

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

June 28, 1985

C. Havird Jones, Jr., Esq.  
Assistant Attorney General  
P. O. Box 11549  
Columbia, South Carolina 29202

Dear Mr. Jones:

This refers to the procedures for conducting the March 1983 special election for school district trustees for School Districts 1 and 2 in Hampton County, South Carolina, 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 29, 1985.

We have considered carefully all of the information provided with your submission as well as that from other interested parties. In making our determination it will be helpful to recount briefly the history of the changes now before us.

On April 9, 1982, South Carolina enacted Act No. 549 which abolished the then-existing county board of education and provided for the election of the two local boards of trustees. That legislation also provided for the initial election to those board of trustee positions (theretofore appointive offices) in November 1982 with a candidate qualifying period to run from August 16 to August 31 of that year. However, on August 23, 1982, the Attorney General interposed a timely objection to the implementation of Act No. 549, thereby continuing the unenforceability of that statute under the provisions of the Voting Rights Act. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.1); Busbee v. Smith, No. 82-0665 (D. D.C. May 24, 1982); Connor v. Waller, 421 U.S. 656 (1975). Accordingly, no election for those positions was held in November 1982.

Subsequently, on November 19, 1982, the Attorney General's objection was withdrawn, thereby removing the legal bar to the implementation of Act No. 549. As a result, the state authorized and the county called a special election for the board of trustee

positions to be held on March 15, 1983. The county did not, however, provide for a new candidate qualifying period but, rather, adopted (but did not reopen) for the newly called election the qualifying period previously held as a part of the November 1982 election schedule, namely, August 16 through August 31, 1982. The new election date and the adoption of the previously held qualifying period as a part of that election schedule essentially are the changes now before us for our review. See NAACP v. Hampton County Election Commission, 53 U.S.L.W. 4207 (U.S. Feb. 27, 1985).

At the outset, we note that even though the required Section 5 preclearance had not been obtained and that there was substantial opposition from members of the minority community to the voting changes embodied in Act No. 549, the county nevertheless began implementation of that act's provisions, i.e., the qualifying period, prior to Section 5 preclearance. The Voting Rights Act makes it clear that unprecleared changes are legally unenforceable until and unless the Attorney General of the United States or the United States District Court for the District of Columbia says otherwise. Busbee v. Smith, supra, slip op. at 3. By requiring candidates to file for the board of trustee elections when the changes permitting those elections had not met the preclearance requirements of the Voting Rights Act, the county was requiring candidates to make choices and commitments, and possibly to expend considerable time, energy, and money campaigning, in districts which may never have gained approval. See State of South Carolina v. United States and NAACP, 585 F. Supp. 418 (D. D.C. 1984). In fact, as noted above, an objection to the implementation of that election system actually was interposed for a time.

In this regard, we note that at least three experienced black school board members declined to lend credibility to the illegal implementation of those changes by not qualifying to run for election under the unprecleared plan. Yet, once the newly created elective positions in the independent school districts had received Section 5 preclearance, those candidates, and conceivably others, were precluded from qualifying as candidates for the new elections by virtue of the county's decision to adopt without reopening the August 16-31, 1982, qualifying period for the later announced March 15, 1983, election.

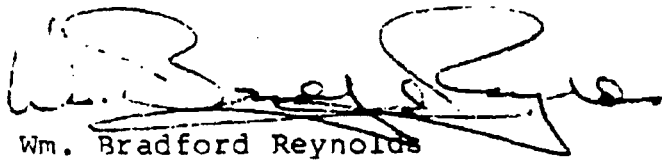
Our analysis shows that this restriction on candidacies for the March 15, 1983, election adversely affected the opportunity of black voters to elect candidates of their choice. For example, election results from other school board elections in the county reveal that at least some of those whose candidacy was rejected by the county enjoyed substantial support among voters in the black community. Yet, the county has provided no compelling justification for failing to provide within reasonable proximity of the election a candidate qualifying period which would allow the special election ballot to reflect the intervening changes in political circumstances between August 1982 and February 1983.

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 28 C.F.R. 51.39(e). Under the circumstances involved here, I am unable to conclude, as I must under the Voting Rights Act, that the qualifying period adopted for the March 15, 1983, special election had no discriminatory effect upon the black voters of Hampton County. Therefore, on behalf of the Attorney General, I must object to the holding of the special election under those conditions.

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 51.44 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 render the March 15, 1983, special election of board of education trustees in Hampton County School Districts 1 and 2 of no legal effect. 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 Hampton County plans to take with respect to these matters. If you have any questions, feel free to call Sandra S. Coleman (202-724-6718), Director of the Section 5 Unit of the Voting Section.

Sincerely,

A handwritten signature in black ink, appearing to read "Wm. Bradford Reynolds", written over a horizontal line.

Wm. Bradford Reynolds  
Assistant Attorney General  
Civil Rights Division