

APR 6 1981

Honorable Bill Allain  
Attorney General  
State of Mississippi  
Jackson, Mississippi 39205

Dear Mr. Attorney General:

This is in reference to House Bill 674 (Chapter 487) of the Mississippi Legislature, 1979 Regular Session, which establishes a new system of maintaining registration books and poll books (Sections 1, 2 and 5) and prohibits campaigning within five hundred feet of a polling place (Section 4), 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 February 3, 1981.

We have given careful consideration to the changes and to the supporting materials you have provided as well as to comments from other interested parties. Our analysis reveals that no notice will be provided to any person whose name is purged from the registration or poll books, and thus, there is no provision for an opportunity to become promptly reregistered or reinstated on the registration rolls. While the challenge ballot procedure appears to be a means of having a name reinstated on the registration and poll books, there appears to be no provision for maintaining a record of those who could qualify for such reinstatement, since the act does not provide a procedure for retention of a list of names of those purged from the registration and poll books pursuant to Sections 1 and 2. Further, there is no notice procedure to advise a voter that his or her name has been restored.

We have also considered the history of black voter registration in the state and the difficulty experienced by blacks in registering over the years. In addition, we have received your proffered justification for purging the names of those persons who have not voted in one election for four years; namely, the necessity to summon more people to attend a particular term of jury duty than would normally be required if

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there was timely removal of qualified electors who had not voted within the last four years. We do not believe that the added convenience, if any, of calling fewer jury summonses justifies the removal of names from the registration rolls under the circumstances proposed by the State, absent better safeguards for preserving the rights of qualified voters, particularly among blacks.

In this connection, we might point out that the United States District Court for the District of Columbia in Mississippi v. United States, 490 F. Supp. 589 (1979), aff'd, 444 U.S. 1050 (1980) found that

The effect of Mississippi's past history of racial discrimination in voting and other areas continues to affect black people in many portions of the state today, which has resulted in a generally lower participation by blacks than whites in the political process. Consequently, proportionally fewer blacks are registered to vote than whites, and black voters turn out at the polls at a lower rate than white voters.

Thus, the effect of a purge, without the safeguards alluded to above, likely will be a disparate impact on black potential voters.

We also wish to point out that while we can appreciate the state's interest in maintaining current and accurate poll books a major concern we have with the new system of maintaining the poll books is the failure of the Act to provide for adequate notice of removal so that removed persons may be reinstated prior to, or at, the next or subsequent election. We are also concerned with the failure of the Act to provide for some procedure for reidentification or reregistration should the person appear to vote at the time of the next election. The use of the challenge ballot procedure, which may be applied differently by different poll managers and the absence of a requirement under state law that the list of purged voters be maintained to facilitate reinstatement under the challenged ballot procedure, would not appear to provide adequate protection.

We have also given careful consideration to Section 4 of House Bill 674, prohibiting distribution of campaign literature within 500 feet of the polling place. Our research revealed that minority candidates in many instances are not able to afford passive campaigning and have limited

access to the media; our information is that they depend to a substantial extent on the opportunity to distribute handbills and literature at the polls on election day. The distance of 500 feet in lieu of the present 150 feet appears to be an excessive increase and could possibly present a hardship on candidates and their supporters' campaignes. Also, as a practical matter, many black voters who are illiterate obtain assistance by selecting persons to assist them who are near the polling places and the way, or way out, for distributing campaign materials. The increased distance where these persons would have to stay under the proposed change likely will result in many illiterate voters not being able to obtain assistance by a person of their choice.

We also note that this provision was enacted at the same session of the Legislature which enacted H.B. 854, which among other things, provided that a person could assist no more than five persons requiring assistance on account of illiteracy or blindness. An objection to the limitation on assistance imposed by H.B. 854 was interposed by the Attorney General on July 6, 1978. As stated in that letter of objection, our experience has been that a vast majority of persons in Mississippi requiring assistance because of illiteracy is black and a restriction on the ease by which assistance is provided will have a greater impact on black voters.

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, e.g., Garrett v. United States, 411 U.S. 524 (1973); see also Section 51.26(r) of the procedures for the Administration of Section 5 (44 Fed. Reg. 878). 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.

Accordingly, and for the reasons stated above, I must, on behalf of the Attorney General, object to the new system for person registration and poll books (Sections 1 and 2) and increasing from 150 to 500 feet the distance within which campaign material may not be distributed around a polling place (Section 4), embodied in House Bill No. 734 (Chapter 487 (1978)).

The Attorney General does not interpose any objection to Section 5 of House Bill 674. We would like to note, however, that a repeal of this Section may result in an absence of any provision allowing a purge of voters for the reasons set forth in Section 5 of House Bill 674. We also would like 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 change.

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 those changes neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (Section 41.44, 48 Fed. Reg. 674) permit 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 Sections 1, 2 and 4 of House Bill No. 674 of 1978 legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter 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 (202-724-7439), Director of the Section 5 Unit of the Voting Section.

Sincerely,

James P. Turner  
Acting Assistant Attorney General  
Civil Rights Division