U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

September 20, 1991

Angie R. LaPlace, Esq.
Assistant Attorney General
State of Louisiana
P. O. Box 94125
Baton Rouge, Louisiana 70804-9125

Dear Ms. LaPlace:

This refers to Act 8 (1991), which authorizes an additional judgeship for the Fourth District Court Judicial District to be elected on an at-large basis from a designated division and the special election therefor in the State of Louisiana, 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 July 20, 1990.

We have considered carefully the limited information you have provided, as well as information from the Census and other interested parties. In addition, we have reviewed the findings of the federal district court in Clark v. Roemer, No. 86-435A (M.D. La.), and its ruling that the use of the state's at-large system for electing district court judges in the Fourth District violates Section 2 of the Voting Rights Act, as amended, 42 U.S.C. 1973.

We note that the Attorney General has reviewed and interposed objections under Section 5 to previous state enactments authorizing additional judgeships in the Fourth District. On September 23, 1988, we interposed an objection to Act 480 (1970), which authorized an additional judgeship to be elected on an at-large basis from a designated division. On May 12, 1989, we interposed an objection to Act 56 (1984) which, inter alia, added two judgeships also to be elected on an at-large basis from designated divisions. Despite the state's failure to obtain preclearance for these three new judgeships, elections have been held to fill those positions and the persons elected are holding office. As you know, these voting changes in

the Fourth District, among others, are the subject of the state's declaratory judgment action seeking Section 5 preclearance from the United States District Court for the District of Columbia. State of Louisiana v. United States, No. 91-0122 (ARR, U.S.C.A., JHG, TFH) (D.D.C).

With regard to Act 8 (1991), we note that prior to its enactment, in 1988 and 1989, the Governor's Special Task Force on Judicial Selection conducted a study of various methods of judicial selection. Several members of the state legislature served on that task force and a portion of the evidence compiled as a part of the task force's record concerned the adverse impact on black voters that the use of designated posts would have within the context of at-large elections.

After the study was completed, the legislature enacted a subdistricting plan for the election of judges in the Fourth District, Act 839 (1989), which was not implemented because it was coupled with changes in the state constitution that failed to obtain the requisite approval from the electorate. In this regard, however, the state constitution does not mandate that district judges continue to be elected on an at-large basis from designated positions. 1974 LA. Const. art. V, §22. Rather, the legislature retains the discretionary power to modify the electoral scheme. See, e.g., Act 3 (1981) and Act 305 (1975).

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); County Council of Sumter County v. United States, 596 F. Supp. 35, 38 (D.D.C. 1984); see also 28 C.F.R. 51.52. In addition, a submitted change may not be precleared if its implementation would lead to a clear violation of Section 2. See 28 C.F.R. 51.55(b). In light of these principles and the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the changes affecting voting authorized by Act 8 (1991) meets the Act's preclearance requirements, particularly in light of the evidence presented to the Governor's Task Force referred to above and the findings in the Clark case about the racially dilutive effects of at-large judicial elections in the Fourth District. Therefore, on behalf of the Attorney General, I must object to Act 8 (1991) insofar as it authorizes an additional judgeship in the Fourth District to be elected to a designated position in the context of an at-large method of election with a majority-vote requirement.

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 change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, you may 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 election of an additional judge in the fourth district in the manner authorized by Act 8 (1991) continues to be legally unenforceable. Clark v. Roemer, 59 U.S.L.W. 4583 (U.S. June 3, 1991); 28 C.F.R. 51.10 and 51.45.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the State of Louisiana plans to take regarding this matter. If you have any questions concerning this letter, you may feel free to call Steven H. Rosenbaum, Deputy Chief of the Voting Section (202-307-3143).

Sincerely,

John R. Dunne

John R. Dunne
Assistant Attorney General
Civil Rights Division