

April 16, 1984

John L. Hatcher, Esq.  
Bolivar County Board of  
Election Commissioners  
P. O. Box 937  
Cleveland, Mississippi 38732

Dear Mr. Hatcher:

This refers to Orders 1983-1, 1983-2, 1983-3, and 1983-4 concerning changes in voting procedures by Bolivar County, Mississippi, 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 the information to complete your submission on February 16, 1984.

The Attorney General does not interpose any objection to the exclusion of certain public officials from serving as managers, clerks, bailiffs, or poll watchers and the change in distance from the poll in which campaign literature may be distributed. 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 the Procedures for the Administration of Section 5 (28 C.F.R. 51.48). In addition, because Order 1983-2 would appear to make no change in the current practice of allowing unauthorized persons to be no closer than 30 feet to the polls, the Attorney General will make no determination concerning that provision. See also 28 C.F.R. 51.33.

Our analysis of the remainder of your submission shows that Orders 1983-1 and 1983-3 would prohibit certain public officials, candidates, and poll watchers from assisting blind, disabled, or illiterate voters. Order 1983-4 would require a local poll official to observe the assistance given in any case where a federal observer is not present.

cc: Public File

Section 208 of the 1982 Amendments to the Voting Rights Act of 1965 (Sec. 5, H.R. 8112, 97th Cong., 2d Sess.) provides:

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.

While we note your contention that Section 208 allows local jurisdictions to impose certain limitations upon such assistance to voters, we have been provided with no authority for that position nor have we been able to find any. From all that we can determine, the limitations sought to be imposed on the category of persons from which a qualifying voter may choose an assistor is in direct contravention to the letter and intent of Section 208. Similarly violative of Section 208, in our view, would be the requirement that certain officials observe the vote of those protected by the Act, in spite of the desires or wishes of the voter.

In addition our review of the information you have provided, as well as information received from other interested parties, shows that these provisions also may have the effect of reducing the participation of illiterates in the election process. Because the overwhelming majority of voters who require assistance in Bolivar County due to their inability to read and write are black, the implementation of these provisions likely will have an adverse racial impact on black voters. Also, with respect to the change sought to be accomplished by Order 1983-4, I note that on July 6, 1979, the Attorney General, pursuant to Section 5 of the Voting Rights Act, objected to a similar provision which would have permitted observation of the assistance process by poll managers in the State of Mississippi. A copy of that letter is enclosed for your convenience.

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) and 28 C.F.R. 51.39(e). In light of the considerations discussed above I cannot conclude that that burden has been met in this instance. Therefore, on behalf of the Attorney General, I must object to the provisions which prohibit certain public officials, candidates, and poll watchers from assisting blind, disabled, or illiterate voters and the requirement that a local poll official observe assistance.

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 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 which prohibit certain public officials, candidates, and poll watchers from assisting blind, disabled, or illiterate voters and require that a local poll official observe assistance 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 Bolivar County Board of Election Commissioners plans to take with respect to this matter. If you have any questions, 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