



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

22 FEB 1983

William S. Boyd, III, Esq.
Special Assistant Attorney General
P. O. Box 220
Jackson, Mississippi 39205

Dear Mr. Boyd:

This is in reference to H.B. No. 828, Chapter 477 (1982), which establishes the dates for conducting political party primary elections, as well as the qualifying time for independent candidates for general elections in the State of Mississippi, 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 December 22, 1982.

Our analysis shows that the provisions of the submitted legislation would require independent candidates to qualify at the same time as political party candidates and would reduce the time between the primary and general elections. In reviewing this matter, we have considered carefully all of the information provided by you as well as information and comments from other interested parties. We have given particular attention to the legislative history of H.B. No. 828 and the history of independent candidacies in Mississippi, including information in our files regarding the objections under Section 5 of May 21, 1969, and June 4, 1975, to similar provisions and the objection to the 1979 open primary bill (Chapter 452, Laws of 1979).

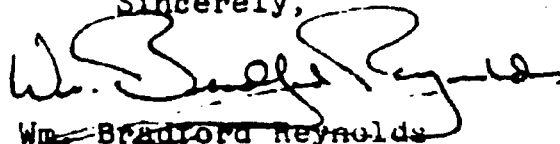
As in our previous reviews, our present analysis indicates that the independent candidacy is a frequently used means of getting on the ballot in Mississippi and that the vast majority of independent candidates in recent years have been black. Accordingly, it would appear that the change in the qualifying date for independent candidates, as well as the change in the primary schedule, not only increases the difficulties faced by independent candidates but, concomitantly, will have a disparate impact on black candidates and their constituencies who, in Mississippi, traditionally have been black voters. Likewise, our review of the legislative history of H.B. No. 828 suggests that it may have been enacted for the proscribed racial purpose.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of proving 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 light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the implementation of H.B. No. 828.

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 these 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, Section 51.44 of the guidelines permits you to request the Attorney General to reconsider the 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 the implementation of H.B. No. 828 (1982) legally unenforceable. See also 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 Mississippi plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Carl W. Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,



~~Wm. Bradford Reynolds~~
Assistant Attorney General
Civil Rights Division