



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

Mr. Alex K. Brock
Executive Secretary-Director
Suite 801 Raleigh Building
5 West Hargett Street
Raleigh, North Carolina 27601

APR 11 1986

Dear Mr. Brock:

This refers to the following changes affecting voting for the State of North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c: Chapter 262, H.B. No. 367 (1965), which established a numbered post requirement for the election of superior court judges; Chapter 997, S.B. No. 557 (1967), which provided for additional superior court judgeships for Judicial Districts 12, 18, 19, 26, and 28, and specified the date on which the initial full terms of office commenced; Chapter 1119, S.B. No. 125 (1977), which provided for additional superior court judgeships for Judicial Districts 3, 4, 8, 10, 12, 14, 19, 20, 22, and 26, and specified the date on which the initial full terms of office commenced; Chapter 1130, S.B. No. 224 (1977), which divided Judicial District 15 for the purpose of electing superior court judges, allocated the pre-existing superior court judgeship to District 15A, provided for an additional superior court judgeship for District 15B, divided Judicial District 27 for the purpose of electing superior court and district court judges, allocated preexisting superior court and district court judgeships between the divided districts, provided for an additional district court judgeship for District 27B, and specified the date on which the new judge's initial full term of office commenced; the administrative decision which specified the date on which the initial full term of office commenced for the judgeship added to District 15B by Chapter 1130 (1977); Chapter 1238, S.B. No. 996 (1978), which divided Judicial District 19 for the purpose of electing superior court judges, and allocated preexisting superior court judgeships

between new Districts 19A and 19B; Chapter 1109, H.B. No. 1551 (1984), which provided for additional superior court judgeships for Districts 1, 9, 18, and 30, provided additional district court judgeships for Districts 2 and 12, and specified the date on which the new judges' initial full terms of office will commence; and Chapter 654, S.B. No. 329 (1965), which provided for additional superior court judgeships for Districts 10, 21, and 27, and specified the date on which the initial full terms of office commenced. Your submission of Chapters 262, 997, 1119, 1238, and 654 was completed on February 10, 1986. Chapters 1130 and 1109 were submitted on February 18, 1986.

We have considered carefully the information you have provided, as well as comments and information from other interested parties. With the exception of the numbered post requirement instituted by Chapter 262 (1965) and the staggered terms of the superior court judgeships created by Chapter 997 (1967) and Chapter 1119 (1977) in Districts 3, 4, 8, 12, 18, and 20, the Attorney General does not interpose any objection to the changes in question. 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. In addition, as authorized by Section 5, the Attorney General reserves the right to reexamine the submission of Chapter 1130 (1977) and Chapter 1109 (1984) if additional information that would otherwise require an objection comes to his attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.42 and 51.48).

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 28 C.F.R. 51.39(e). In measuring discriminatory effect, we must examine the changes in the context of the currently existing conditions. City of Rome v. United States, 446 U.S. 156, 186 (1980).

The use of numbered posts, in combination with staggered terms for superior court judgeships in some districts, precludes minority voters from effective use of the election technique of single-shot voting, a technique that was available prior to the 1965 change. The elimination of the opportunity to single-shot vote plainly has a retrogressive effect in some districts on the ability of the minority community to participate meaningfully in the election of superior court

judges. See, e.g., City of Rome v. United States, supra, 446 U.S. at 183-85. Our analysis indicates that the covered districts with minority voting age population of sufficient size to make single-shot voting effective are Districts 9, 12, and 18, as well as potentially Districts 1, 3, 4, 8, and 20.

In these circumstances, I am unable to conclude, as I must under the Voting Rights Act, that the state has sustained its burden in this instance of demonstrating the absence of discriminatory effect. See Beer v. United States, 425 U.S. 130, 141 (1976). Therefore, on behalf of the Attorney General, I must object to Chapter 262 (1965) and the staggered terms of the superior court judgeships created by Chapter 997 (1967) and Chapter 1119 (1977) in Districts 3, 4, 8, 12, 18, and 20 (the information provided by the state indicates that the terms of the judges in Districts 1 and 9 already are concurrent).

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 objected-to changes 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 State of North Carolina plans to take with respect to this matter. If you have any questions, feel free to call Mark A. Posner (202-724-6302), Attorney/Reviewer of the Section 5 Unit of the Voting Section.

Sincerely,



Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division