91-1375)	9/30/1991	
Lauderdale County (91-2342)	10/7/1991	
Forrest County (91-1506)	10/7/1991	
Tate County (91-2967)	10/11/1991	
Leflore County (91-1463)	10/21/1991	
Sunflower County (86-3763)	10/25/1991	
Perry County (91-1598)	11/19/1991	
Pearl River County (91-1579)	11/25/1991	
Attala County (91-2449)	1/13/1992	
State (92-0993)	3/30/1992	
Tallahatchie County (91-3011)	4/27/1992	
State (91-3975)	5/1/1992	

DOJ Objections 1985-1994 cont. (MS)

Sunflower County (92-1415)	5/21/1992
Marshall County (92-3602)	10/13/1992
Amite County (92-2548)	11/30/1992
Greenville (Washington Cty.) (92-4012)	2/22/1992
Lee County (93-0126)	3/22/1993
Chickasaw County (92-4440)	3/26/1993
Gloster (Amite Cty.) (92-4396)	3/30/1993
Charleston (Tallahatchie Cty.) (93-1053)	6/4/1993
Monroe County (93-0356)	9/17/1993
Okolona (Chickasaw Cty.) (93-1558)	10/29/1993
State (90-4933)	11/24/1993
Canton (Madison Cty.) (93-0115)	12/21/1993

Total: 58

Appendix B cont.

South Carolina

Department of Justice Objections 1985-1994

Jurisdiction	Date	Note
Hampton County School District Nos. 1 and 2 (85-3312; 85-3826)	6/28/1985	
Spartanburg (Spartanburg Cty.) (84-3504)	7/16/1985	withdrawn 10/6/87
Orangeburg County (82-2622)	9/3/1985	
Sumter (Sumter Cty.) (83-2952, 84-3510, 84-3511, 84-3512)	10/21/1985	
Batesburg (Lexington and Saluda Ctys.) (85-3334)	2/24/1986	
Sumter (Sumter Cty.) (86-4439, 86-4440, 86-4441)	4/10/1986	objection to annexations withdrawn 10/17/86
Summerville (Dorchester Cty.)	10/10/1986	withdrawn 10/17/88 upon change in method of election
Consolidated School District of Aiken County (Aiken and Saluda Ctys.) (86-4090)	10/14/1986	
Dorchester County School District No. 4 (Dorchester Cty.) (86-4224)	12/1/1986	withdrawn 2/12/87
Bamberg County (R1027; R1374)	12/29/1986	
Edgefield County School District (Edgefield Cty.) (86-4224)	5/22/1987	

Department of Justice Objections 1995-2004

Jurisdiction	Date
Bennettsville (Marlboro Cty.) (94-2216)	2/6/1995
Spartanburg County School District (Spartanburg Cty.) (94-2743)	11/20/1995
Gaffney Board of Public Works (Cherokee Cty.) (95-2790)	3/5/1996
State (97-0529)	4/1/1997
Horry County (97-3787)	5/20/1998
Charleston (Berkely and Charleston Ctys.) (2001-1578)	10/12/2001
Greer (Greenville and Spartanburg Ctys.) (2001-1777)	11/2/2001
Sumter County (2001-3865)	6/27/2002
Union County School District (Union Cty.) (2002-2379)	9/3/2002
Clinton (Laurens Cty.) (2002-1512) (2002-2706)	12/9/2002
Cherokee County School District No. 1 (Cherokee Cty.) (2002-3457)	6/16/2003

Department of Justice Objections 1985-1994 cont. (SC)

Rock Hill (York Cty.) (87-3969)	6/28/1988
School District No. 4 (Dorchester Cty.) (87-3809)	7/18/1988
Richland County (88-4728)	9/23/1988
Lancaster (Lancaster Cty.) (88-4655)	6/13/1989
Beaufort County (89-3281)	7/18/1989
Bennettsville (Marlboro Cty.) (90-4137)	2/2/1990
Kershaw County (90-4108)	2/5/1990
Anderson County School District (89-3259)	4/23/1990
North Charleston (Charleston, Berkely, and Dorchester Ctys.) (90-4005)	5/3/1990
Chester (Chester Cty.)	5/7/1990
York (York Cty.) (90-4221)	8/10/1990
State (90-3986)	10/15/1990
Rock Hill (York Cty.) (91-2478)	1/17/1992
Johnston (Edgefield Cty.) (92-1181)	6/5/1992
Orangeburg County (92-0473)	7/21/1992
(Cont. on next page)	
Dorchester County (92-0373)	8/28/1992
Norway (Orangeburg Cty.) (92-0156)	11/9/1992
Marion County School District (Marion Cty.) (92-2803)	1/5/1993
Marion County (92-2802)	1/5/1993
Lee County School District (Lee Cty.) (92-4139)	2/8/1993
Lee County (92-2259)	2/8/1993
Batesburg-Leesville (Lexington and Saluda Ctys.)(92-4640)	6/1/1993
Johnston (Edgefield Cty.) (93-1658)	7/6/1993

Department of Justice Objections 1995-2004 cont. (SC)

North (Orangeburg Cty.) (2002-5306)	9/6/2003
Charleston County School District (2003-2066)	2/26/2004
Richland-Lexington School District No. 5 (2002-3766)	6/25/2004
Total: 14	

Appendix B cont.

Department of Justice Objections 1985-1994 cont. (SC)

State (94-1394)	5/2/1994	
Lee County (94-109) and Lee County School District (94-1722) (Lee Cty.)	6/6/1994	
Hemingway (Williamsburg Cty.) (93-4248)	7/22/1994	
Florence and Williamsburg Counties (93-5026, 93-4959)	7/22/1994	
Barnwell (Barnwell Cty.) (94-0431)	8/15/1994	withdrawn 2/13/95
Georgetown County School District (Georgetown Cty.) (94-2274)	10/3/1994	
North Charleston (Berkely, Charleston, and Dorchester Ctys.)	10/17/1994	withdrawn 8/20/96
Spartanburg County School District (Spartanburg Cty.) (94-2743)	12/13/1994	

Total: 42

Appendix B cont.

Texas

Department of Justice Objections 1985-1994

Rusk Independent School District (Cherokee Cty.) (83-0174)	1/18/1985
Liberty-Eylau Independent School District (Bowie Cty.) (84-0121)	2/26/1985
Dawson County (84-0343)	8/6/1985
El Campo (Wharton Cty.) (84-1364)	11/8/1985
Lynn County (85-0895)	11/18/1985
Terrell County (85-0674)	1/13/1986
Plainview Independent School District (Hale Cty.) (86-0674)	4/10/1986
El Campo (Wharton Cty.) (86-1633)	7/18/1986
Trinity Valley Community College District (Anderson, Henderson, Hunt, Kaufman and Van Zandt Ctys.) (86-0002)	10/14/1986
Wharton Independent School District (Falls Cty.) (87-0487)	12/29/1986
Marlin Independent School District (Falls Cty.) (87-0487)	6/22/1987
Crockett County (87-0300)	10/2/1987
Columbus Independent School District (Colorado and Austin Ctys.) (87-0025)	1/4/1988
Hondo Independent School District (Frio and Medina Ctys.) (87-0952)	1/22/1988

Department of Justice Objections 1995-2004

State (94-4077)	2/17/1995	
Edwards Underground Water Conservation District (Gonzales Cty.) (94-0333)	3/2/1995	
Andrews (Andrews Cty.) (94-2271)	6/26/1995	
State (95-2017)	1/16/1996	
Webster (Harris Cty.) (96-1006)	3/17/1997	withdrawn 4/7/98
State (98-1365)	9/29/1998	withdrawn 10/21/98
Galveston (Galveston Cty.) (98-2149)	12/14/1998	withdrawn 02/04/02
Lamesa (Dawson City) (99-0270)	7/16/1999	
Sealy Independent School District (Austin Cty.) (99-3823)	6/5/2000	
Haskell Consolidated Independent School District (Haskell, Knox, and Throck-morton Ctys.) (2000-4426)	9/24/2001	
State (2001-2430)	11/16/2001	
Waller County (2001-3951)	6/21/2002	
Freeport (Brazoria Cty) (2002-1725)	8/12/2002	

Total: 13

Department of Justice Objections 1985-1994 cont. (TX)

Marshalltown Independent School District (Harrison Cty.) (87-0060)	4/18/1988	
San Patricio County (87-1132)	6/14/1988	
Jasper (Jasper Cty.) (88-0951)	8/12/1988	withdrawn 12/24/91
Lynn County (85-0895)	9/26/1988	
El Campo (Wharton Cty.) (88-1471)	2/3/1989	
Dallas County (88-0363)	2/27/1989	
Baytown (Chambers and Harris Ctys.) (88-0634)	3/20/1989	
Refugio Independent School District (Refugio Cty.) (88-1251)	5/8/1989	
Cuero (DeWitt Cty.) (89-0326)	10/27/1989	
Denver City (Yoakum Cty.) (88-1530; 88-1533)	2/5/1990	
Nolan County Hospital District (89-0794)	2/12/1990	
San Patricio County (89-0874)	5/7/1990	
State (90-0015)	11/5/1990	
Freeport (Brazoria Cty.) (90-0164)	11/13/1990	
Grapeland (Houston Cty.) (90-0960)	12/21/1990	
Dallas (Collin, Dallas, Denton, Kaufman & Rockwall Ctys.) (89-0245)	3/13/1991	
Lubbock County Water Control and Improvement District No. 1 (Lubbock Cty.) (90-4938)	3/19/1991	
Refugio Independent School District (Refugio Cty.) (90-1268)	4/22/1991	
Dallas (Collin, Dallas, Denton, Kaufman & Rockwall Ctys.) (89-0425, 91-0642)	5/6/1991	
State (90-0003)	8/23/1991	withdrawn 8/4/92

Department of Justice Objections 1985-1994 cont. (TX)

Houston (Harris, Montgomery and Fort Bend Ctys.) (91-2353)	10/4/1991	
State (91-3395)	11/12/1991	
Del Valle Independent School District (Travis Cty.) (91-3124)	12/24/1991	
El Campo (Wharton Cty.) (91-0530)	1/7/1992	
State (92-0070)	3/9/1992	
State (92-0146)	3/10/1992	
Gregg County (91-3349)	3/17/1992	
Calhoun County (91-3549)	3/17/1992	
Galveston County (91-3601)	3/17/1992	
Castro County (91-3780)	3/30/1992	
Monahans-Wickett-Pyote Independent School District (Ward Cty.) (91-3272)	3/30/1992	
Ellis County (91-4250)	3/30/1992	
Lubbock Independent School District (Lubbock Cty.) (91-3910)	3/30/1992	
Terrell County (91-4052)	4/6/1992	
Bailey County (91-3730)	4/6/1992	
Cochran County (91-4049)	4/6/1992	
Hale County (91-4048)	4/10/1992	
Deaf Smith County (91-4051)	4/10/1992	
Gaines County (91-3990)	7/14/1992	
Wilmer (Dallas Cty.) (90-0393)	7/20/1992	
Del Valle Independent School District (Travis Cty.) (7-31-92)	7/31/1992	
Ganado (Jackson Cty.) (92-0319)	8/17/1992	withdrawn 1/22/93
Castro County (92-4027)	10/6/1992	
Galveston (Galveston Cty.) (92-0136)	12/14/1992	

Atlanta Ind. School District (Cass Cty.) (92-3754)	2/19/1993	
Carthage Independent School District (Panola Cty.) (92-4890)	3/22/1993	withdrawn 1/3/94
Corsicana Independent School District (Navarro Cty.) (92-4186)	3/22/1993	
Lamesa (Dawson Cty.) (92-0907)	4/26/1993	
Bailey County (93-0880)	5/4/1993	
Castro County (93-0917)	5/10/1993	
(Cont. on next page)		
McCulloch County (93-0075)	6/4/1993	
Bailey County (93-0194)	7/19/1993	
Wharton County (92-5239)	8/30/1993	
Edwards Underground Water Dist. (93-2267)	11/19/1993	
Marion County (93-3983)	4/18/1994	
State District Court (93-2585)	5/9/1994	
Harris County Criminal Court at Law (Harris Cty.) (93-2664)	5/31/1994	
Fort Bend County Court at Law (Fort Bend Cty.) (93-2475)	5/31/1994	
Mexia Independent School District (Limestone Cty.) (93-4623)	6/13/1994	
Tarrant County (94-3012)	8/15/1994	
Edna Independent School District (Jackson Cty.) (94-0866)	8/22/1994	
Morton (Cochran Cty.) (94-1303)	9/12/1994	
San Antonio (Bexar Cty.) (94-2531)	10/21/1994	
Karnes City (Karnes Cty.) (94-2366)	10/31/1994	
Judson Independent School District (Bexar Cty.) (94-4175)	11/18/1994	

Total: 79

Appendix B cont.

Virginia

Department of Justice Objections 1985 - 1994

Franklin (86-4549) (Independent city)	3/11/1986	withdrawn 5/18/87
Fredericksburg (87-4154)	4/7/1988	
Newport News (88-5098)	7/24/1989	
State (91-1483)	7/16/1991	
Powhatan County (91-2115)	11/12/1991	
Newport News School District (92-3887)	2/16/1993	
Chesapeake School District (93-4561)	6/20/1994	withdrawn 8/28/95

Total: 7

Department of Justice Objections 1995 - 2004

Dinwiddie County (99-2229)	10/27/1999
Northampton County (2001-1495)	9/28/2001
Pittsylvania County (2001-2026) (2001-2501)	4/29/2001
Cumberland County (2001-2374)	7/9/2002
Northampton County (2002-5693)	5/19/2003
Northhampton County (2002-3010)	10/21/2003

Total: 7