

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

26 OCT 1981

Honorable F. R. Albritton, Jr.
Probate Judge, Wilcox County
Post Office Box 660
Camden, Alabama 36726

Dear Judge Albritton:

This is in reference to Act No. 81-383, which requires a purge and reidentification of voters in Wilcox County, Alabama, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Your submission was completed on August 26, 1981.

As a backdrop to our analysis, we note that a submitted voting practice or procedure may not be precleared under Section 5 unless the Attorney General is persuaded that the practice or procedure does not have the purpose of denying or abridging the right to vote on account of race, color, or membership in a language minority group and will not have that effect. See Beer v. United States, 425 U.S. 130 (1976); State of Mississippi v. United States, 490 F. Supp. 569, 581 (D.D.C. 1979), aff'd, 444 U.S. 1050 (1980). The burden of proof, "by a preponderance of the evidence," is on the submitting authority. City of Port Arthur, Texas v. United States, 517 F. Supp. 987, 1011 (D. D.C. 1981). It is in this context we have considered the information provided by you, relevant Census data, and the information and comments from other interested parties. We also have found pertinent to our analysis the history of Wilcox County as it pertains to racial discrimination in the voting process, the 1980 purge and resulting litigation, the present status of black voting activity in the county, as well as the likely effect this reidentification and purge will have on the voting strength of the black population as compared with its effect on the white population.

cc: Public File

At the outset, our analysis shows that the right to vote in Wilcox County and in the State of Alabama historically has been denied or abridged on account of race or color and that the State of Alabama and Wilcox County have adopted and seek to implement the submitted practices over the strong opposition of black residents, who constitute 69 percent of the county's population. Our analysis further shows that because of the continuing effects of past resistance to black voting participation, the lower socio-economic status of the black population, the limited hours and locations at which reidentification can be accomplished, and the generally restrictive manner in which one would have to go about perfecting his or her reidentification, the burden cast by this process upon blacks would be much greater than on whites and would make it much more difficult for registered blacks to preserve their voting status. This becomes particularly significant to the determination we must make, since our analysis also shows that the county was not limited in the procedures it could have adopted to accomplish a legitimate reidentification.

In addition, the county has not demonstrated why current state law providing for the purging of registered voter lists is not adequate for the maintenance of accurate registered voter rolls. We further call your attention to the provisions of 45 C.F.R. Part 801, Subpart D, which prescribes the method for removing the names of persons whose names are contained on the registration lists of Wilcox County as a result of their having been listed as voters by federal examiners, under the provisions set forth in 45 C.F.R. Part 801, Subpart C. According to our information, a total of 3,667 black and 11 white persons have been listed by federal examiners. Failure to comply with the provisions of Subpart D of 45 C.F.R. Part 801, in addition to being a violation of the regulations, would have a disparate impact on black voters.

Under these circumstances, therefore, I am unable to conclude, as I must under the Voting Rights Act, that the conduct of this purge and reidentification as presently authorized does not have the purpose or effect of denying or abridging the right to vote on account of race or color. Accordingly, on behalf of the Attorney General, I must interpose an objection to the implementation of the purge and reidentification of voters set forth in Act No. 81-383.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (Section 51.44, 46 Fed. Reg. 878) permit you to request the Attorney General to reconsider the objection. In this regard, should the county take steps to extend the reidentification period until the end of 1982 and allow reidentification at the polls for the primary and general elections in 1982; use additional days and hours for reidentification including additional time to reidentify in the beats; use deputy registrars, including minorities, to assist in the reidentification in a meaningful way at times and places convenient to the voters; provide effective notice to the persons whose names are removed for failure to reidentify, we will reconsider our objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make Act No. 31-383 legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter of the course of action Wilcox County plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Carl Gabel (202-724-7439), Director of the Section 5 Unit of the Voting Rights Section.

Sincerely,

Mr. Bradford Reynolds
Assistant Attorney General
Civil Rights Division