



Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

August 3, 1984

William J. Bridge, Esq.
Assistant Attorney General
Supreme Court Building
101 North Eighth Street
Richmond, Virginia 23219

Dear Mr. Bridge:

This refers to Chapter 775 of the Virginia Laws, 1984 Session, relating to assistance to voters, 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 June 4, 1984.

Chapter 775, which amends and reenacts §24.1-132 of the Code of Virginia and adds a new §24.1-228.2 to that Code, appears to have been enacted, at least in part, to bring the Commonwealth of Virginia into compliance with Section 208 of the Voting Rights Act, as amended, 42 U.S.C. 1973aa-6. Section 208 states:

Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union.

Except for the prohibition on assistance by "the voter's employer or agent of that employer or officer or agent of the voter's union," Section 208 affords the voter entitled to receive assistance complete freedom to select whomever he or she wishes as an assistor. This provision was enacted by

Congress in large part to safeguard the right to vote of those who are unable to read and write well enough to cast their ballots without assistance, the predominant majority of whom are minorities whose rights are protected by other provisions of the Act.

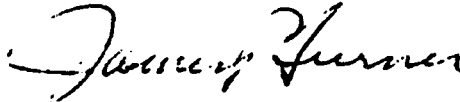
Chapter 775, however, appears to go beyond the above provision of federal law by prohibiting an illiterate voter from receiving assistance from "a candidate for an office to be voted on at the election." It therefore adds an additional restriction not contained in Section 208 of the Voting Rights Act.

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 the Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)). In the administration of this provision, the Attorney General has taken the position that voting changes which are inconsistent with other provisions of the Voting Rights Act cannot be considered to have met the Section 5 standard for preclearance. Because Chapter 775, by excepting candidates as potential assistants for voters needing assistance, does not conform to the requirements of Section 208 of the Voting Rights Act, the Supremacy Clause of the United States Constitution legally prevents the Attorney General from approving it as a valid voting change under Section 5. Therefore, on behalf of the Attorney General, I must object to Chapter 775 of the 1984 Session of the General Assembly of Virginia.

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 this change does, in fact, meet the preclearance requirements of Section 5. 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 Chapter 775 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 Commonwealth of Virginia plans to take with respect to this matter. If you have any questions, feel free to call Carl W. Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,

A handwritten signature in cursive script, appearing to read "James P. Turner".

James P. Turner
Acting Assistant Attorney General
Civil Rights Division