SUPREME COURT OF THE UNITED STATES

No. 97–1396

VICKY M. LOPEZ, ET AL., APPELLANTS *v.*
MONTEREY COUNTY ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

[January 20, 1999]

JUSTICE KENNEDY, with whom THE CHIEF JUSTICE joins, concurring in the judgment.

I would not decide in this case whether "§5's preclearance requirement applies to a covered county's nondiscretionary efforts to implement a voting change required by state law, notwithstanding the fact that the State is not itself a covered jurisdiction." *Ante,* at 15. I think it quite possible, particularly in light of the constitutional concerns identified by JUSTICE THOMAS, that the phrase "seek to administer" in the statute requires that the covered jurisdiction exercise discretion or pursue its own policy aims before the obligation to preclear a voting change arises. See 14 Oxford English Dictionary 877 (2d ed. 1989) (defining "seek," *inter alia,* as "[t]o make it one's aim, to try or attempt *to* (do something)"). That interpretation draws some support from our decisions in *Connor* v. *Johnson*, 402 U. S. 690 (1971) *(per curiam),* and *Young* v. *Fordice,* 520 U. S. 273 (1997), which suggest that covered jurisdictions need not seek preclearance when a noncovered entity requires them to implement specific voting changes. See *Connor* v. *Johnson*, *supra,* at 691 (holding that covered jurisdictions need not preclear voting changes ordered by a federal court); *Young* v. *Fordice*, *supra*, at 290 (noting that a State's adoption of the National Voter Registration Act's registration system "is not, by itself, a

change for the purposes of §5, for the State has no choice but to do so").

I concur in the majority's disposition of this case, however, because it is clear that the state enactments requiring the voting changes at issue in fact embodied the policy preferences and determinations of the county itself. See *McDaniel* v. *Sanchez*, 452 U. S. 130, 148–151 (1981) (voting changes contained in federal-court order require preclearance if they were proposed by the covered jurisdiction); *Young* v. *Fordice*, *supra*, at 285 (state changes made in an effort to comply with federal law require preclearance if they "reflect the exercise of policy choice and discretion by [state] officials"). For example, the 1979 state law which codified the county's merger of its municipal court districts stated on its face that it was enacted at the county's behest. 1979 Cal. Stats., ch. 694, §4 ("[T]his act is in accordance with the request of a local governmental entity or entities which desired legislative authority to carry out the program specified in this act"). In these circumstances, the county was required to seek preclearance of the voting changes codified by the state enactments.