

Georgia Municipal Association

"Bailing Out" of the Preclearance Requirements of the Voting Rights Act

Presented by:

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Legal Information

This presentation is intended only to provide general information and is not legal advice.

This presentation does not create any attorney client relationship.

As with any matters, jurisdictions should consult counsel about specific situations before acting

Section 5 of the Voting Rights Act

- History of the Voting Rights Act
 - Initially passed in 1965 as “emergency” legislation
 - 2006 – Reauthorized for additional 25 years
- Currently set to expire in 2031

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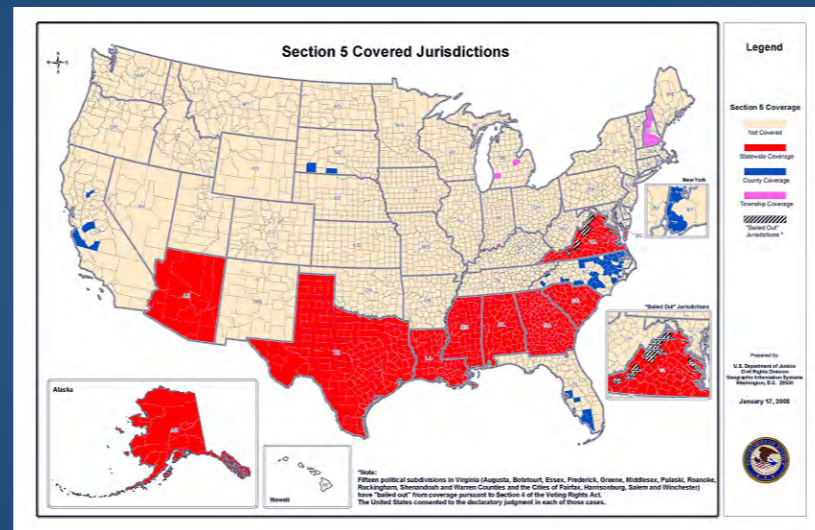
Without bailouts:

Every Georgia municipality will be subject to preclearance requirements for 20 more years

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Section 5 of the Voting Rights Act

- Requires federal government approval for changes with respect to voting



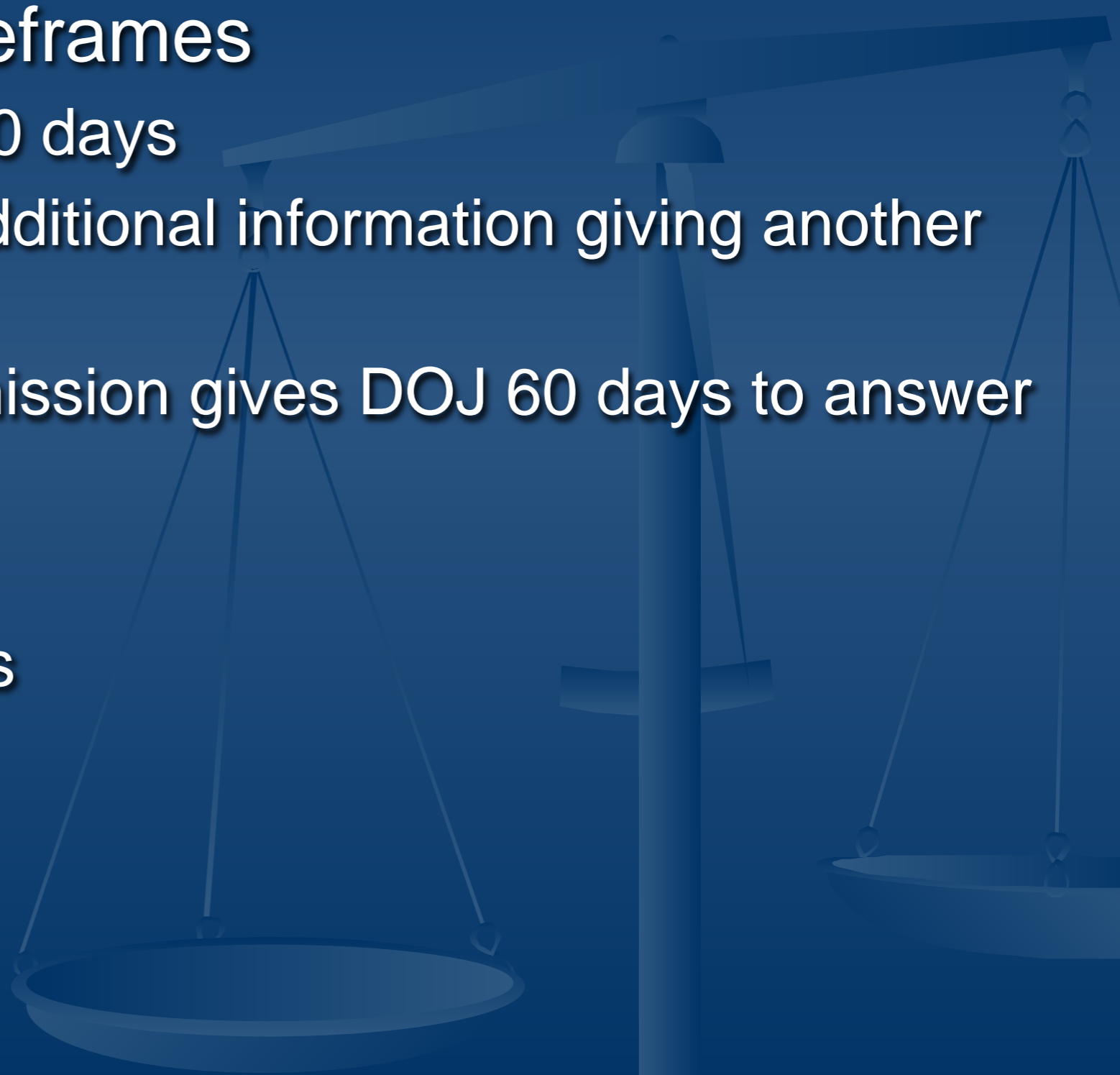
- Preclearance requires either:
 - Submission to DOJ for administrative review
 - Submission to 3-judge federal court in DC

Section 5 of the Voting Rights Act

- Types of changes requiring preclearance:
 - Redistricting (major issue for 2011-2012)
 - Annexations
 - Special elections (dates and procedures)
 - Bond referendum and municipal ballot questions
 - Administering elections locally
 - Moving polling places
 - Changes to voter registration process / locations / hours

Section 5 of the Voting Rights Act

- Preclearance Timeframes
 - DOJ gets at least 60 days
 - DOJ can request additional information giving another 60 days
 - 3-judge panel submission gives DOJ 60 days to answer
- Preclearance Costs
 - Staff time
 - Uncertainty / Delays
 - Legal costs



“Bailout”

- Voting Rights Act allows jurisdictions with “clean” voting rights records to “bailout” of the preclearance requirements
- Why no bailouts in Georgia until 2010?
 - Interpretation of bailout provision was very limited until 2009 Supreme Court decision
 - Prior understanding was that only jurisdictions that registered voter – i.e. – counties – could “bailout”

Bailout Requirements

- Two primary groups of requirements:
 - History of city with respect to voting rights
 - Participation of minority voters and city's efforts to include minority residents in civic life of city

Bailout Requirements

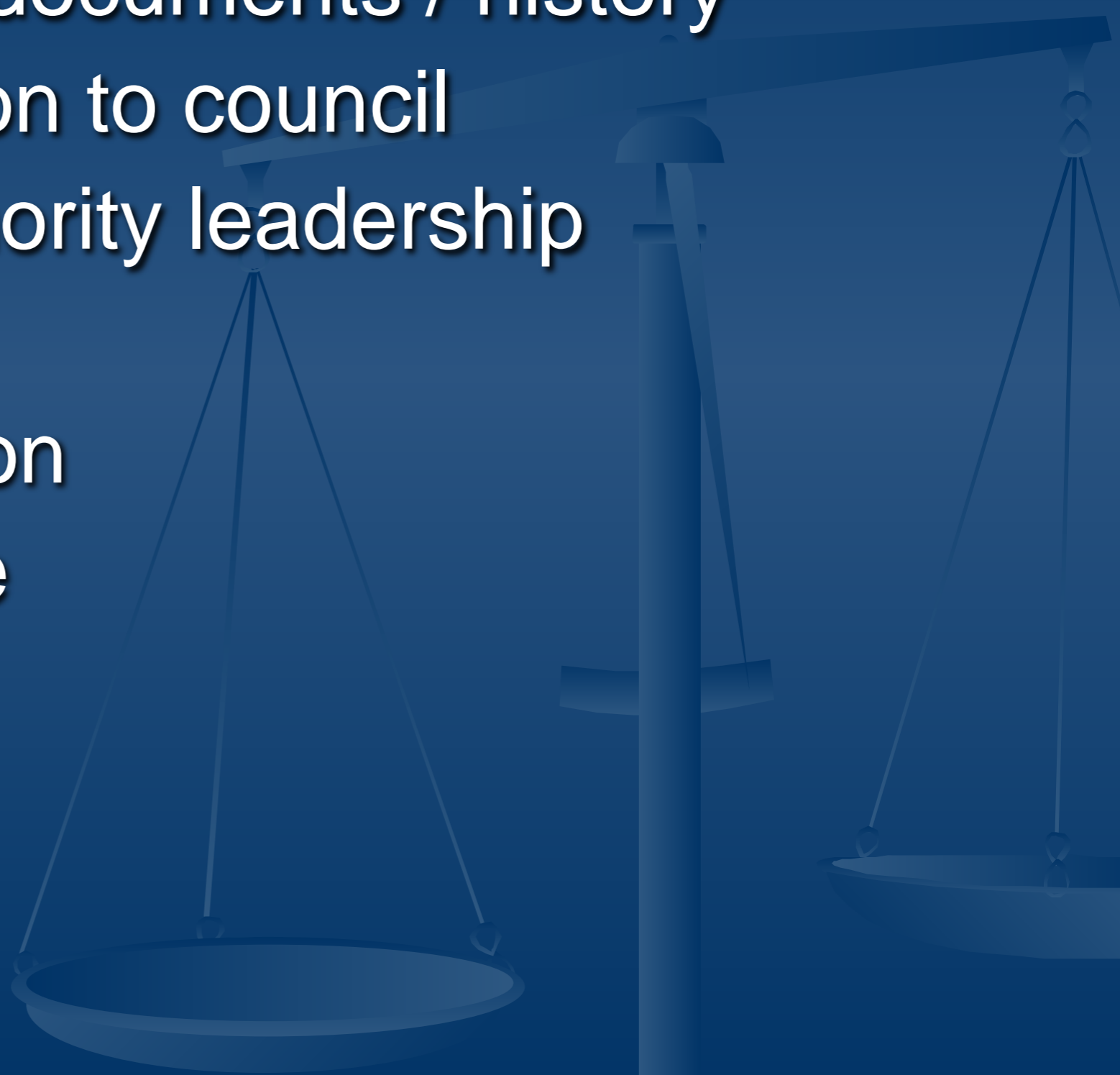
- Documents Needed
 - Election returns and voter registration data
 - Election officials and candidate data
 - Local minority officials and activists
 - Election related litigation
 - Details on form / structure of local government
 - 10 years of minutes from city council meetings
 - Copies of prior Section 5 submissions

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Bailout Process

- Initial review of documents / history
- Recommendation to council
- Outreach to minority leadership
- Public Hearing
- DOJ Investigation
- Consent Decree



Bailout Timeline

- Mostly under control of local government
 - Collect needed information
 - Attorney review
- Public Hearing notice under state law
- DOJ investigation is only portion outside of local control
- Consent decree usually has 30 day review period before court will sign

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What Is Effect of Bailout?

- A municipality which bails out is still subject to the Voting Rights Act. It may not act in a discriminatory manner.
- Voting Rights Act (Section 2, Voting Assistance provisions, language minority provisions), U.S. Constitution, and state laws and constitutional requirements still apply
- **The Key Benefit:** A municipality which has bailed out no longer has to obtain advance approval from Washington for changes

Sandy Springs Experience

- Initially driven towards bailout because of the costs of Fulton County running local elections
- Although the city wanted to run its own elections in 2009, it ran out of time for preclearance
- Mayor was convinced city could run elections for less money
- City Attorney memo cost projections:
 - Fulton County - \$263,000
 - Privately Run - \$154,000

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Sandy Springs Experience

- Public Hearing held in March of 2010
- DOJ Received paperwork in April of 2010
- DOJ agreed to consent decree in August of 2010
- Consent Decree filed in September 2010
- Consent Decree approved without objection in October 2010

Contact Information

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Fact Sheet on Bailouts from Section 5 of the Voting Rights Act**December 2010****What is Section 5?**

Section 5 is the provision of the Voting Rights Act of 1965 (the “VRA”) that requires certain jurisdictions in Georgia to seek pre-clearance from federal authorities in Washington of any changes in voting practices or election procedures. If such changes are not approved, they may not be implemented. Although originally enacted in 1965 as an emergency provision expected to last 5 years, the VRA was reenacted by Congress in 2006 for another 25 years. As such, Section 5 will continue to impose financial and administrative costs on counties, cities, municipalities and other governmental entities in Georgia until 2031.

What changes require pre-clearance?

Changes requiring pre-clearance include, but are not limited to, the following: redistricting or reapportionment, including local redistricting done by municipalities after the 2010 census under O.C.G.A. 36-35-4.1; election dates; election procedures; absentee voting; moving, realigning, consolidating or expanding precincts; changes from at-large to districted seats or from districted to at-large seats; changes in control or administration of elections from counties to cities or towns; changes from partisan or non-partisan elections; and annexations. In short, virtually any material change in the conduct of elections must be submitted for preclearance.

Is there any way out of Section 5 coverage?

Yes. Because of a 2009 Supreme Court decision, any jurisdiction subject to Section 5 coverage may now seek to bail out of coverage. Prior to the Supreme Court’s June, 2009 decision in *Northwest Austin Municipal Utilities District Number One v. Holder*, it was presumed that only covered jurisdictions that conducted voter registration could bail out. The Supreme Court’s decision has provided a new opportunity for other political subdivisions to bail out from under Section 5 of the VRA.

Have any jurisdictions bailed out since the Supreme Court ruling?

On September 22, 2010, United States Department of Justice filed consent decrees with the City of Sandy Springs, GA and the City of Kings Mountain, NC in the United States District Court in Washington, DC agreeing to permit the two cities to bailout. The decrees – expected to be approved by the federal court – make these cities the first two jurisdictions to complete bailout as permitted by the Supreme Court in 2009. According to press and other accounts, however,

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numerous jurisdictions in Virginia, Georgia, Texas, Florida and Alabama are seriously considering bailing out.

What are the benefits of bailing out?

There are two primary benefits to bailing out:

The first is a long term cost saving. A jurisdiction that bails out will no longer have to submit pre-clearance requests to the Department of Justice each time it wants to make an election-related change over the next 21 years. This should result in savings, both in the form of staff time and outside legal costs.

The second benefit of bailing out is that administration of voting and elections will be more efficient, streamlined, and predictable, without the uncertainty of delays and objections resulting from the constant need to submit even minor changes for federal government review and approval.

What is required for bailout?

In order to seek bailout, a jurisdiction must meet a number of requirements which, in sum, amount to the following:

Prove that no “test or device” has been used to abridge the right to vote on account of race or color;

Demonstrate that the jurisdiction has a clean record of voting rights compliance;

Demonstrate that efforts have been made to encourage minority participation in the voting and election process; and

Demonstrate that there was input from the public, including minority groups, in making a determination to seek bailout.

Any jurisdiction that bails out from Section 5 coverage is not relieved from other redistricting and voting legislation, such as Section 2 of the VRA and other applicable federal and state law. Bailing out would simply relieve the jurisdiction from the requirement to obtain federal pre-clearance for the next 21 years before changes in voting practices or procedures may be enacted.

Generally, once a jurisdiction has conducted a self-assessment and determined it can meet the statutory requirements, has consulted with and engages local minority groups and leaders, and has held public meetings about the bailout, the process with the Department of Justice and the federal court in DC should be non-confrontational.

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What is the cost of bailing out?

The cost of bailing out will vary based on the size of the jurisdiction, the history of the jurisdiction with respect to elections and minorities, and the availability and ability of the jurisdiction's staff to assist outside legal counsel with the collection and review of the necessary information. While there can be no guarantees, the cost of bailing out should presumably be less than the cost of having to submit preclearance requests to the federal government over a 21-year period. At a jurisdiction's option, we can provide legal services related to VRA bail outs at either an hourly rate or for a flat fee.

How does this impact local governments in light of Home Rule and local legislation rules?

The exact contours will depend on exactly what the local jurisdiction is entitled to do under the charter and home rule laws.

For example, in Georgia, there was a case in 1977 where a local law authorized an annexation, and then the city by ordinance changed the districts of the city council to include the new land area. The annexation had to be submitted by the state, since the annexation was authorized by state action, but the change in the boundaries of the city council districts were required to be submitted for pre-clearance by the local government.

As another example, if a local government in Georgia wanted to administer its own elections, rather than have its elections conducted by its county, such a change would require pre-clearance before it could be implemented.

Changes such as charter amendments, special elections, annexations, ballot formats, polling place locations all could require Section 5 preclearance.

In August of 2010 alone, nearly 40 local jurisdictions in Georgia made required pre-clearance submissions.

Where can I get additional information?

Please feel free to contact either of the following:

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