



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

March 3, 1997

James McRae Criss, Esq.
City Attorney
2245 South Commerce Street
Grenada, Mississippi 38901-5130

Dear Mr. Criss:

This refers to the procedures for conducting the September 10, 1996, special referendum election for the City of Grenada in Grenada County, Mississippi, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received the most recent information concerning your submission on January 2, 1997.

We have carefully considered the information that you have provided, as well as Census data and information from other interested persons. On September 10, 1996, the city held an unprecleared special referendum election. As part of the procedures for conducting that election, the election commission adopted a rule that prevented persons who transported voters to polls (*i.e.*, "haulers") from assisting more than one such voter in the voting booth. The city informs us that this hauler assistance rule was adopted as a result of a misreading of state law by the board of election commissioners and that it was not actually implemented during the special election. The city claims that its investigation into the use of the hauler assistance rule during the special election did not identify any voters who were unable to receive assistance from the person of their choice.

Our analysis has revealed, however, that at least in Ward 5, there were voters who sought the assistance of an individual who transported them to the polling place and who were prevented from receiving assistance from that individual. Our analysis also has revealed that no white voters appear to have been affected by the hauler assistance rule. Instead, the only voters who were prevented from being assisted by the individual of their choice at the special election were black.

Our review under Section 5 focuses upon whether the city has sustained its burden of showing that the procedures for conducting the special election, which, in part, include the hauler assistance rule, are free of the proscribed discriminatory purpose and effect. See the Procedures for the Administration of Section 5, 28 C.F.R. 51.52(a), 51.55, 51.56. It is with these standards in mind that we have reviewed and analyzed the submitted voting change.

Under Section 208 of the Voting Rights Act, 42 U.S.C. 1973aa-6, 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. The city represents that the assistance rule used prior to the instant special election did not restrict the voter's choice of assistor and was therefore consistent with Section 208. The hauler assistance rule used in the city's September 10, 1996, special election, however, violated the protections to voters guaranteed by Section 208. Furthermore, as stated above the only voters impacted by the restriction implemented in the special election appear to have been minority voters. Under these circumstances, I cannot conclude that the city has met its burden of showing under Section 5 of the Voting Rights Act that the proposed change will not "lead to a retrogression in the position of . . . minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 130, 141 (1976). See Georgia v. United States, 411 U.S. 526 (1973); Procedures for the Administration of Section 5, 28 C.F.R. 51.52. Therefore, on behalf of the Attorney General, I must object to the procedures for conducting the special election insofar as they include the hauler assistance rule.

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 proposed change has neither a discriminatory purpose nor effect. 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the procedures for conducting the special election continue to be legally unenforceable. See Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action that the city plans to take concerning this matter. If you have any questions, you should call Zita Johnson-Betts, a Deputy Chief in the Voting Section (202-514-8690).

Sincerely,

Isabella Katz Pinzler

for Isabelle Katz Pinzler
Acting Assistant Attorney General
Civil Rights Division

cc: Jerry L. Mills, Esq.