



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

Honorable Michael Bowers
Attorney General
State of Georgia
Department of Law
132 State Judicial Building
Atlanta, Georgia 30334

18 SEP 1981

Dear Mr. Attorney General:

This is in reference to Act No. 793, H.B. No. 405 and No. 794, H.B. No. 406 (Ga. Session Laws of 1981), amending certain provisions of the State and Municipal Election Codes which were submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Your submissions were completed on July 20, 1981.

The Attorney General does not interpose any objections to the changes in question except with regard to Sections 2, 6 and 8 of Act No. 793 (1981) and Sections 2, 6 and 8 of Act No. 794 (1981).

Section 2 of Act Nos. 793 and 794 amend Georgia State and Municipal Election Code provisions dealing with voter registration by requiring that all voter registration applicants furnish "proper identification" in order to register to vote. Section 2 further provides that a valid driver's license, birth certificate or any other document reasonably reflecting the true identity of the applicant will constitute proper identification.

We have given careful consideration to the information submitted by you, available statistical data, and comments and views presented by other interested persons. From our analysis it would appear that the proposed identification requirement leaves it up to the discretion of the individual board of registrars, who are the ultimate administrators of voter registration procedures, to determine the type(s) of identification which would be considered adequate if neither one of the enumerated types of identification is furnished by the applicant seeking to register.

Although your letter of July 9, 1981, indicated a list of forms of identification which in the judgment of the Georgia Secretary of State would be adequate to satisfy the proposed identification requirements, to date we have not been advised of any official pronouncement of the Secretary of State's views which would serve to guide the otherwise broad discretion which the individual boards of registrars presently would seem to have in administering the new identification requirement.

Our analysis further shows that according to the 1980 Census figures and information compiled by the Georgia Board of Elections Office during 1980 and 1981, a substantially smaller proportion of the black voting age population in the State is registered than of the white voting age population.

Given the extent of the discretion which the new identification provisions allow for their administration and the uncertainty as to what, if any, will be the Secretary of State's official guidelines in the enforcement of these provisions, the Attorney General cannot conclude that the State has satisfied its burden of showing that the new identification requirements will not bear a disparate impact upon blacks who have been shown to have a lower voter registration rate than that of whites.

Sections 6 and 8 of Act Nos. 793 and 794 amend Georgia State and Municipal Election Code provisions relating to assistance in voting by reducing the number of illiterate or disabled voters which one person may assist in voting, regular and absentee, from ten to five. In this regard the Attorney General interposed an objection in 1968 to a similar reduction in voting assistance. At that time the Attorney General could not conclude that the proposed reduction in assistance would not have the proscribed effect under Section 5. Our analysis leaves us similarly unable to reach such a conclusion at this time.

First, our analysis reveals that a disproportionately larger number of black than white voters depend on assistance in order to effectively exercise their right to vote. For instance, according to the 1970 Census, 32 percent of blacks aged 25 and over have completed less than five years of school compared to eight percent of whites aged 25 and over. Further, it is our experience, based on the observation of a number of elections in Georgia, that in fact the vast majority of voters who request assistance because of illiteracy are black. Our research and experience as well as our conversations with interested parties indicate that it is common for more than five black voters to receive assistance from the same person. This is specially true in the smaller, yet more heavily black populated counties of rural Georgia where political activity on the part of blacks has increased significantly in the recent past.

Finally, we note that the court has expressly considered the merits of the State's present limit of ten voters for each assistor and found it to be a "reasonable" number for serving the double purpose of keeping down partisanism and making the franchise effective to the illiterate voter. Morris v. Fortson, 261 F. Supp. 538, 541 (N.D. Ga. 1966).

Under these circumstances, therefore, I am unable to conclude that the State has carried its burden of showing that either of these changes does not have the purpose or effect of discriminating on the basis of race or color. Accordingly, I must, on behalf of the Attorney General, interpose an objection to the implementation of Sections 2, 6 and 8 of Acts No. 793 and 794 (1981) as presently written.

While our responsibilities under Section 5 of the Voting Rights Act require me to reach this conclusion, I certainly recognize the State's interest in taking steps to guard against fraud in the registration and election process. In that regard, we note that earlier this year we precleared identification verification procedures for Fulton County, Georgia, which we understood were designed to reduce fraudulent registrations but which were reasonable and clearly defined as to their operation. We would be similarly satisfied if the Secretary of State, by regulation or through some other official directive, issued a list of forms of identification similar to the one informally proposed to us in response to the request for additional information that could be used under Section 2 of the Act Nos. 793 and 794.

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 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 (28 C.F.R. 51.21(b) and (c), 51.23, and 51.24) permit you to request the Attorney General to reconsider this objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of this objection is to make the provisions objected to 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 what course of action the State of Georgia plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Carl W. Gabel (202-724-7439), Director of the Section 5 Unit of the Voting Section.

Sincerely,



Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division