



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

MAY 23 1986

Mr. Alex K. Brock
Executive Secretary-Director
State Board of Elections
Suite 801 Raleigh Building
5 West Hargett Street
Raleigh, North Carolina 27601

Dear Mr. Brock:

This refers to temporary regulations N.C.A.C. 07 .0003 through .0006 adopted by the North Carolina State Board of Elections and submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Regulation .0003 provides an election schedule for holding special primary elections for superior court positions in Districts 1, 9, 10, 15A, 15B, 18, 26, 27B, and 30; regulation .0004 specifies that a numbered post requirement will not be used in filing for candidacy for the office of superior court judge; regulation .0005 designates the method for calculating whether a judicial candidate has received a majority of the vote in the first primary; and regulation .0006 provides that superior court judges shall be nominated in elections in their respective districts and elected in statewide elections. We received your submission on April 30, 1986. In accordance with your request, expedited consideration has been given this submission pursuant to the Procedures for the Administration of Section 5 (28 C.F.R. 51.32).

We have considered carefully the information you have provided, as well as comments received from other interested parties. At the outset, we note that regulations .0005 and .0006 restate current North Carolina law and, thus, do not reflect voting changes that are subject to the Section 5 pre-clearance requirements. Accordingly, the Attorney General will make no determination with regard to these regulations.
28 C.F.R. 51.4(b).

With respect to regulation .0004, the Attorney General does not interpose any objection to the change in question. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change. In addition, as authorized by Section 5, the Attorney General reserves the right to reexamine this submission if additional information that would otherwise require an objection comes to his attention during the remainder of the sixty-day review period. See also 28 C.F.R. 51.42 and 51.48.

Likewise, with regard to regulation .0003, the Attorney General interposes no objection insofar as it provides for elections in Districts 1, 9, 10, 15A, 15B, 26, 27B and 30. We cannot reach the same conclusion, however, to the extent that regulation .0003 provides for special primary elections in District 18.

The state previously decided that it would be appropriate to defer holding primary elections for these positions because of the pending submission before the Attorney General of voting changes related to the election of superior court judges. As you are aware, on April 11, 1986, the Attorney General interposed a Section 5 objection to the staggering of terms in District 18 occasioned by the setting of the date for the commencement of the initial term of office of the judgeship in that district created by Chapter 997 (1967). The state's decision now to resume the election schedule in District 18, without acting to make the terms of all positions in District 18 concurrent, is inconsistent with the April 11, 1986, objection and, in our view, seeks to implement further the system of staggering addressed in the objection.

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. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.39(e). In these circumstances, I am unable to conclude, as I must under the Voting Rights Act, that the state has sustained its burden with respect to its proposal to hold special elections for only three of the four positions in District 18. Therefore, on behalf of the Attorney General, I must object to regulation .0003 insofar as it provides for special primary elections for superior court positions in District 18.

Otherwise, our information indicates that the election schedule contained in regulation .0003 satisfies the requirements of Section 5. However, should the state decide that the remainder of this regulation is not severable, and thus that a new regulation must be adopted to provide a schedule for the other districts covered by regulation .0003, we will provide expedited consideration should the state make a new Section 5 submission in that regard to the Attorney General.

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 the holding of special primary elections for three of the superior court judgeships in District 18 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, Section 51.44 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 effect of the objection by the Attorney General is to make the proposed holding of an election in District 18 legally unenforceable. 28 C.F.R. 51.9.

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 North Carolina plans to take with respect to this matter. If you have any questions, feel free to call Mark A. Posner (202-724-8388), Attorney/Reviewer of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division