



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

October 24, 1994

Dennis R. Dunn, Esq.  
Senior Assistant Attorney General  
40 Capital Square, S.W.  
Room 132  
Atlanta, Georgia 30334-7298

Dear Mr. Dunn:

This refers to the submission to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, of Act No. 1207 (1994) of the State of Georgia, which adopts changes (listed in Attachment A) to voter registration and related procedures to, inter alia, implement the National Voter Registration Act of 1993 ("NVRA"), 42 U.S.C. 1973gg et seq. We received your responses to our request for additional information on August 24 and October 18, 1994; other supplemental information was received on October 20, 1994.

We have given careful consideration to the information you have provided, as well as to information from other interested persons. Except as set forth below, the Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41). In this regard, the granting of Section 5 preclearance does not preclude the Attorney General or private individuals from filing a civil action pursuant to Section 11 of the NVRA, 42 U.S.C. 1973gg-9.

We cannot reach the same conclusion with respect to the procedures for removing registered voters from the registration list, insofar as the procedures provide for sending a registration confirmation notice to persons who have not voted or otherwise had "contact" during a three-year period. In this regard, we note that the NVRA specifically provides with respect to such voter removal procedures that the procedures "shall not result in the removal of the name of any person from the official list of voters registered to vote in an election for Federal office by reason of the person's failure to vote." Section 8(b)(2), 42 U.S.C. 1973gg-6(b)(2).

Under the proposed procedures, registered voters in Georgia who fail to vote (or otherwise have "contact" with the election administration system) during a three-year period would be specifically targeted to be included in the state's purge procedures. This result is directly contrary to the language and purpose of the NVRA, and is likely to have a disproportionate adverse effect on minority voters in the state. The proposed procedures thus appear to eliminate certain of the gains to minority voters mandated by Congress in enacting the NVRA and, accordingly, "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).

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. Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained with regard to the specified voter removal procedures. Therefore, on behalf of the Attorney General, I must object to the voter removal procedures proposed by Act No. 1207 insofar as they provide a "no contact" rule for triggering the mailing of a registration confirmation notice.

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 proposed changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the objected-to change continues to be legally unenforceable. See Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

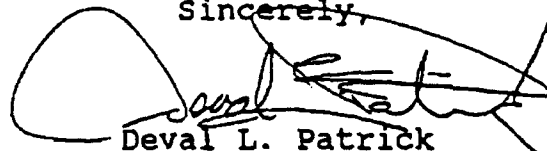
In addition, there are two other NVRA compliance issues raised by Act No. 1207. First, Act No. 1207 may be read as requiring that a registrant placed on the inactive registration list will be purged unless the person votes within the prescribed period, although the NVRA specifies that appearing to vote (without voting) will terminate the purge process for that voter. Section 8(d)(1), 42 U.S.C. 1973gg-6(d)(1). However, in your letters of October 18 and 20, 1994, you clarified that appearing to vote or otherwise having "contact" during the prescribed period is sufficient to avoid being purged. Second, the NVRA requires that agencies designated for voter registration include "all offices in the State that provide State-funded programs primarily engaged in providing services to persons with disabilities." Section 7(a)(2)(B), 42 U.S.C. 1973gg-5(a)(2)(B).

Act No. 1207 designates only offices that provide such programs to persons with physical disabilities, a limitation not provided in the NVRA. We understand that the state is reviewing this matter and is considering whether the secretary of state should exercise the discretionary authority granted by Act No. 1207 to designate as voter registration sites those agencies that provide programs to persons with nonphysical disabilities.

Finally, we note that the preclearance of those provisions of Act No. 1207 that enable or permit the state or its political subdivisions to adopt future voting changes does not constitute preclearance of those future changes and, accordingly, Section 5 review will separately be required when those changes are adopted or finalized. See 28 C.F.R. 51.15. The matters for which Section 5 review will be required include (but are not limited to): the designation of additional locations where registration may occur or changes in existing locations; the statewide voter registration application and any other forms developed to implement the NVRA; the procedures to be used to integrate voter registration into the driver's license application, renewal, and updating process; and the cost or charge prescribed for a copy of the voter registration list.

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 this matter. If you have any questions, you should call Special Section 5 Counsel Mark A. Posner, at (202) 307-1388.

Sincerely,

A handwritten signature in black ink, appearing to read "Deval Patrick", written over a horizontal line. The signature is stylized and somewhat cursive.

Deval L. Patrick  
Assistant Attorney General  
Civil Rights Division

Attachment A -- Changes Enacted by Act No. 1205 (1994)

1. Assignment of responsibility to the Georgia Secretary of State to coordinate implementation of the NVRA, and to establish and maintain the lists of active and inactive registered voters.

2. Adoption of the registration form prescribed by the Federal Election Commission and promulgation of a uniform statewide voter registration application by the Georgia Secretary of State.

3. Voter registration by the state Department of Public Safety (including the adoption of procedures and a voter registration application).

4. Voter registration at "voter registration agencies," including every office that provides public assistance, every office that provides state funded programs primarily engaged in providing services to persons with physical disabilities, every armed forces recruitment office, and other offices to be designated by the Georgia Secretary of State (including promulgation of a voter registration inquiry/declination form by the Georgia Secretary of State).

5. Voter registration by mail (including the promulgation of a mail registration application by the Georgia Secretary of State).

6. An amendment to the list of permissible satellite registration locations.

7. Procedures when insufficient or false information is provided on a voter registration application.

8. Standards governing voter registration deadlines and the acceptance of voter registration applications, and the preparation of registration lists.

9. The requirement that voter registration applicants be notified of the disposition of their applications.

10. Amended procedures concerning registrants who move or whose registration record reflects that they have moved.

11. An amended registration card.

12. Procedures for voter registration list maintenance, including the placement of registrants on and the use of an inactive registration list, and the removal of names from the list of eligible registered voters.

13. Amended procedures governing challenges to the eligibility of persons to register and vote.

14. The provision that the appointment of deputy registrars is discretionary rather than mandatory.

15. Amended qualifications for registrars and deputy registrars.

16. A definition of which voter registration information is public (including authorizing the Georgia Secretary of State to establish by rule or regulation the cost to be charged for a copy of a registration list).

17. Procedures for use of county registration lists in municipal elections, and the discontinuation of existing municipal separate registration systems.

18. Penalties for unlawful voter registration conduct.

19. Provisions regarding registration using the post card application provided by the Overseas Citizens Absentee Voting Act and related matters.