



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20535

FEB 11 1992

Mark H. Cohen, Esq.
Senior Assistant Attorney General
132 State Judicial Building
Atlanta, Georgia 30334

Dear Mr. Cohen:

This refers to the amendments to State Election Board Rules 183-1-6-.03(3)(o)(2) and 183-1-6-.03(4)(a) and (e) which provide for the maintenance of voter registration cards at permanent satellite registration locations, reduce the minimum number of permanent satellite voter registration locations to be established by certain counties, and eliminate the requirement for Saturday registration hours for satellite voter registration locations in the period outside the six months preceding the close of registration for November general elections in even-numbered years, in the State of Georgia, 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 most recent response to our request for additional information on December 13, 1991.

With respect to the amendment concerning the maintenance of voter registration cards, the Attorney General does not interpose any objection to that change. However, we note that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

With respect to the other submitted changes, however, we are unable to reach the same conclusion. At the outset, we note that in 1984 the State Board of Elections enacted regulations which established minimum requirements for the provision of satellite registration opportunities, both with respect to the number of locations that each county must establish and the days and hours

of operation. As stated in the regulations, the minimum requirements were adopted to "increase the level of participation in the elective process ... [and] to make voter registration in Georgia as convenient and as easy as practicable...." To that end, the regulations include a formula specifying the minimum number of satellite locations in each county and require that satellite locations be open a minimum number of weekend and weekday evening hours in order to serve their intended function.

While there has been substantial progress since the adoption of the Voting Rights Act in 1965, blacks of voting age continue to register at a relatively low rate and at a significantly lower rate than voting age whites. As of the November 1990 general election, only 52.3 percent of voting age blacks were registered compared to 62.1 percent of eligible whites. Thus, efforts by the state to expand voter registration opportunities are particularly important to its black citizens and we understand that generally blacks have actively sought to utilize the satellite locations mandated by the state's minimum requirements.

The state now proposes to eliminate any requirement for satellite registration hours during 18 months of the state's two-year election cycle, or in other words three-fourths of the program by time period, leaving in place the requirements for the six months preceding the close of registration for the November general election in even-numbered years. The state justifies this seemingly major curtailment of its program by contending that during this 18-month period residents have a minimal interest in registering, apparently because the next significant election is not close upon them. This conclusion is based in large part on a survey conducted by the state of voter registrations that occurred from January 1985 to October 1986. However, that survey reported that nearly half (46%) of all registrations occurred during the alleged "low-interest" period (January 1985 through March 1986), and during that period 35 percent of the registrants registered at a satellite location.

Moreover, the state appears to have ignored the fact that potentially significant elections regularly occur during the 18-month period, which in turn may well prompt a substantial interest in registering to vote. The state's presidential primary occurs in March (the state did not survey an election cycle including a presidential primary) and municipal general elections occur in November of odd-numbered years (the state adopted this uniform date after the survey was conducted).

The state also proposes to alter the formula for determining the minimum number of satellite locations in the state's larger counties. Based on 1990 Census data, this apparently will affect 35 counties, of which 19 have black population percentages

greater than 20 percent. This reduction in the minimum requirements will apply across-the-board, in both the "high-interest" and the "low-interest" period. Again, however, the data obtained by the state in its survey offers no indication that there is an overabundance of satellite locations. While some of the affected counties voluntarily provide more locations than the minimum required, others do not, and the proposed reduction would appear to signal all the affected counties that a retrenchment is appropriate.

We are aware that the state has received complaints from election officials that the current minimum requirements are unworkable and that, for example, there are certain periods of time during which relatively few persons register to vote. These concerns, however, do not appear to justify the broad changes now proposed which, among other things, fail to take into account voter registration activity associated with all the state's regularly scheduled primary and general elections.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory 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. 51.52). With respect to the effect prong of the Section 5 standard, a change may not be precleared "that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 130, 141 (1976). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the state's burden has been sustained in this instance with respect to the proposed alterations to the minimum requirements for satellite registration locations. Therefore, on behalf of the Attorney General, I must object to the changes occasioned by the amendments to Rules 183-1-6-.03(4)(a) and (e).

We hasten to add, however, that our determination here with respect to the specific changes adopted by the state should not be taken as precluding the state from modifying its minimum requirements in a way which targets the specific needs of its registration system without limiting access of minorities to register to vote.

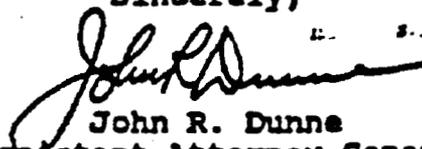
We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the objected-to changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, you may 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

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objected-to changes continue to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of Georgia plans to take concerning these matters. If you have any questions, you should call Mark A. Posner (202-307-1388), an attorney in the Voting Section.

Sincerely,



John R. Dunne
Assistant Attorney General
Civil Rights Division