U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

June 22, 1990

Ms. Debbie Barnes
Chairperson, Dallas County
Board of Registrars
P.O. Box 997
Selma, Alabama 36701

Dear Ms. Barnes:

This refers to the additional procedures for the 1990 implementation of the voter reidentification and purge program pursuant to Act No. 84-389, including the schedule and voter update program, for Dallas County, Alabama, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on April 23, 1990.

At the outset we note that on September 12, 1984, we precleared, pursuant to Section 5, State of Alabama Act No. 84-389, which mandates annual purge and reidentification of voters in each county and the appointment of deputy registrars in each county precinct, and the procedures for implementing the provisions of Act No. 84-389 as outlined in the Alabama Secretary of State's August 7, 1984, letter. Under the precleared procedures for Act No. 84-389, the county board of registrars is to identify deceased electors and other electors who are believed to be no longer qualified to vote in the county, and, under certain conditions, to purge the active voter registration list of the names of these electors and to place the names of these electors on a list of inactive voters. The statute and the Secretary of State's letter set forth the timetable and the specific procedures that are to be followed in carrying out these actions.

It is our understanding that the precleared statute and implementation procedures do not address a countywide re-identification of voters or general re-registration program nor do they provide any procedures for completely re-constituting

the county's voter registration list. Act No. 84-389 seems designed simply to remove from the existing registered voters list the names of those persons who are no longer qualified to vote because of death, conviction of certain crimes, or taking up residence in another county.

On September 18, 1989, we precleared a submission by the county of its implementation of Act No. 84-389. As you know, the county's implementation plan received the requisite Section 5 preclearance only after the county withdrew provisions of the program that involved procedures for using a voter update form which would have been mailed to all registered voters. The remaining portions of the county's program, which was precleared, merely tracked the precleared state law.

Based on the information available to us, it appears that the 1990 implementation of the voter reidentification and purge program pursuant to Act No. 84-389 deviates in several ways from the precleared procedures under Act No. 84-389, and, thus, from the county program precleared September 18, 1989. The proposed changes, implemented without benefit of Section 5 preclearance, include the use of voter update forms, which the county apparently had printed and distributed notwithstanding that the September 18, 1989, preclearance occurred only after the county withdrew its proposal for a voter update form that would be mailed to each registered voter. We note that while the distribution of these forms apparently did not include any mail-out procedure, the county implemented the voter update program without the requisite Section 5 preclearance, and relied on the information provided by the forms to disqualify electors from voting or re-qualify electors for voting in the June 5, 1990, primary election.

We understand that the voter update program has been implemented in such a way that many black voters believed they were not qualified to vote in the June 5, 1990, primary election if they had not returned a voter update form. Further, it appears that this misapprehension was exacerbated during the election because the voter registration list prepared by the board of registrars used the same designation for voters who did not return a voter update form or whose form was not yet processed by the county, as the designation for voters who are required to reidentify under Act No. 84-389. Thus, the voter update program has resulted in a voter registration list that actually includes many voters who have been and continue to

be qualified to vote, but may not have been permitted to vote on June 5 and may be purged and thus disqualified from voting in subsequent elections simply because they failed to pick up or return a voter update form, when there was no valid requirement that they do so.

The proposed schedule apparently did not permit time for completing the voter update program prior to the election, but the county proceeded to implement the incomplete, and in some cases erroneous, results for the June 5, 1990, primary election. The outcome was that many voters who had returned the voter update form were required to reidentify a second time, at the polls or elsewhere, prior to being permitted to cast a ballot. The proposed schedule also apparently did not permit sufficient time for adequate training of poll officials, with the result that the re-registration and reidentification procedures were applied inconsistently. Some voters were made to travel to the probate judge's office to reidentify, while other voters were required to complete reidentification forms prior to voting, and still other voters were permitted to cast regular ballots prior to completing reidentification forms. It appears that there was little if any reasonable evidence to believe that most of the voters who were designated by a "P" listing and who were made to reidentify or re-register in fact were not qualified to vote in the June 5, 1990, primary election.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In satisfying its burden, the submitting authority must demonstrate that the proposed change is not tainted, even in part, by an invidious racial purpose; it is insufficient simply to establish that there are some legitimate, nondiscriminatory reasons for the voting change. See Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 265-66 (1977); City of Rome v. United States, 422 U.S. 156, 172 (1980); Busbee v. Smith, 549 F. Supp. 494, 516-17 (D.D.C. 1982), aff'd, 459 U.S. 1166 (1983). In light of these principles, and under the circumstances discussed above, I cannot conclude, as I must under the Voting Rights Act, that the county has sustained its burden in this instance. Therefore, on behalf of the Attorney General, I must object to the proposed 1990 implementation of Act No. 84-389 and the proposed voter update program. We note that this objection does not otherwise affect any precleared procedures for conducting the June 26, 1990, election.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the

effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the additional procedures for the 1990 implementation of Act No. 84-389 and the voter update program continue to be legally unenforceable, and, therefore, may not be enforced in any manner in the June 26, 1990, run-off election or subsequently. See also 28 C.F.R. 51.10.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Dallas County plans to take with respect to these matters. In order to avoid further voter confusion, we stand ready to work with local and appropriate state officials. In that regard, we will be contacting you soon to discuss these matters.

If you have any questions, feel free to call Ms. Lora L. Tredway (202-307-2290), an attorney in the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division