

## **DRAFT**

### **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 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 insured 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 bailout from coverage if they could prove that any tests or other devices they had used as a pre-requisite to registering to vote had not been used with the purpose or effect of discriminating on account of race or color.

This article will address the bailout provisions of the Voting Rights Act. In addition to providing background and explanation of the bailout provisions themselves, the paper examines whether the bailout provisions have worked effectively, and whether they should be changed.

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<sup>1</sup> 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 two jurisdictions that are presently seeking a bailout.

At the outset, I believe the standards for establishing bailout eligibility that currently exist have proven to be both workable and practical. Since Congress amended the Act in 1982, ten jurisdictions have sought and obtained bailout, and at least two bailout requests are pending. As explained below, jurisdictions subjected to the Act's special remedial provisions, such as the preclearance provisions, have an effective opportunity to bailout today 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 that those practices not only have been abandoned, but further that they have no lingering effects. The current bailout provisions, by allowing State and local governments with a history of discrimination the ability to avoid some of the Act's more intrusive requirements, insure that the Act remains consistent with sound principles of federalism.

The first part of this paper 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 that they go through to bring about a bailout. Part two also examines whether the bailout process has been shown to be cost-effective, timely and efficient. Part three 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 why more jurisdictions have not yet

pursued the option. The final part of this paper will discuss whether Congress should make any changes to the bailout formula and what those changes might be.

## **A. History of Bailout**

### **Summary of the Voting Rights Act**

A jurisdiction is “covered,” meaning 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, it (1) maintained a racially discriminatory test or device as a prerequisite to voting or casting a ballot; and (2) if either less than 50 percent of its voting age residents were not registered to vote or less than 50 percent of its voting age residents actually voted at the time of the 1964, 1968, or 1972 Presidential elections.<sup>2</sup> Currently twelve townships and fifty-four counties in seven States, as well as nine States in their entirety, are covered under this formula.<sup>3</sup>

When the VRA was first enacted in 1965 and again when the Act was amended and extended in 1970, 1975 and 1982, Congress gathered extensive information and data, collecting vast evidence on voter discrimination that justified the Act’s strong remedial provisions. In 1970, for example, the Act was extended because while there had been a significant increase in black voter registration in the covered states,<sup>4</sup> 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; minority candidates prevented

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<sup>2</sup> 42 U.S.C. § 1973b(b) (2005).

<sup>3</sup> Voting Section, Civil Rights Division, U.S. Department of Justice, Section 5 Covered Jurisdictions, [http://www.usdoj.gov/crt/voting/sec\\_5/covered.htm](http://www.usdoj.gov/crt/voting/sec_5/covered.htm) (last visited Oct. 19, 2005).

<sup>4</sup> Although the voter registration rates for black voters still lagged behind the rate 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, 393-394 (1985).

from running; illiterate voters being denied assistance; racial discrimination in selection of poll officials; and harassment and intimidation of 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, the ability of minority voters and minority candidates to participate in the political process free of interference or intimidation still had not been achieved.<sup>5</sup>

#### 1. The bailout provisions since 1965

Between 1965 and 1982, covered jurisdictions could bailout 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, such as counties, were prohibited from bailing out separately if they were located within a state that was covered in its entirety.<sup>6</sup>

The constitutionality of the Voting Rights Act was immediately challenged in *South Carolina v. Katzenbach*.<sup>7</sup> The Supreme Court upheld the Act in its entirety as an “appropriate” exercise of Congress’ power under the Fifteenth Amendment.<sup>8</sup> With respect to the bailout provisions, the Court found the burden on a covered jurisdiction seeking 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.”<sup>9</sup> Furthermore, in response to *amici curiae* Alabama’s argument that the trigger formula used to determine

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<sup>5</sup> *Id.* at 397 fn. 93-98.

<sup>6</sup> *City of Rome v. United States*, 446 U.S. 156, 167 (1980).

<sup>7</sup> *South Carolina v. Katzenbach*, 383 U.S. 301 (1966).

<sup>8</sup> *Id.* at 337.

<sup>9</sup> *Id.* at 332.

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 termination of coverage under Section 4(b)...This [bailout] procedure serves as a partial substitute for direct judicial review."<sup>10</sup>

The bailout provision in the 1965 Act only allowed those covered jurisdictions which, in the past five years, had not used a test or device with the purpose or effect of discriminating on the basis of race to bailout. 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.<sup>11</sup> The Attorney General opposed the bailout for Gaston and Nash Counties, North Carolina, however, because those jurisdictions were unable to prove their use of literacy tests were free of a nondiscriminatory purpose or effect.<sup>12</sup> Since each the 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 coverage formula was also amended to include the results of 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 bailout. New York and Alaska, parts of which were covered under the expanded coverage formula imposed by the 1970 amendments, each

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<sup>10</sup> *Id.* at 333.

<sup>11</sup> Hancock and Tredway, *supra* note 4, at 392.

<sup>12</sup> *Id.* at 392-393.

successfully obtained bailouts in 1972 on behalf of their covered jurisdictions in 1972.<sup>13</sup> 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 unsuccessfully attempted a bailout after the court found Virginia's maintenance of inferior schools for minorities hindered their ability to pass Virginia's literacy test and thus the state could not show that it had employed a test or device free of a racially discriminatory effect.<sup>14</sup>

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 in only English when at least five per cent of the population was of a single language minority group. Furthermore, in order to bailout, covered jurisdictions now had to prove 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 which sought to demonstrate that no test or device, under the now expanded definition, had been used in a racially discriminatory manner. In Maine, eighteen municipalities that had been covered under the 1970 formula successfully bailed out.<sup>15</sup> 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.<sup>16</sup> However, bailout was denied for City of Rome, GA, because the court found a political subdivision of a covered state lacked authority to bail itself out when the state itself was covered.<sup>17</sup> During this time, the Department of Justice opposed the bailouts of Alaska; Yuba County, California; and El Paso County,

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<sup>13</sup> *Id.* at 396.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 403.

<sup>16</sup> *Id.*

<sup>17</sup> *City of Rome*, 446 U.S. at 167.

Colorado.<sup>18</sup> The jurisdictions dismissed their bailout lawsuits rather than litigate against the federal government in a contested bailout lawsuit.

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.<sup>19</sup> 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.<sup>20</sup>

### 3. 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 complying with the Voting Rights Act. 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.<sup>21</sup> Congress thought it “wholly unwarranted” to allow such a mass bailout at that time given “the continuing problems of discrimination and widespread failure to comply with the Voting Rights Act in the covered jurisdictions.”<sup>22</sup> At the same time, the Congress wanted to “provide incentives to jurisdictions to attain compliance with the law and increase[e] participation by minority citizens in the political

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<sup>18</sup> Hancock and Treadway, *supra* note 4, at 403.

<sup>19</sup> Hancock and Treadway, *supra* note 4, at 411.

<sup>20</sup> Hancock and Treadway, *supra* note 4, at 412-415.

<sup>21</sup> S. Rep. No. 97-417, at 43 (1982), *reprinted in* 1982 U.S.C.C.A.N. 178, 222.

<sup>22</sup> *Id.* at 44, *reprinted in* 1982 U.S.C.C.A.N. at 222.

process of their community.”<sup>23</sup> These were the primary aims of Congress when it considered the bailout provisions in 1982.

With these two goals in mind, Congress enacted two major revisions to the bailout provisions. First, political subdivisions within a covered state were now given the opportunity to bailout 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.”<sup>24</sup> Recognizing the potential for a dramatic increase in bailout litigation, Congress delayed implementation of the new bailout standard until August 5, 1984.<sup>25</sup>

Before the 1982 amendments to the VRA, political subunits of a covered jurisdiction lacked the ability to bailout independently of the jurisdiction.<sup>26</sup> 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 that was entirely covered by the special provisions, no separate determination had been made that the political subunit was subject to the coverage formula.<sup>27</sup> After 1982, political subdivisions within a covered state were now eligible to initiate a bailout.<sup>28</sup>

The amendments also dramatically changed the bailout provisions themselves. Since 1982, covered jurisdictions now must demonstrate both a ten-year record of nondiscriminatory voting practices, and show current efforts to expand minority participation in all aspects of the political process before it can obtain a bailout. While this may seem onerous at first blush, in fact it is not.

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<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 46, reprinted in 1982 U.S.C.C.A.N. at 222.

<sup>25</sup> *Id.* at 59, reprinted in 1982 U.S.C.C.A.N. at 237.

<sup>26</sup> *City of Rome*, 446 U.S. at 167.

<sup>27</sup> *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.”)

<sup>28</sup> 42 U.S.C. § 1973b(a)(1) (2005).

Exactly what must a jurisdiction show in order to establish a ten-year record of nondiscriminatory voting practices? Since the 1982 amendments to the bailout provisions became effective covered jurisdictions must first demonstrate that in the past 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
- (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.<sup>29</sup>

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) It has 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.<sup>30</sup>

#### 4. 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.<sup>31</sup> Congress presumed this test would be relatively

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<sup>29</sup> 42 U.S.C. § 1973b(1)(A-E) (2005).

<sup>30</sup> 42 U.S.C. § 1973b(1)(F) (2005).

<sup>31</sup> 42 U.S.C. § 1973b(a)(1)(A) (2005).

easy for covered jurisdictions to meet given the nationwide ban on such devices, a ban that had been made permanent in the 1970 amendments.<sup>32</sup> This requirement is directly linked to the coverage formula, and thus establishes a strong nexus between the bailout and coverage criteria.<sup>33</sup>

Second, the jurisdiction must also show that it has not had a final judgment of racially discriminatory voting practices entered against it during the previous ten years.<sup>34</sup> 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 their settlement is an effective admission that the abandoned practice was unlawful and discriminatory.<sup>35</sup> Additionally, “a decree granting bailout ... must await final judgment in any pending suit that alleges voting discrimination.”<sup>36</sup> Voting rights litigation reached its peak in the 1970’s and 1980’s and the number of lawsuits alleging racially discriminatory voting practices has significantly decreased in the last ten years.<sup>37</sup> Thus, this provision has not proven to be a significant bailout hurdle to a covered jurisdiction.

Third, the jurisdiction seeking bailout must show that no federal examiner has been assigned to the state or political subdivision within the past ten years.<sup>38</sup> Section 6 of the Voting Rights Act provides for the appointment of federal examiners if:

(1) [the Attorney General] has received complaints in writing from twenty or more residents of such political subdivision alleging that they have been denied the right to vote under color of law on account of race or color...or (2) that in [the

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<sup>32</sup> S. Rep. No. 97-417, at 70, *reprinted in* 1982 U.S.C.C.A.N. at 248.

<sup>33</sup> *Id.*

<sup>34</sup> 42 U.S.C. § 1973b(a)(1)(B) (2005).

<sup>35</sup> S. Rep. No. 97-417, at 50, *reprinted in* 1982 U.S.C.C.A.N. at 228.

<sup>36</sup> S. Rep. No. 97-417, at 51, *reprinted in* 1982 U.S.C.C.A.N. at 229.

<sup>37</sup> *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.”)

<sup>38</sup> 42 U.S.C. § 1973b(a)(1)(C) (2005).

Attorney General’s] judgment (considering, among other factors, whether the ratio of nonwhite persons to white persons registered to vote within such subdivision appears to [the AG] to be reasonably attributable to violations of the fourteenth or fifteenth amendment or whether substantial evidence exists that bona fide efforts are being made within such subdivision to comply with the fourteenth or fifteenth amendment), the appointment of examiners is otherwise necessary to enforce the guarantees of the fourteenth or fifteenth amendment.<sup>39</sup>

Congress saw fit to add this element to the bailout provision, because “[t]he assignment of examiners is a good indication of voting rights abuses at the local level.”<sup>40</sup> In many states subject to the Act’s special provisions, such as Virginia, not a single federal examiner has ever been assigned, making this element also particularly easy to establish for many covered jurisdictions.

The fourth 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.<sup>41</sup> The covered jurisdiction “and *all governmental units within that jurisdiction*” must have timely submitted all voting changes; not have implemented any changes affecting voting without submitting them for preclearance; not have submitted any changes to which an objection has been entered; and repealed all changes to which an objection has been entered.<sup>42</sup> This means that in a county seeking a bailout, the county must not only establish bailout eligibility for itself, but must do so as well for “all governmental units within” it.

Importantly, the preclearance requirements serve to prevent new changes that affect voting that might have a racially discriminatory purpose or effect. Thus, demonstrated

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<sup>39</sup> 42 U.S.C. § 1973d (2005)

<sup>40</sup> S. Rep. No. 97-417, at 52, *reprinted in* 1982 U.S.C.C.A.N. at 230.

<sup>41</sup> 42 U.S.C. § 1973b(a)(1)(D) (2005).

<sup>42</sup> S. Rep. No. 97-417, at 71, *reprinted in* 1982 U.S.C.C.A.N. at 249-50.

compliance with Section 5 preclearance requirements is a central requirement for bailout.

Compliance with the preclearance requirements by covered jurisdictions insures that potentially discriminatory voting practices and procedures have not been implemented.

Fifth, within the past ten years, there must not have been any objections to administrative or judicial preclearance submissions.<sup>43</sup> 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.<sup>44</sup> The number of objections interposed by the Department of Justice over the years has dropped.<sup>45</sup> For example, in Mississippi, between 1985 and 1994, the Department of Justice interposed 58 objections, whereas between 1995 and 2004, there were only 11 objections. Similarly, in the same time periods, objections dropped from 79 to 3 in Texas, and 35 to 2 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.

A second major bailout provision requires a covered jurisdiction to demonstrate at the time bailout is sought that in the past 10 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.<sup>46</sup> In determining whether the

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<sup>43</sup> 42 U.S.C. § 1973b(a)(1)(E) (2005).

<sup>44</sup> *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.

<sup>45</sup> *See* Appendix B. During the last 10 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.

<sup>46</sup> 42 U.S.C. § 1973b(a)(1)(F) (2005).

jurisdiction employs any “procedures or methods ‘inhibit or dilute equal access,’ the standard to be applied is the ‘results’ standard” of Section 2 of the Voting Rights Act.<sup>47</sup> 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 1980’s where voting rights litigants filed numerous lawsuits to end dilute practices.<sup>48</sup> To date, each of the jurisdictions that have obtained a bailout has not encountered any difficulty satisfying these requirements.

Finally, a covered jurisdiction cannot bailout 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.<sup>49</sup> The legislative history anticipated that “[t]his 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.’”<sup>50</sup> 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.

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

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<sup>47</sup> S. Rep. No. 97-417, at 72, *reprinted in* 1982 U.S.C.C.A.N. at 251.

<sup>48</sup> *See*, Katz, *supra* note 37.

<sup>49</sup> 42 U.S.C. § 1973b(a)(3) (2005).

<sup>50</sup> S. Rep. No. 97-417, at 53, *reprinted in* 1982 U.S.C.C.A.N. at 231.

to 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.”<sup>51</sup> There is evidence that the bailout provisions have done precisely that. 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.”<sup>52</sup>

### **B. What Jurisdictions Have Pursued Bailout and How**

There have been ten jurisdictions that 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 ten jurisdictions worked cooperatively with Department of Justice officials in seeking a bailout to insure 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 obtain their bailout, a process that was followed to insure that bailout option was cost effective and that any problems that arose could be corrected before a bailout action was filed in the court.

#### **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

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<sup>51</sup> S. Rep. No. 97-417, at 59, *reprinted in* 1982 U.S.C.C.A.N. at 238.

<sup>52</sup> S. Rep. No. 97-417, at 44, *reprinted in* 1982 U.S.C.C.A.N. at 222.

records to assess its eligibility for bailout. The jurisdiction may lower the cost of bailout by compiling this information itself under direction of its legal counsel.

Typical information that must be collected, and is needed to assess bailout eligibility, includes data on voter registration and voter turnout, the number of minority polling 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 to collect relates to changes effecting voting. Section 5 submissions to the Department of Justice are easily retrievable under the Freedom of Information Act. It is necessary to conduct this review to insure that all changes affecting voting have actually been submitted for preclearance. In addition, the DOJ records can be cross-checked 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 and ascertain the basis for those concerns. It is important to learn what minority leaders and the community thinks 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. It is better for a jurisdiction to learn about any potential problems early in the process, rather than later on.

#### Phase II: Remedying any Flaws

If it is discovered during the research phase that the jurisdiction is not immediately eligible for bailout, perhaps because it has inadvertently failed to make a preclearance

submission, Phase II of the bailout process entails remedying those problems. Voting-related changes that during Phase I are identified as not having been 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 insure 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 of seeking a bailout, the county found that a number of local towns within the county had made approximately two dozen voting changes without having obtained timely preclearance. Each town within the County promptly made a submission of the unprecleared changes which were then 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 then consented to the bailout. Similarly, King's County California has been required to make dozens of preclearance submissions to the Department of Justice of voting changes occasioned by governmental subunits, a number of whom are no longer even in existence.

At this stage, the jurisdiction seeking bailout will want to continue the dialogue it began with DOJ in the initial fact-gathering phase. This will enable the jurisdiction to learn whether, despite the failure of the jurisdiction to obtain timely preclearance of all its changes, the Department of Justice will consent to the bailout once all changes are submitted and precleared. If DOJ opposes 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.

On average, Phases I and II have taken up to two years to complete especially if there are a number of unprecleared changes. During the early bailouts, the Department of Justice was slow to process the bailout requests, but recently these have been processed more efficiently and led to a reduction in the amount of time (and cost) for the bailout process.

### Phase III: The Judicial Process

Once the bailout fact-gathering and compliance assessment phases are complete, the jurisdiction is then 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.

There are minimal legal resources expended to complete these documents, and this portion of the bailout takes relatively 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 eight bailouts filed since then have taken an average of four months each from the time of the initial court filing to the court granting the bailout judgment.<sup>53</sup>

### Phase IV: Conditions and the 10-Year Rule

There is nothing in the bailout provisions of the Voting Rights Act that preclude either 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 (10) years from the date that the

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<sup>53</sup> See Appendix A.

bailout is granted. If such a change occurs, the Department of Justice may reactivate the bailout case or a person aggrieved may file a motion to reactivate the case.

However, since the changes are no longer being submitted to DOJ for preclearance and because these changes 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 change being adopted? How is the minority community going to insure 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 insure 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. And if such notice can be given before the change is implemented, even better. 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 DOJ identifying changes they made affecting voting so DOJ can monitor the jurisdiction’s electoral activity.<sup>54</sup> This type of reporting provision has been imposed by the Department of Justice in the part as a condition of their agreement to a bailout in those jurisdictions where a significant number of unprecleared

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<sup>54</sup> For example, in *Shenandoah County v. Reno*, C.A. No. 1:99CV00992 (KLH, PLF, NHJ) (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.

changes were discovered when they were pursuing a bailout. Additional information may also be requested in these annual reports that measure minority participation in the election process.<sup>55</sup>

In addition to including reporting provisions in bailout agreements, jurisdictions have also agreed to provisions that provide for continued federal review of certain 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 multi-member districts, each with staggered terms. The Justice Department 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 Justice 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 pre-cleared by the Justice Department.<sup>56</sup> The City chose not to make such changes within the prescribed period.

### **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 used by it and all governmental subunits within it, does not deny equality of opportunity to minority voters. The burden is on the jurisdiction, as it properly should be, and the burden is neither too light nor too onerous. Not a

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<sup>55</sup> 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.

<sup>56</sup> *City of Winchester v. Ashcroft*, C.A. No. 1:00CV03073 (DHG, RCL, ESH) (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”).

single jurisdiction that has sought a bailout has been denied one. That all ten jurisdictions that have sought a bailout 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 which feels the preclearance process is too cumbersome or costly has a cost-effective alternative: to exempt itself from coverage.

Local jurisdictions with which I have worked have expressed to me several advantages that they derive from the current bailout formula. For instance, by requiring them to prove a ten-year record of good behavior and to demonstrate improvements to the elections process for minorities, these covered jurisdictions are afforded a public opportunity to prove and publicize that their voting and election practices are fair and non-discriminatory. Second, while bailouts come with some costs (on average around \$5,000 for legal expenses), it is still less costly 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 cost local governments, on average, over \$500 each. Thus, ten submissions to DOJ would exceed the cost of bailout. Most jurisdictions have made dozens of submissions to the Department. Finally, once bailout is achieved local jurisdictions are afforded 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 Section 5 should be retained *because* jurisdictions have not been achieving bailout on a mass scale, and that this may be proof there are still many problems with the election processes in

these jurisdictions.<sup>57</sup> 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.<sup>58</sup> Why is this?

One reason might be that smaller localities simply do not know the bailout option is even available to them; or even if they are aware of bailout, the process may be perceived as too complicated, time consuming, or costly.<sup>59</sup> For the vast majority of jurisdictions, the process is relatively straightforward and easy. Perhaps more importantly, it is cost effective.

Many local governments undoubtedly have become accustomed to Section 5's preclearance requirements, making preclearance submission to DOJ routine to the point where state and local governments now factor into their election calendar the time it will take to obtain preclearance review of their proposed changes. Others simply are not willing to invest the time to get with the leaders of the minority community to discuss why the local government is interested in pursuing a bailout. Whatever the reason, I would recommend that when the legislation is reauthorized, Congress suggest the Department of Justice provide more information to covered localities about the bailout provisions.

Another reason posited for the lack of bailouts is that the criteria are thought to be too difficult to meet. That is not the case. Most of the factors to be demonstrated, as discussed above, are easily proven for jurisdictions that do not discriminate in their voting practices. One factor, proving Section 5 compliance, is often cited as the most difficult to meet because opponents to bailout are likely to be able to find some small change that was not precleared. But, as noted above, this has not proven to be an insurmountable obstacle either.

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<sup>57</sup> 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.

<sup>58</sup> See Appendix A.

<sup>59</sup> *Id.*

There are several reasons why demonstrating Section 5 compliance should be retained as part of the bailout formula. First, DOJ 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. The key here is that the jurisdiction's failure to submit changes for preclearance was inadvertent and not for the purpose of evading Section 5 review. Second, 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."<sup>60</sup> 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 few such submissions of previously implemented but unprecleared changes.<sup>61</sup> In some places, county officials are aware that political subdivisions within the county, such as towns, cities, school districts, and special use districts, have not made any submissions. This failure, of course, affects the county's ability to obtain an expedited bailout. In King's County, California, for example, a county that has informed DOJ that it desires a bailout, it was discovered that 40-50 submissions had not been made by governmental subunits within the county. The county has had to bear this expense and the delay in the bailout process it has produced.<sup>62</sup> This has proven cumbersome, especially since some of these local governmental entities do not even exist anymore and the submission relates to changes that occurred years ago. Furthermore, King's

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<sup>60</sup> S. Rep. No. 97-417, at 48, *reprinted in* 1982 U.S.C.C.A.N. at 226.

<sup>61</sup> See Appendix A.

<sup>62</sup> King's County informed DOJ in 1999 that it desired a bailout and the county is still in the process of making submissions on behalf of governmental subunits.

County's burden is even more pronounced inasmuch as 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 in 1982 which would have made it easier for States to bailout before each of the political subdivisions within the state had bailed out. Each amendment was rejected.<sup>63</sup> 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.<sup>64</sup> 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."<sup>65</sup> Thus, counties may bailout independently of the State, but the State may not bailout until each county has done so.

Similarly, the Voting Rights Act prohibits a county from bailing out until all of its governmental subunits are eligible. The Senate Report did not provide any specific rationale for this aspect of the legislation, focusing instead on States attempting to bailout before each of its counties have done so. Clearly, counties have an interest in bringing about compliance with the Voting Rights Act by local governments within their borders. Moreover, such compliance affects the county's eligibility to bailout. When counties become involved in advising political

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<sup>63</sup> H.Amdt. 266 to H.R. 3112, 97<sup>th</sup> Cong., 1<sup>st</sup> Sess., *offered* Oct. 5, 1981 would have allowed a state to bailout 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 bailout if the state met all the criteria, even if its political subdivisions did not.

<sup>64</sup> *Id.* at 57-58, *reprinted in* 1982 U.S.C.C.A.N. at 235-236.

<sup>65</sup> S. Rep. No. 97-417, at 57, *reprinted in* 1982 U.S.C.C.A.N. at 235.

subunits about Voting Rights Act compliance including preclearance obligations, it has the salutary effect of bringing those subunits into compliance with the law. Of course, counties generally do not have the authority to force action by their political subunits. States generally do, however, and it is reasonable to assume that a political subunit which consistently refuses to meet its VRA obligations could be compelled to do so by State authorities. In any event, Congress in 1982 decided that counties should not be able to bailout until each of its political subunits is eligible.

Procedurally, there is a difference between how States as opposed to counties are allowed to bailout. A county within a covered State may bailout, leaving the state still covered. All state-wide voting changes still must be precleared while changes affecting voting within the bailed out county do not need to be precleared. However, a town may not independently bailout of a covered county.

A proposed solution that would make it more efficient for counties bailing out would be to allow towns, cities and other local governmental units within a covered county to bailout independently. Then, once each locality has bailed out, the county can then pursue its own bailout without having to bear the time or expense of making submissions of 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 right 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. Moreover, 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 seeks a bailout for itself.

To consider the merits of this possible amendment to the bailout law, Congress should examine Section 5 in covered states to see if allowing a bailout to jurisdictions within the state has proven to be problematic from an enforcement or compliance perspective. If counties can bailout now in a state that is completely covered (and, as noted above, they can and have done so in Virginia), Congress could consider if exempting parts of the State from preclearance obligations or other special remedial provisions of the VRA caused any problems from a law enforcement perspective. I am not aware of any and doubt any exist. In any event, such an inquiry would shed light on whether Congress should amend the bailout provisions and permit a local government within a covered county to bailout separately from the county.

#### **D. Changes to Bailout and Coverage Formulas**

Currently the bailout provision is linked to the coverage formula. Broadly, if a jurisdiction used a test or device as a prerequisite to registering to vote or casting a ballot as of the 1964, 1968 or 1972 presidential elections, and less than fifty per cent of the population was registered to vote or voted in that election, that jurisdiction is covered. States with a history of administering such tests or devices in a discriminatory manner were covered under this formula, primarily because such discrimination produced low registration and voter turnout rates below the formula's threshold. By requiring as a prerequisite to bailout that a jurisdiction show that minorities have had an equal opportunity to register to vote and that minority voters enjoy an effective opportunity to participate in the political process, the bailout provisions are closely tied to the coverage formula. Put another way, the coverage formula is designed to reach

jurisdictions that administered tests or devices that had a racially discriminatory purpose or effect, and which manifested themselves in a lower political participation rate for minorities within the jurisdiction; and the bailout provisions require a showing that the entire voting and election process is free of discrimination and that minority voters are no longer excluded from participation in that process.

### **Conclusion**

In sum, the current standards for bailout are practical and are drafted in such a way as to require covered jurisdictions to prove the absence of those conditions which led to coverage in the first place. Congress, however, should examine the possibility of allowing local governmental subunits within a covered county to bailout. For the most part, jurisdictions subjected to the Act's special remedial provisions, such as the preclearance provisions, have an effective and reasonable opportunity to bailout 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 intended to target when it enacted the special remedial provisions in the first place. The Voting Rights Act has made our democracy stronger, and the extension of the special remedial provisions will help bring about a day when there will be no discrimination that affects the ability of any person to register to vote or to cast a ballot.

The Supreme Court has held the VRA to be constitutional because its remedial provisions are proportional to the injury Congress sought to remedy.<sup>66</sup> The bailout provisions help insure 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

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<sup>66</sup> See *Katzenbach*, *supra* note 7; *City of Rome*, *supra* note 6.

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 have eliminated such practices and have let minority voters take their rightful place as full participants in all aspects of the political process.

## APPENDIX A

### Bailouts Filed Since 1982 Amendments to VRA (Chronological)

<u>Name of Jurisdiction</u>	<u>Bailout Filed Date</u>	<u>Bailout Granted Date</u>	<u>% Black</u>	<u>% Hispanic</u>	<u># of Unprecleared Changes (if any)</u>	<u># of Years Post-Bailout Reporting Required</u>
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

### Bailouts Currently Pending

<u>Name of Jurisdiction</u>	<u>Bailout Filed Date</u>	<u>Bailout Granted Date</u>	<u>% Black</u>	<u>% Hispanic</u>	<u># of Unprecleared Changes (if any)</u>	<u># of Years Post-Bailout Reporting Required</u>
Kings, County, CA	(Pending)	N/A	8.3%	43.6%	40-50 (est.)	N/A

## Bailouts Filed Since 1982 Amendments to VRA (Alphabetical)

<u>Name of Jurisdiction</u>	<u>Bailout Filed Date</u>	<u>Bailout Granted Date</u>	<u>% Black</u>	<u>% Hispanic</u>	<u># of Unprecleared Changes (if any)</u>	<u># of Years Post-Bailout Reporting Required</u>
Augusta County, VA	September 30, 2005	November 30, 2005	3.9%	0.8%	3	0
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
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

<u>Name of Jurisdiction</u>	<u>Bailout Filed Date</u>	<u>Bailout Granted Date</u>	<u>% Black</u>	<u>% Hispanic</u>	<u># of Unprecleared Changes (if any)</u>	<u># of Years Post-Bailout Reporting Required</u>
Kings, County, CA	(Pending)	N/A	8.3%	43.6%	40-50 (est.)	N/A

## **APPENDIX B**

Alabama				
Justice Department Objections 1985 --1994			Justice Department Objections 1995 - 2004	
Houston County (80-1180, 84-1513)	10/15/1985		Tallapoosa County (97-1021)	2/6/1998
Greensboro (Hale Cty.) (85-1532)	10/21/1985		Alabaster (Shelby Cty.) (2000-2230)	8/16/2000
Marengo County (86-2012; 86-2013)	2/10/1986		<b>Total: 2</b>	
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 Clys.) (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			
Tallasse (Elmore and Tallapoosa Clys.) (88-1891)	12/19/1988			
State (89-1469) and Dothan (Dale, Henry, & Houston Clys.) (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			
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		
<b>Total: 35</b>				

## Mississippi

Justice Department Objections 1985 - 1994			Justice Department Objections 1995 - 2004		
State (86-3683)	7/1/1986		Adams County (94-4463)	1/30/1995	
Yazoo County (84-3024)	7/7/1986		State (94-4538)	2/6/1995	
Sunflower County (86-3763)	12/15/1986		Monroe County (95-0118)	3/20/1995	
Pike County School District (83-2512)	2/9/1987		Chickasaw County (94-4316)	4/11/1995	
Grenada County (87-3101)	6/2/1987		Union County (95-1234)	6/20/1995	
Washington County (87-3308)	6/19/1987		Aberdeen (Monroe Cty.) (95-1120)	12/4/1995	
Quitman County (87-3225)	9/28/1987		Grenada (Grenada Cty.) (96-3225)	3/3/1997	
Belzoni (Humphreys Cty.) (86-3627)	10/1/1987		State (95-0418)	9/22/1997	
Monroe County (87-3200)	1/12/1988		Grenada (Grenada Cty.) (96-2219)	8/17/1998	
Grenada Municipal Separate School District (Grenada Cty.) (87-3098-3099)	5/9/1988		McComb (Pike Cty.) (97-3795)	6/28/1999	withdrawn 9/20/1999
Greenville (Washington Cty.) (88-4074)	2/10/1989	withdrawn 2/14/90	Kilmichael (Montgomery Cty.) (2001-2130)	12/11/2001	
State (87-3282)	3/31/1989		<b>Total: 11</b>		
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				
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				
(Cont. on next page)					
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	
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	
<b>Total: 58</b>		

## South Carolina

Justice Department Objections 1985 - 1994			Justice Department Objections 1995 - 2004	
Hampton County School District Nos. 1 and 2 (85-3312; 85-3826)	6/28/1985		Bennettsville (Marlboro Cty.) (94-2216)	2/6/1995
Spartanburg (Spartanburg Cty.) (84-3504)	7/16/1985	withdrawn 10/6/87	Spartanburg County School District (Spartanburg Cty.) (94-2743)	11/20/1995
Orangeburg County (82-2622)	9/3/1985		Gaffney Board of Public Works (Cherokee Cty.) (95-2790)	3/5/1996
Sumter (Sumter Cty.) (83-2952, 84-3510, 84-3511, 84-3512)	10/21/1985		State (97-0529)	4/1/1997
Batesburg (Lexington and Saluda Ctys.) (85-3334)	2/24/1986		Horry County (97-3787)	5/20/1998
Sumter (Sumter Cty.) (86-4439, 86-4440, 86-4441)	4/10/1986	objection to annexations withdrawn 10/17/86	Charleston (Berkely and Charleston Ctys.) (2001-1578)	10/12/2001
Summerville (Dorchester Cty.)	10/10/1986	withdrawn 10/17/88 upon change in method of election	Greer (Greenville and Spartanburg Ctys.) (2001-1777)	11/2/2001
Consolidated School District of Aiken County (Aiken and Saluda Ctys.) (86-4090)	10/14/1986		Sumter County (2001-3865)	6/27/2002
Dorchester County School District No. 4 (Dorchester Cty.) (86-4224)	12/1/1986	withdrawn 2/12/87	Union County School District (Union Cty.) (2002-2379)	9/3/2002
Bamberg County (R1027; R1374)	12/29/1986		Clinton (Laurens Cty.) (2002-1512) (2002-2706)	12/9/2002
Edgefield County School District (Edgefield Cty.) (86-4224)	5/22/1987		Cherokee County School District No. 1 (Cherokee Cty.) (2002-3457)	6/16/2003
Rock Hill (York Cty.) (87-3969)	6/28/1988		North (Orangeburg Cty.) (2002-5306)	9/6/2003
School District No. 4 (Dorchester Cty.) (87-3809)	7/18/1988		Charleston County School District (2003-2066)	2/26/2004
Richland County (88-4728)	9/23/1988		Richland-Lexington School District No. 5 (2002-3766)	6/25/2004
Lancaster (Lancaster Cty.) (88-4655)	6/13/1989		<b>Total: 14</b>	
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	
(Cont. on next page)		
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	
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	
<b>Total: 42</b>		

**Texas**

<b>Justice Department Objections 1985 - 1994</b>			<b>Justice Department Objections 1995 - 2004</b>		
Rusk Independent School District (Cherokee Cty.) (83-0174)	1/18/1985		State (94-4077)	2/17/1995	
Liberty-Eylau Independent School District (Bowie Cty.) (84-0121)	2/26/1985		Edwards Underground Water Conservation District (Gonzales Cty.) (94-0333)	3/2/1995	
Dawson County (84-0343)	8/6/1985		Andrews (Andrews Cty.) (94-2271)	6/26/1995	
El Campo (Wharton Cty.) (84-1364)	11/8/1985		State (95-2017)	1/16/1996	
Lynn County (85-0895)	11/18/1985		Webster (Harris Cty.) (96-1006)	3/17/1997	withdrawn 4/7/98
Terrell County (85-0674)	1/13/1986		State (98-1365)	9/29/1998	withdrawn 10/21/98
Plainview Independent School District (Hale Cty.) (86-0674)	4/10/1986		Galveston (Galveston Cty.) (98-2149)	12/14/1998	withdrawn 02/04/02
El Campo (Wharton Cty.) (86-1633)	7/18/1986		Lamesa (Dawson City) (99-0270)	7/16/1999	
Trinity Valley Community College District (Anderson, Henderson, Hunt, Kaufman and Van Zandt Ctys.) (86-0002)	10/14/1986		Sealy Independent School District (Austin Cty.) (99-3823)	6/5/2000	
Wharton Independent School District (Falls Cty.) (87-0487)	12/29/1986		Haskell Consolidated Independent School District (Haskell, Knox, and Throckmorton Ctys.) (2000-4426)	9/24/2001	
Marlin Independent School District (Falls Cty.) (87-0487)	6/22/1987		State (2001-2430)	11/16/2001	
Crockett County (87-0300)	10/2/1987		Waller County (2001-3951)	6/21/2002	
Columbus Independent School District (Colorado and Austin Ctys.) (87-0025)	1/4/1988		Freeport (Brazoria Cty) (2002-1725)	8/12/2002	
Hondo Independent School District (Frio and Medina Ctys.) (87-0952)	1/22/1988		<b>Total: 13</b>		
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				
(Cont. on next page)					

Freeport (Brazoria Cty.) (90-0164)	11/13/1990	
(Cont. on next page)		
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
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 Independent School District (Cass Cty.) (92-3754)	2/19/1993	
(Cont. on next page)		

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 District (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		
<b>Total: 79</b>			

**Virginia**

<b>Justice Department Objections 1985 - 1994</b>			<b>Justice Department Objections 1995 - 2004</b>	
Franklin (86-4549) (Independent city)	3/11/1986	withdrawn 5/18/87	Dinwiddie County (99-2229)	10/27/1999
Fredericksburg (87-4154)	4/7/1988		Northampton County (2001-1495)	9/28/2001
Newport News (88-5098)	7/24/1989		Pittsylvania County (2001-2026)	
State (91-1483)	7/16/1991		(2001-2501)	4/29/2001
Powhatan County (91-2115)	11/12/1991		Cumberland County (2001-2374)	7/9/2002
Newport News School District (92-3887)	2/16/1993		Northampton County (2002-5693)	5/19/2003
Chesapeake School District (93-4561)	6/20/1994	withdrawn 8/28/95	Northampton County (2002-3010)	10/21/2003
<b>Total: 7</b>			<b>Total: 7</b>	