

**Frequently Asked Questions**  
**Regarding Section 5 of the Federal Voting Rights Act and “Bailout”**

- Q1. What is Section 5 of the federal Voting Rights Act?
- A1. Section 5 (42 U.S.C. § 1973c) requires certain specified jurisdictions (“covered” jurisdictions) to seek and obtain the approval of the U.S. Attorney General or the federal district court in the District of Columbia before implementing any change to the jurisdiction’s voting practices. This preapproval process is referred to as “preclearance.”
- Q2. What are the “covered” jurisdictions?
- A2. Nine states (mostly, but not exclusively, in the South) are entirely covered. Counties and townships in 7 additional states are also covered. Merced is one of only four counties in California that is subject to Section 5 (along with Kings, Monterey & Yuba). The State of California is not subject to Section 5.
- Q3. What is “bailout”?
- A3. In enacting Section 5, Congress recognized that some jurisdictions might be “covered” that were not guilty of racial discrimination. It therefore provided for jurisdictions to file a lawsuit in the federal district court in D.C. to get a declaration that it was no longer necessary to seek “preclearance.” Such suits are typically pursued in cooperation with the U.S. Attorney General.
- Q4. If Merced County bails out, what protections will remain for minority voting rights?
- A4. The same protections that exist for voters in the 54 California counties not subject to Section 5. Federal and state constitutional provisions (equal protection and due process), Section 2 of the Voting Rights Act (42 U.S.C. § 1973), the Help America Vote Act (HAVA), and the National Voter Registration Act (“Motor Voter”). The County will also remain subject to the Voting Rights Act provisions that require all ballot materials to be provided in Spanish.
- Q5. Isn’t Merced County’s “coverage” under Section 5 a sign that the County had a history of racial discrimination in voting?
- A5. No. While Section 5 was targeted primarily at jurisdictions that did have such a history, coverage turned on neutral factors that were not necessarily tied to racial discrimination. A jurisdiction was covered in 1975 (when Merced County became subject to its provisions) if (1) certain voting practices (*i.e.*, literacy tests and use of all-English ballot materials where the jurisdiction had more than 5% of the population speaking another language as their primary language) were in use within the jurisdiction on November 1, 1972, and (2) less than 50% of eligible voters were registered or voted for President at the November 1972 election.
- Q6. How did Merced County get covered?
- A6. Through no fault of its own. The County met the first prong of the test (*i.e.*, use of a literacy test and all-English ballot materials) because those voting practices were

prescribed by California state law—not County policy.<sup>1</sup> The second prong was met as a result of methodological errors by the Census Bureau and—like the other covered California counties—a large military population on Castle Air Force Base that was treated as eligible to vote in Merced County, even though most of them voted absentee in their home counties. Even with those exceptional factors, Merced County just barely missed the 50% turnout mark; 49.6% of eligible voters voted in November 1972. If the precincts that covered Castle AFB are excluded, well over 50% of eligible voters voted.

Q7. What is Merced County’s history under the Voting Rights Act?

A7. Following the County’s coverage determination in 1975, the County immediately began complying with the Act. Since it was covered, Merced County has submitted hundreds of voting changes, including frequent submissions for its polling places, voting precincts, voting machines, bilingual procedures, special elections, etc.

The County has proactively scoured its records and worked with cities, school districts, and special districts to ensure compliance with the preclearance rule.

There has never been a suit filed in the County under Section 2 of the federal Voting Rights Act (which applies nationwide), or under the Constitution, alleging discrimination in voting.

Only one voting practice has ever been denied “preclearance”—the County’s supervisorial redistricting plan adopted following the 1990 Census. Subsequent U.S. Supreme Court decisions suggest that objection was unjustified, but rather than litigate the County repealed the plan and adopted a new one that received preclearance.

Q8. Why is Merced County considering a “bailout” action?

A8. Three reasons:

- *Remove the stigma.* Section 5 is correctly regarded as a remedy aimed at historical bad actors—primarily Southern states with a history of intransigent violations against the voting rights of minority voters. Merced County does not have such a history, and wishes to clear its name.
- *Mitigate the high costs:* Merced County has spent close to \$1 million dollars in the last decade attributable solely to its coverage under Section 5—for compliance and (successful) defense of Section 5 litigation.
- *Stop being a political football.* Merced County was sued in 2003 based on its alleged failure to seek preclearance in connection with the Gray Davis recall. Merced County had complied, and ultimately prevailed, but the suit contributed to the high costs discussed above. The true purpose of the suit was not to enforce voting rights in Merced County, but to block the recall election. Similar suits may occur in the future.

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<sup>1</sup> The State’s literacy test had been invalidated by the California Supreme Court in 1970, but it was not formally repealed by the voters until November 7, 1972—six days after the magic date prescribed by Congress.