U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

July 1, 1986

Stephen J. Kirchmayr, Esq.
Deputy Attorney General
P. O. Box 220
Jackson, Mississippi 39205-0220

Dear Mr. Kirchmayr:

This refers to the statutes specified in Attachments A and B which provide, inter alia, for the addition of judges to single-judge districts and establishment of district-wide, at-large elections with single-shot voting prohibited; the addition of judges to multi-judge districts in effect on November 1, 1964; the creation of one new circuit court district and two new chancery court districts; and the recodification of judicial district boundary lines in state circuit and chancery court systems for 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. We received the information to complete your submission on May 28, 1986; supplemental information relevant to our determination was received on June 2, 1986. In accordance with your request, expedited consideration has been given this submission pursuant to the Procedures for the Administration of Section 5 (28 C.F.R. 51.32).

At the outset, we note that the state previously has submitted one statute that is included in the instant submission. We precleared Chapter 481 §§ 2-4 (1982), which temporarily created a multi-judge district in the Twentieth Circuit Court District, on October 6, 1982. Therefore, no further determination is required or appropriate under Section 5. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.33).

cc: Public File

With regard to Chapter 332 §§ 1.1, 1.3, 2 (1970); Chapter 329 §§ 1(1), 1 (3), 2 (1971); Chapter 305 §§ 1.1, 1.4, 2 (1971); Chapter 335 §§ 1.1, 1.3, 1.5, 2 (1966); Chapter 427 §§ 1.1, 1.3, 2 (1971); Chapter 347 §§ 1, para. 1, 2 (1973), it appears to us that these provisions merely reprint the text of statutes that were adopted prior to the state's coverage under the Voting Rights Act. Therefore, the Attorney General will make no determination concerning these provisions. See 28 C.F.R. 51.4(b). In addition, one pending provision, Section 43 of Chapter 502 (1985), relates to the scheduling of "vacation" hearings by a court, which is an administrative change that does not affect voting and is not subject to the preclearance requirements of Section 5. Accordingly, no determination is required concerning this provision. See 28 C.F.R. 51.33.

With regard to the voting changes effected by the following statutes, the Attorney General does not interpose any objection: Chapter 421 (1982) (Seventh Circuit); Chapter 420 (1982) (Eleventh Circuit); Chapter 344 (1971) (Seventh, Eighth, and Twentieth Circuits); Chapter 310 §§ 1, 3 (1972) (Eighth Chancery); Chapter 326 (1966) (Second, Twelfth, and Nineteenth Chancery); Chapter 322 §§ 1.1, 1.3, 2 (1968) (Nineteenth Chancery); Chapter 451 (1977) (Second and Twentieth Chancery); Chapter 355 (1982) (Twentieth Chancery); and Chapter 502, §§ 1-5, 7-42, 47,50 (1985). 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 this submission if additional information that would otherwise require an objection comes to his attention during the remainder of the sixty-day review period. See 28 C.F.R. 51.42 and 51.48.

The remainder of the submitted statutes affect the 24 single-judge judicial districts that the state has converted, since the effective date of Section 5, into multi-judge districts using district-wide, at-large election systems with numbered places. At the time that the state came under Section 5 coverage, there was no state constitutional provision or general legislation that required the use of an at-large/numbered place system in multi-judge judicial districts, and the state has not subsequently enacted any such provision. Therefore, every post-Act legislative choice of an election system for a newly created, multi-judge district is reviewable under Section 5.

We have considered carefully all of the information you have provided, together with Bureau of the Census data and information and comments provided by other interested parties. At the outset, we note that since the enactment of the Voting Rights Act, which afforded black citizens the opportunity for equal access to the political process, the state effectively has doubled the size of both its circuit and chancery court systems and that it has chosen to do this by converting single-judge judicial districts into multi-judge districts, rather than creating additional single-judge districts, as typically was done prior to November 1, 1964. In each case, the state incorporated a feature which precluded single-shot voting in the newly established multi-judge district notwithstanding that the concurrent terms for judges would have permitted single-shot voting if the state simply had added a judge to an existing district. In addition, the court in Kirksey v. Allain, No. J85-0960(B) (S.D. Miss. May 28, 1986) (order enjoining elections in multi-judge districts), noted that racial bloc voting likely is involved in elections in multi-judge districts in Mississippi, and the state has offered no basis for us to conclude otherwise.

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); see also 28 C.F.R. 51.39(e). The change from single-judge to multi-judge districts -- in the context of racial bloc voting and the anti-single-shot feature -- strongly suggests a retrogressive effect in black voting strength. In light of this consideration, which has not been adequately refuted by the state, I cannot conclude, as I must under the Voting Rights Act, that the burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the incorporation of anti-single-shot voting provisions in the 24 multi-judge circuit and chancery court districts created after November 1, 1964. The statutes affected by this decision are specified in Attachment B.

With regard to four of the judicial districts in which the objectionable anti-single-shot voting provision is part of the election method, we granted preclearance on May 23, 1986, on an expedited basis to provisions of Chapter 502 (1985) that converted a temporary multi-member judicial

district with an at-large/numbered place system into a permanent district. In the circumstances of expedited preclearance Section 5 provides that "the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section." See 28 C.F.R. 51.42. Our thorough review of all the information relevant to Chapter 502 (1985) and the other submitted statutes, including facts revealed or provided since May 23, 1986, has justified reexamination of our earlier decision. While we continue to have no objection to the use of multi-judge districts as such, for the reasons discussed above, I cannot now conclude that the state has satisfied its burden with regard to the imposition of an anti-single-shot voting provision in the election of judges under Sections 45, 48, 52, and 53 of Chapter 502 (1985). Accordingly, an objection to the permanent incorporation of that feature is likewise being interposed at this time.

Consistent with Section 5, the focus of the objection is the election system used in judicial districts that became multi-judge districts after November 1, 1964. The objection precludes further use of the anti-single-shot voting provisions in those districts. Nothing in the objection is intended to suggest that the circuit and chancery judges added to and elected from districts after that date have acted without full judicial authority granted them under the constitution and laws of Mississippi. We note that the terms of all affected judicial positions expire on December 31, 1986.

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 use of an anti-single-shot provision under the specified statutes 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 Mississippi plans to take with respect to this matter. If you have any questions, feel free to call Steven H. Rosenbaum (202-724-8388), Acting Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

Chapter (Year)	Circuit Court District
421 (1982)	Seventh
420 (1982)	Eleventh
332, §§ 1.1, 1.3, 2 (1970)	Nineteenth
329, §§ 1(1), 1(3), 2 (1971)	Nineteenth
481, §§ 2-4 (1982)	Twentieth
344 (1971)	Seventh, Eighth, and Twentieth
502, §§ 22-42 (1985)	All
502, § 50 (1985)	Seventh

Chapter (Year)	Chancery Court District
310, §§ 1, 3 (1972)	Eighth
305, §§ 1.1, 1.4, 2 (1971)	Fifteenth
335, §§ 1.1, 1.3, 1.5, 2 (1966)	Eighteenth
427, §§ 1.1, 1.3, 1.5, 2 (1971)	Eighteenth
347, §§ 1, para. 1, 2 (1973)	Eighteenth
326 (1966)	Second, Twelfth, and Nineteenth
322, §§ 1.1, 1.3, 2 (1968)	Nineteenth
451 (1977)	Second and Twentieth
355 (1982)	Twentieth
502, §§ 1-5, 7-21 (1985)	All Except Fifth
502, § 47 (1985)	Twentieth
502, § 43 (1985)	Not Applicable

ATTACHMENT A

Chapter (Year)	Circuit Court District
325, §§ 1-4, 7-8 (1968)	First
373 (1974)	First
326, §§ 2-5 (1968)	Second
328, §§ 2, 3 (1971)	Second
474 (1975)	Third
327, §§ 1, 3-4 (1968)	Fourth
324, §§ 1, 3 (1978)	Fifth
365 (1978)	Ninth
417, §§ 2-3 (1982)	Fifteenth
344 (1975)	Sixteenth
413 (1982)	Seventeenth
333 (1970)	Nineteenth
379 (1978)	Nineteenth
502, § 48 (1985)	Fourth
502, § 49 (1985	Fifth
502, § 51 (1985)	Ninth
502, § 52 (1985)	Tenth
502, § 53 (1985)	Eleventh
502, § 54 (1985)	Fifteenth
502, § 55 (1985)	Seventeenth

ATTACHMENT B

Chapter (Year)	Circuit Court District
502, § 56 (1985)	Nineteenth
502, § 57 (1985)	Twentieth

Chapter (Year)	Chancery Court District
314, §§ 1-4, 7-8 (1968)	First
373 (1974)	First
325 (1970)	Third
371 (1974)	Sixth
317, §§ 2-4 (1968)	Seventh
331, §§ 2-4 (1966)	Ninth
325, §§ 1(1), 1(2), 3 (1975)	Tenth
312 (1975)	Twelfth
326 (1970)	Fourteenth
421 (1973)	Sixteenth
431 (1977)	Sixteenth
387 (1979)	Eighteenth
502, § 44 (1985)	Tenth
502, § 45 (1985)	Eleventh
502, § 46 (1985)	Sixteenth

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WBR:GWJ:LLT:jmc
DJ 166-012-3
N3211-3486

Voting Section
P.O. Box 66128
Washington, D.C. 20035-6128

SEP 8 1987

Stephen J. Kirchmayr, Esq.
Deputy Attorney General
P. O. Box 220
Jackson, Mississippi 39205-0220

Dear Mr. Kirchmayr:

This refers to your request that the Attorney General reconsider his July 1, 1986, objection under Section 5 of the Voting Rights Act of 1965, as amended, to incorporation of anti-single-shot voting provisions into the methods of election for the 24 multi-judge circuit and chancery court districts created after November 1, 1964. We received your letter on July 7, 1987. Although we noted your request for expedited consideration, we have been unable to respond until this time.

We have considered carefully all of the information you have provided, along with Census data and the decision in Martin v. Allain, 658 F. Supp. 1183 (S.D. Miss. 1987). At the outset we note several findings and observations by the Martin court that are relevant to the matter before us: (1) racially polarized voting exists throughout the State of Mississippi; (2) black candidates would be more easily elected if the post system were not used and no other anti-single-shot requirement were imposed; (3) the policy behind the use of post system elections in multi-judge circuit and chancery court districts is tenuous, albeit that use of that feature is not per se violative of Section 2 of the Act; (4) the standards for assessing voting changes under Section 5 are different from those by which claims under Section 2 are to be assessed; and (5) the numbered post system was not adopted and has not been maintained with the intent to deprive black voters of their right to elect candidates of their choice. Id. at 1194-96, 1198-99, 1200, 1202-03.

In seeking reconsideration of a Section 5 objection, the state continues to shoulder the burden of demonstrating that the submitted voting changes were not enacted with a discriminatory purpose and do not have a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also Sections 51.48 and 51.52 of the Procedures for the Administration of Section 5 (52 Fed. Reg. 497-98 (1987)). In making our original decision, we noted that when "the state came under Section 5 coverage there was no state constitutional provision or general legislation that required the use of an at-large/numbered place system in multi-judge judicial districts" and that "the state has not subsequently enacted any such provision." The situation appears to be unchanged. Indeed, the Martin court found that the state has no "anti-single-shot voting laws." Id. at 1194. Thus, as we discussed in our July 1, 1986, letter, each post-act legislative choice to incorporate the numbered post provision, with its attending anti-single-shot consequence, in creating a multi-judge circuit or chancery court district is reviewable under Section 5. In the context of the racial bloc voting that has been found to exist, and the imposition of such an anti-single-shot feature, we concluded that the change from single-judge to multi-judge districts "strongly suggests a retrogressive effect" on the position of minority voters in the electoral system, an effect that is not permissible under Section 5. See Beer v. United States, 425 U.S. 130, 140-42 (1976). On that basis, the objection at issue was interposed.

In its request for reconsideration, the state has presented no new facts or arguments that address the basis of the objection. Moreover, the decision in Martin v. Allain, supra, upon which the state appears to rely heavily in seeking reconsideration, rightly does not deal with the issues relating to Section 5 preclearance of these changes. Yet, to the extent that they are relevant, the court's findings appear to support, rather than vitiate, a conclusion that the selection of the numbered post requirement denies to black voters the opportunity they otherwise would have enjoyed in electing candidates of their choice in post-act multi-judge circuit and chancery court districts.

In light of all of the foregoing, we have not found a basis for altering our earlier conclusions with respect to the changes involved. Therefore, on behalf of the Attorney General, I must decline to withdraw the objection.

Of course, Section 5 permits you 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, irrespective of whether the changes previously have been submitted to the Attorney General. As previously noted, however, until such a judgment is rendered by that court, the legal effect of the objection by the Attorney General is to render the changes in question unenforceable. See also Sections 51.10 and 51.48 (52 Fed. Reg. 492, 497 (1987)).

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division