



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

MAY 1 1992

Giles W. Bryant, Esq.  
Special Assistant Attorney General  
Office of the Attorney General  
P. O. Box 220  
Jackson, Mississippi 39205-0220

Dear Mr. Bryant:

This refers to your submission under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, of Chapter 440 (1991) of the State of Mississippi, which provides for the following changes affecting voting:

1. Establishes a system of mail-in voter registration, including the specification of a deadline for registration prior to an election, the procedures for processing a mail-in application by county and municipal registrars and the criteria for accepting or rejecting the application, the circumstances under which the application will be deemed a request to transfer registration, the requirement that the signing of the application be witnessed by a registered voter who is not then a candidate for public office, the requirement that the witness certify that the facts stated in the application are true and correct to the best of the witness' knowledge, the specification of the information to be provided in the application, and the procedures for distributing mail-in applications;

2. Expands the authority of registrars to conduct satellite registration so as to permit such registration at any location without any publication requirement, and eliminates the requirement that satellite registration be conducted every four years at certain locations; and

3. Provides that an applicant for registration must properly complete the registration application, defines the registration date, requires counties to adopt automated registration systems, defines residency for persons incarcerated in a Department of Corrections facility, amends enforcement provisions with respect to precluding false voter registration, amends the in-person registration form, provides for removal of a new registrant's name from the registration list at a previous place of registration, requires notification to the election commission of rejected voter registration applications, and establishes an implementation schedule.

We received your responses to our request for additional information on March 2 and April 9, 1992; supplemental information was received on April 27, 1992.

We have considered carefully the information you have provided, as well as information received from other interested persons. We note that the submitted changes include the requirement that prospective registrants indicate on either their mail-in or in-person application whether they will need assistance on election day, and if so, the reason for needing assistance. This prompted some concern based upon the continuing need of a portion of the black electorate for assistance at the polls on election day, the past controversy that sometimes has surrounded the provision of such assistance, and the voting assistance guarantees of Section 208 of the Voting Rights Act, 42 U.S.C. 1973aa-6. The state's response to our December 23, 1991 letter inquiring about this matter indicates that strict precautions will be taken by the state to assure that a registrant's response to this inquiry will be used only to "alert election administrators to any accommodation at the polling place that might be needed to facilitate the vote of an elector needing assistance." The registrant's response will not provide a basis for offering or sustaining a challenge to that person's ballot, and we understand that the state will continue to ensure that election officials honor any request for assistance authorized by Section 208, or other law or court order.

With these assurances in mind, the Attorney General does not interpose any objection to the submitted changes, except for one part of the witness certification requirement discussed below. However, we note that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine these changes if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

There are two aspects of the witness certification requirement in Chapter 404. With regard to the requirement that the witness certify that the "applicant signed [the] application for registration in my presence," we have determined that the state has a legitimate interest in this requirement and that it has met its Section 5 burden. We are unable to reach the same conclusion regarding the other aspect of the witness certification requirement, which specifies that in applying for registration by the mail-in method, the applicant must have a third person who is registered to vote in the applicant's county (and who is not then a candidate for public office) "certify ... that the facts stated [in the application] are true and correct to the best of my knowledge." As you are aware, the Voting Rights Act prohibits the use of any "test or device" in the registration process, which includes "any requirement that a person as a prerequisite for voting or registration for voting ... prove his qualifications by the voucher of registered voters or members of any other class." Sections 4(a)(1), 4(c), and 201; 42 U.S.C. 1973b(a)(1), 1973b(c), and 1973aa. Our review indicates that this prohibition bars the implementation of the identified certification requirement. While we note that the state's registration system allows for an alternative means of registration that does not include this voucher requirement--i.e., registration in person before a registrar or deputy registrar--we find no basis in the Voting Rights Act for concluding that use of a "test or device" is permissible if limited to one aspect of the voter registration system.

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. 51.52. In addition, Section 51.55 of the Section 5 Guidelines provides that the Section 5 determination will be made with consideration given to the requirements of other provisions of the Act that "safeguard the right to vote from denial or abridgment on account of race, color, or membership in a language minority group." In light of the considerations discussed above, I am unable to conclude that the requirement that a registered voter attest to the facts stated in the mail-in application is in compliance with the "test or device" prohibition contained in Sections 4 and 201 of the Act. Accordingly, on behalf of the Attorney General, an objection is interposed to this requirement.

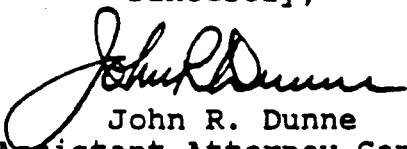
We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the objected-to requirement has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, you may 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 objected-to requirement continues to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

Finally, we note that our review of the submitted legislation has raised a concern that the state may not be in compliance with Section 202 of the Voting Rights Act, 42 U.S.C. 1973aa-1, which eliminated durational residency requirements as a condition for voting in presidential elections. Under Section 202(d), each state is to provide for registration or other means of qualification for all qualified residents who apply, up to 30 days before a presidential election, for registration or qualification to vote for President. Section 202(f) provides that if registration is a prerequisite for such persons casting a ballot for President, "absentee registration" must be made available, which, under Section 202(d), must include a 30-day cut-off for registration. It appears that Mississippi does require that such persons be registered to vote, and although the state now has enacted a mail-in registration system, it includes a requirement that mail-in applications be submitted at least 60 days before an election in order to vote in that election. Thus, it appears that the state is not in compliance with Section 202.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of Mississippi plans to take concerning these matters. If you have any questions, you should call Mark A. Posner (202-307-1388), an attorney in the Voting Section.

Sincerely,

  
John R. Dunne  
Assistant Attorney General  
Civil Rights Division