U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

January 15, 1985

Honorable Jim Smith
Attorney General
Department of Legal Affairs
The Capitol
Tallahassee, Florida 32304

Dear Mr. Attorney General:

This refers to voting changes occasioned by House Bill No. 619 (1984) for the State of Florida, 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 initial submission on August 27, 1984; supplemental information was received on November 16, 1984.

According to information provided in support of your submission, House Bill No. 619 amends the voter assistance provisions of the Florida Election Code, Section 97.061(3) and Section 101.051(1) and (3), to bring those provisions into compliance with Section 208 of the Voting Rights Act. 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.

Under amended Section 97.061(3) and Section 101.051(1), a voter who qualifies to receive assistance in casting a ballot may, in the alternative, receive assistance from "two election officials" or another person of the voter's choice. In view of the choice provided to the voter, we believe that these provisions

are in substantial compliance with Section 208 and, therefore, the Attorney General interposes no objection to the changes involved in those sections of the Election Code.

On the other hand, amended Section 101.051(3) provides that a voter who needs assistance when marking an absentee ballot and preparing the certification in the office of the supervisor of elections is not permitted to receive assistance from the supervisor of elections, his deputies, or members of his staff. It is our view that this restriction in Florida law would contravene the provisions of the federal statute.

Under Section 208, a state can take reasonable steps to insure that only persons entitled to receive assistance actually receive assistance and to prevent the assistance process from being used for fraudulent purposes. Such steps, however, must not be allowed to compromise the basic Section 208 principle that the voter is entitled to decide who will actually assist him or her in the voting process. It appears to us that Congress considered it would be a sufficient safeguard of the voter in need of assistance and of the integrity of the electoral process for the voter to be permitted a free choice of the person who would give help. When a voter is able to choose someone that is trusted, it should not matter whether that person is an elections official such as the supervisor of elections or his deputy or his staff.

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. Therefore, on behalf of the Attorney General, I must interpose

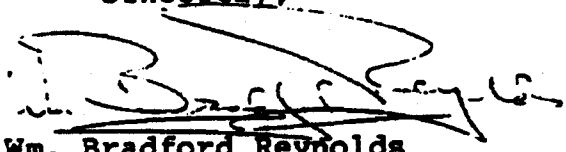
an objection to the prohibition on a voter's use of the supervisor of elections, his deputies, or members of his staff from providing assistance during the absentee ballot process.

The Attorney General does not interpose any objections to Sections 97.061(3) and 101.051(1) of the Election Code or other voting changes in House Bill No. 619 (1984). However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. See also 28 C.F.R. 51.48.

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 none of these changes has either the purpose or will have the effect of denying or abridging the right to vote on account of race or color. 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 the provisions of Section 101.051(3) 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 State of Florida plans to take with respect to the voter assistance provisions. If you have any questions, feel free to call Sandra S. Coleman (202-724-6718), Director, Section 5 Unit of the Voting Section.

Sincerely,



Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division