U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

November 16, 1993

Charles M. Hensey, Esq.
Special Deputy Attorney General
Elections Section
Department of Justice
P. O. Box 629
Raleigh, North Carolina 27602-0629

Dear Mr. Hensey:

This refers to Chapter 74 (1993), insofar at it postpones the implementation of mail-in voter registration from July 1, 1993, to January 1, 1995, in the State of North 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 response to our request for additional information on September 17, 1993; supplemental information was received on November 15, 1993.

We have considered carefully the information you have provided, as well as information from other interested persons. According to the 1990 Census, black residents comprise 21.9 percent of the state's total population and 20.0 percent of the state's voting age population. Based on the most recent registration data available (for October 1993), the percentage of voting age blacks who are registered to vote continues to lag behind the percentage of registered whites of voting age. Statewide, 61.6 percent of eligible blacks are registered compared to 72.9 percent of eligible whites; in the 40 counties covered by Section 5, the figures are 57.6 percent and 64.8 percent, respectively. With respect to Native American residents of the state, they are primarily concentrated in Robeson County where the Native American registration rate also is lower than the white registration rate.

In July 1992, the state adopted legislation to augment the existing voter registration system to provide that residents of the state may register to vote by mail. This new procedure was to begin implementation on July 1, 1993, and in the interim period the state board of elections was to develop and approve a mail-in registration form. This change received the requisite Section 5 preclearance on October 15, 1992. The state board of elections then undertook to develop the registration form, and in April 1993 a draft form was approved by a subcommittee of a state board advisory council. However, work on the form was then halted in light of the introduction of the instant legislation in the state legislature, and on May 24, 1993, this legislation was ratified delaying implementation of the mail-in system for a year and a half until January 1, 1995. Although the state has not received Section 5 preclearance for this delay, the state has proceeded to implement it in contravention of Section 5.

On May 20, 1993, the President signed into law the National Voter Registration Act of 1993. As stated in Section 2(b)(1) of the Act, Congress enacted this legislation "to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office." In that regard, Congress acted out of a concern that "discriminatory and unfair registration laws and procedures can have a direct and damaging effect on voter participation in elections for Federal office and disproportionately harm voter participation by various groups, including racial minorities." Section 2(a)(3). To increase the opportunities to register, the Act generally requires that states establish a number of registration procedures, including mail-in registration. Under the terms of the Act, North Carolina is required to have these procedures in place for elections for Federal office by January 1, 1995.

The state contends that the proposed delay in implementing the mail-in procedure will not have a deleterious effect on the opportunity of minority residents to register to vote. Although the state agrees that in the long run the use of mail-in registration will increase voter registration, it contends that the 18-month delay is insignificant because there are other substantial registration opportunities, the delay is short, and there are costs associated with implementing mail-in registration before the date set for implementing it pursuant to the National Voter Registration Act.

Under the state's registration system, the minority registration rates continue to lag behind the white registration rate both in the state as a whole and in the covered counties. Indeed, we understand that the state originally adopted mail-in registration in large part because of the perceived need to

eliminate barriers to minority registration, and in that regard the North Carolina system does not currently provide all the registration opportunities contemplated by the National Voter Registration Act. In addition, we cannot view the 18-month delay as being insignificant given that it includes an entire election cycle -- the 1994 elections -- in which the state's congressional delegation, the entire state legislature, and many county offices will be up for election. In these circumstances, we cannot say that the state has met its burden of showing that the delay will not "lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 130, 141 (1976).

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. 51.52. In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the state's burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the proposed delay in the implementation of the mail-in registration procedure.

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 objected-to change continues to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of North Carolina plans to take concerning this matter. If you have any questions, you should call Special Section 5 Counsel Mark Posner, at (202) 307-1388.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division