

MERCED COUNTY SEEKS LEVEL PLAYING FIELD

Despite no history of voting discrimination or even a lawsuit alleging voting discrimination, Merced County is treated much differently than 54 other counties in California when it comes to running an election. For us, the rules and expectations from the Federal government are different, and burdensome. Unfortunately, this cost our taxpayers over a million dollars in the last decade alone. This is the result of an action by Congress in 1972 when they strived to tackle ongoing violations of minority voting rights, targeting the Southern states. We were one of only four counties in California that were caught-up in, and became covered by, Congress' action, even though not a target of the legislation.

In 1972, Congress amended Section 5 of the Voting Rights Act to extend special controls on elections, called "preclearance," that were due to expire. Those controls are imposed on all elections in covered states and counties. Under this rule, the United States Department of Justice must "pre-clear" common voting procedures such as filling City Council vacancies, consolidating voting precincts for special elections, or moving polling place locations – even if it is just across the street. Congress has created a process called a "bailout" which allows an entity to end its coverage under Section 5, which is what Merced County intends to do.

One might ask the logical question which is how Merced County got included under this set of rules in the first place. Our County was never the target of Congress' action, which was largely designed to impose needed controls on Southern states with long histories of voting discrimination against African-Americans. We were covered under Section 5 due to a historical fluke, that fluke being that we were once home to Castle Air Force Base.

Section 5 coverage was triggered by a few neutral factors over which the County had no control. These included the following: (1) the existence of a literacy requirement for voting in the California Constitution on November 1, 1972, (2) the lack of any provision for bilingual voting materials in California law, and (3) voter turnout under 50% at the 1972 presidential election.

Starting with voter turnout, the Census Bureau determined that Merced fell barely under 50%, with 49.6% of the County's eligible voters voting in the 1972 presidential election. The main reason was Castle, which was fully staffed and operational at the height of Vietnam. The Bureau counted military personnel on the base as eligible County voters, though most were not even California residents and were registered and voted absentee in their home states. Merced County had no way of tracking voters on the base who voted absentee elsewhere. Excluding the base, Merced's registration easily exceeded 50%.

California's literacy test dated back to 1894. The California Supreme Court blocked its enforcement in 1970, but it was not formally repealed by the voters until six days after the trigger date for Merced County's Section 5 coverage.

As for the lack of bilingual voting materials, that too was a matter of state law, which controls nearly all elections in Merced County and did not authorize such materials in 1972. State law requires them now, but that does not retroactively undo the application of Section 5 to Merced.

Despite the unusual circumstances of its coverage the County has diligently complied with Section 5 since 1972, but the costs are high. It's in this spirit that we seek removal from these requirements.

We have been working with the Voting Section of the United States Department of Justice to be released from the special controls of Section 5 through the "bailout" process. If successful, we will erase the stigma and "guilt by association" we endure, which not only places burdens on the County but also discourages businesses and development from coming to Merced, pushing them to neighboring counties instead. We will no longer be a pawn in statewide politics. In 2003, we were sued for allegedly failing to comply with Section 5 in its conduct of the gubernatorial recall. These allegations were untrue and we incurred significant legal fees to fight the baseless charges. Local taxpayers footed the bill, while the real target of the suit was the statewide election itself. By being associated with Section 5, we have become an easy target.

In the days ahead, we'll continue to work to ensure that our County and its voters enjoy the same protections that apply in the 54 other non-covered Counties in California, including the applicable provisions of the Voting Rights Act. After public presentations in April and July of 2010, the Board of Supervisors passed a resolution and directed my office to seek the aforementioned bailout.

County representatives met with Federal officials and are continuing to provide information they've requested to evaluate our compliance with Section 5. Many cities and districts in the County have passed resolutions supporting the bailout as they are all impacted by this requirement as well. In the near future, the Department of Justice will be visiting our County to continue their due diligence into the matter.

The County has established a dedicated place on its website in both English and Spanish where the public can get up-to-date information about the bailout. Our residents can also leave questions and comments about the process, and the County encourages all residents to do so. The County values the public's viewpoints and asks for its support in this worthwhile effort. The Board's resolution and public hearing materials are all publicly accessible and can be viewed at <http://www.co.merced.ca.us/index.aspx?NID=1707>.

In the end, we believe that discrimination of any type against any person is wrong and indefensible. We will always work and strive to protect the rights of all Merced County residents. Unfortunately, this Section 5 requirement places us as at a significant disadvantage and it's time to place us on a level playing field with the rest of California.