U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

OCT 17 1980

I. Drayton Pruitt, Jr., Esq.
Pruitt and Pruitt
Post Office Drawer PP
Livingston, Alabama 35470

Dear Mr. Pruitt:

This is in reference to Act No. 79-729 of the 1979 Regular Session of the Alabama Legislature which provides for the use of electronic voting systems in Sumter County, Alabama, and to the changes adopted by Sumter County pursuant to the provisions of this Act.

As you know, the Attorney General has sixty days in which to consider a submission pursuant to Section 5 of the Voting Rights Act of 1965, as amended. This sixty-day period begins when the Department has received all the information necessary for the proper evaluation of the change submitted. Further, the Attorney General may object to the proposed change consistent with the burden of proof placed upon the submitting authority (in this case the State of Alabama, with respect to the Act itself and Sumter County, with respect to changes adopted pursuant to the Act in question) to show that the submitted change has no discriminatory purpose or effect. See, e.g., Georgia v. United States, 411 U.S. 526 (1973); 28 C.F.R. 51.19. If the submitting authority fails to provide the Attorney General with the information necessary for the proper evaluation of the submission it fails to sustain its burden of proof. For the reasons set forth below, I have concluded that your burden has not been carried with respect to the instant submission. Thus, on behalf of the Attorney General, I must object to the submitted changes.

Our records indicate that this submission has had an unfortunate and confusing history which has prevented the normal flow of information that would enable the Attorney General to make a determination as to whether or not this change has the purpose or the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. Because of this, we will continue our consideration of this matter upon your providing the information necessary for the completion of our review of the merits of the changes that appear to be involved.

To aid you in gathering the information necessary for our review, we here set out our understanding of the submitted Act; our understanding of the changes adopted by Sumter County pursuant to the provisions of the Act; the questions asked in our letter of October 23, 1979; the questions reiterated in our letter of January 1, 1980; and the confusion arising from the information you have provided, along with the information requested but which has not been provided to us:

1. Our understanding of Section 11 of Act No. 79-729 (1979) is that it provides, among other things, the following:

A. that Sumter County is exempt from the limitations (not enumerated) prescribed by law to other counties that undertake to use electronic voting systems;

B. that there shall be one polling place located within each beat;

C. that Sumter County is authorized to:

(1) abolish existing beats and discontinue the use of the polling sites located therein; or

(2) extend or redistrict a beat and retain a polling site therein; or

(3) subdivide a beat, thus creating an additional beat, and designate an additional polling site therein.

2. Our understanding is that Sumter County, as authorized above, chose to extend or redistrict beats, thus reducing the number of beats, and retained certain polling sites, one in each restructured beat.

3. On October 23, 1979 (copy of our letter enclosed), we requested that you provide us with information relating to how the procedures specified by the Act differ from those required by the general Alabama Election Law in counties using voting machines; how the procedures specified in the Act differ from those previously followed in Sumter County; whether or not the county had implemented the change to voting machines; a description of the county's plan to familiarize voters with the voting machines; and, specifically, an explanation of other changes that had been vaguely referred to or otherwise implied. Our letter stated as follows:

In addition, your submission refers to the reduction of beats from 16 to 9 (source of these numbers is unknown). Please explain the reduction as it relates to the use of voting machines and how this change will affect county officials presently elected, along with a map of the previous boundary lines and the population and registered voters, by race, of each beat before and after the change.

If any polling places will be abolished, please indicate the locations of and the distances between the old and new polling places as well as how voters will be notified of the change.

4. In your response (letter dated November 26, 1979, a copy of which is also enclosed), you stated that the Act itself provided for a reduction in the number of beats; that "(p)reviously there were more beats in Sumter County and voting was by written ballot without use of machines;" that Sumter County has never used voting machines; that you were enclosing a map indicating the existing 16 beats and the reduction to 9 beats and the boundaries of each; that the only county officials who are elected by beats are the Constables, but that because the bonds of the individuals currently holding office had expired and had not been renewed, the offices were presently vacant, and you indicated, accordingly, "no-one will be affected;" that no plans had been initiated to notify voters "but we would be happy to take suggestions of the Justice Department...;" that you would be unable to provide us with "a percentage of black and white voters in each beat" but that you were enclosing "Exhibit 'A'" which would indicate the percentage of votes received by the black and the white candidates in each beat during the Democratic Primary of 1978; and that "(i)f this Legislation is approved and enacted by the Alabama Legislature, then these voting machines will be used for the first time in the next Presidential general election." However, your response failed to provide information that we previously requested concerning the following:

A. How the procedures specified by the Act differ from those required by the general Election law in counties using voting machines;

B. How the procedures specified by the Act differ from those previously followed in Sumter County (i.e., changes in the number of voting boxes, changes in the method of assigning voters to their voting sites, etc.);

C. An explanation of the relationship between the number of beats and the method of electing county officials (i.e., do members of the county commission run from districts that are changed by a reduction in the number of beats; if and when individuals seeking to apply for or to renew "bonds" in order to run for the office of Constable, how will they be affected by a reduction in the number of beats; what other state, district, county or political party offices are voted on by voters in Sumter County that are affected by a reduction in the number of beats and how are they affected?);

D. The number of registered voters of each beat before and after the change even if racial breakdowns are unavailable; and

E. If any polling places would be abolished, the locations of and the distances between the old and new polling places.

Further, your response raised several additional questions: The letter states that the map enclosed indicates the existing 16 beats and the reduction to 9 beats while the lines on the map appear to delineate 18 previous beats now reduced to 10. In fact, the numbers on the map suggest that there used to be 20 beats. Were two beats deleted -- was this change subject to the preclearance requirements of Section 5 and, if so, was such preclearance sought? How are voting boxes affected? How can the proposed changes not affect the offices of at least seven Constables? Which constables are deleted? Where, in the cities circled on the map, are the polling places located? Are these entirely new polling places or are they "remaining" polling places? Where were the other eight polling places? Does your letter mean that Sumter County will not notify voters without our suggestions on how notice should be given, and is Sumter County not required by State law to take all necessary steps to notify voters of the changes? With respect to "Exhibit 'A'," who are the black candidates, who opposed them, why does the heading say November, 1976 (your letter described "Exhibit A" as pertaining to the 1978 Democratic Primary)?

5. In our letter of January 18, 1980 (copy enclosed), to Ms. Lynda F. Knight, Assistant Attorney General for the State of Alabama, we noted your comment that the Act was not yet approved and that, therefore, it was not ripe for review. We also asked that (when the Act was resubmitted) the submission include the information requested in our letter of October 23, 1979, because "the change cannot be reviewed until the Department has received the specific information requested." With respect to our request that you provide the number of registered voters by race, we stated: "If exact figures are not available, give your best estimate and the basis for them." However, subsequent correspondence, some of which was not received by this Department's Civil Rights Division until October, 1980, indicates that the Act is indeed ripe for review by the Attorney General. On the other hand, no response was made to the outstanding questions addressed to you in our letters of October 23, 1979, and January 18, 1980.

6. On October 9, 1980, during a telephone conversation with Elda Gordon, of our staff, you provided the following information:

A. The total number of registered voters in Sumter County, noting that the number exceeded the county's voting age population and estimating the percentage of blacks at around forty percent;

B. The number of registered voters in the eighteen previous beats and in the ten new beats;

C. The names of the old and of the remaining voting centers;

D. The names, beat numbers, race and daytime telephone numbers of the eight persons who last held the office of Constable in Sumter County;

E. A description of the duties of a Constable;

F. An interpretation of the provisions of Sections 6(3), 11(b), 14(d) and 15(a) of the Act dealing with the mechanical aspects of the conduct of elections in counties using voting machines.

This conversation did not cover items or information that could not satisfactorily be addressed telephonically but for which we had previously requested written responses or that would, more properly, be included in a complete submission of all the changes effected by the implementation of the Act involved.

7. Further, it has now come to our attention that members of the Sumter County Democratic Executive Committee may be affected by the proposed changes. (You had stated, during your telephone conversation on October 9, 1980, with Ms. Gordon, that you were not sure that these offices would be affected.) It seems that committee members are elected by voting box and that the number of voting boxes may be changed upon implementation of the provisions of this Act. This development, too, addresses the effect of the proposed change and must be reviewed before a decision can be reached on the merits of Act No. 79-729 (1979).

In summary, while it now appears that the Act is ripe for review, Sumter County has not completed its submission by providing all the information necessary for the proper evaluation of the changes it seeks to implement. While the Attorney General does not usually object to changes from paper ballots to voting machines, because of the incompleteness of the submission in this case, it is not clear what other changes are effectuated by the submitted Act. Consequently, the Attorney General is unable to conclude, as he must under Section 5, that Act No. 79-729 (1979) and the implementation of the Act by Sumter County will not have the proscribed discriminatory purpose or effect. Therefore the Attorney General must interpose an objection consistent with the burden of proof placed on the submitting authority. However, we iterate our willingness to evaluate the changes on the merits pursuant to a request for reconsideration that responds to the questions found at No. 4, above (except item found at No. 4(b)), including the questions that arose from your November 26, 1979, response, and at No. 7, above. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the implementation of Act 79-729 (1979) legally unenforceable.

If you have any questions concerning the matters discussed in this letter or if we can aid you in any way to obtain the information requested, please do not hesitate to call Ms. Elda Gordon (202--724-6675) who has been assigned to handle this submission. Please refer to File No. C6237 in any written response to this letter and address all correspondence to the Assistant Attorney General, Civil Rights Division, Department of Justice, Washington, D. C. 20530. The envelope and first page should be marked "Submission Under Section 5, Voting Rights Act". Your cooperation will insure that your correspondence will be properly channeled.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

cc: Lynda F. Knight, Esq.