U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

September 16, 1994

William R. McNally, Esq.
McNally, Fox & Cameron
Post Office Box 849
Fayetteville, Georgia 30214

Dear Mr. McNally:

This refers to Act No. 1129 (1994), which provides for the creation of a state court, establishes four-year terms of office for an elected judge and solicitor position (non-partisan judicial election), provides candidate qualifications including residency requirements, establishes compensation for the judicial and solicitor's position, provides an implementation schedule for the election of both positions and designates the Clerk of the Superior Court the clerk for the state court for Fayette County, Georgia, 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 responses to our June 28, 1994, request for additional information on July 18 and 25, 1994; supplemental information was received on August 4, 1994.

This also refers to the schedule for conducting the November 8, 1994, special election for judge and solicitor, and the November 29, 1994, special election runoff date. We received your submission on September 1, 1994.

We have carefully reviewed the information you have provided, as well as Census data, information from other interested persons and the litigation files in State of Georgia v. Reno, C. A. No. 90-2065 (D.D.C.). According to the 1990 Census, Fayette County has a total population of 62,415 persons, of whom 5.4 percent are black. Fayette County is the largest of four counties in the Griffin Superior Court Circuit, which according to the 1990 Census is 18.6 percent black. As you know, we have interposed objections under Section 5 to the creation of two additional superior court judgeships in the Griffin Circuit.

Under the state's system of at-large elections with numbered posts and a majority vote requirement, we found that black voters in the circuit would be denied an equal opportunity to elect superior court judges of their choice. We also concluded that there was substantial information to indicate that the election method was infected with an invidious racial purpose.

The State of Georgia has been enjoined in Brooks v. State Board of Elections, No. CV288-146 (S.D. Ga.), from conducting at-large elections to fill unprecleared judicial positions and, consequently, two of the three sitting superior court judges in the Griffin Circuit are holding over in unprecleared seats. We are aware that a fourth superior court position was created by the state in 1992 for this circuit, but that Section 5 preclearance has not been obtained for this elected position and that the position has not been filled. The objected-to superior court positions are also at issue in the declaratory judgment action filed by the state concerning Georgia's method of electing superior court judges. See State of Georgia v. Reno, C.A. No. 90-2065 (D.D.C.).

It is against this backdrop that the county now seeks through state legislation embodied in Act No. 1129 the creation of a state court in the Griffin Circuit to offset a backlog of superior court cases. Although the state had available a wide range of alternatives to address this concern, including the creation of a separate circuit for Fayette County (an alternative that you tell us the county has advocated for some time) or an expansion of the number of superior court judges within the Griffin Circuit under one of a variety of nondiscriminatory election systems, the state chose instead to create a state court in the most heavily white county within the circuit; this was the one alternative offering the least opportunity possible to black voters in the circuit to participate in the political process and elect candidates of their choice.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. 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 light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the changes occasioned by Act No. 1129 (1994).

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes have neither

the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, Act No. 1129 (1994) continues to be legally unenforceable. See Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

With regard to the special election schedules, the Attorney General will make no determination because the proposed changes are directly related to Act No. 1129, to which an objection has been interposed. 28 C.F.R. 51.22(b).

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Fayette County plans to take concerning this matter. If you have any questions, you should call Ms. Zita Johnson-Betts (202-514-8690), an attorney in the Voting Section.

Sincerely,

Loretta King

Loretta King
Acting Assistant Attorney General
Civil Rights Division