



U.S. Department Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

JAN 24 1995

Susan B. Forsling, Esq.
Fulton County Attorney
141 Pryor Street, S.W.
Suite 4038
Atlanta, Georgia 30303

Dear Ms. Forsling:

This refers to Act No. 731 (1994), which provides for the addition of a ninth state court judgeship, establishes a four-year term of office for the judgeship, and provides an implementation schedule for the election of the judge to the state court for Fulton 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 submission on November 25, 1995.

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.) and Brooks v. State Board of Elections, No. CV288-146 (S.D. Ga.). Fulton County is the sole county in the Atlanta Judicial Circuit, and according to the 1990 Census, the county has a total population of 648,951 persons, of whom 324,008 (49.9%) are black. As you know, the Attorney General has previously interposed objections under Section 5 to the addition of superior court judgeships throughout the State of Georgia, including several positions in the Atlanta Judicial Circuit.

Under Georgia's system of at-large elections, with designated posts and a majority vote requirement, the Attorney General concluded that black voters in Georgia were denied an equal opportunity to elect candidates of choice to the superior court bench. There was also substantial information to indicate that Georgia's method of electing superior court judges was

tainted by an invidious racial purpose. While the state is seeking judicial preclearance for all of the affected superior court judgeships in Georgia v. Reno, no decision has yet been reached by the court. Georgia has also been enjoined in Brooks v. State Board of Elections, No. CV288-146 (S.D. Ga.), from conducting at-large elections to fill any of the unprecleared superior court judgeships, including a total of six positions in the Atlanta Judicial Circuit. In our view, the same considerations underlying these lawsuits apply with equal force to Act No. 731, as the judgeship at issue is to be filled by precisely the same method of election previously found objectionable by the Attorney General.

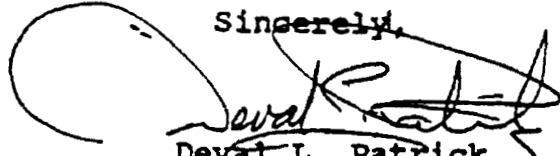
Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5, (28 C.F.R. 51.52). Further, preclearance cannot be granted in circumstances where the proposed change presents a clear violation of Section 2 of the Voting Rights Act. See 28 C.F.R. 51.55(b)(2).

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 voting changes occasioned by Act No. 731 (1994).

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. 731 (1994) continues to be legally unenforceable. See Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Fulton County plans to take concerning this matter. If you have any questions, please contact Thomas E. Armstrong (202-514-6346), the attorney in the Voting Section assigned to handle this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Deval Patrick", written over the typed name below.

Deval L. Patrick
Assistant Attorney General
Civil Rights Division