



U.S. Department of Justice

Civil Rights Division

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Office of the Assistant Attorney General

Washington, D.C. 20530

SEP 11 1984

C. Havird Jones, Jr., Esq.  
Assistant Attorney General  
P. O. Box 11549  
Columbia, South Carolina 29211

Dear Mr. Jones:

This refers to Act No. R522 (1984) which relates to the assistance to voters in the State of South Carolina, 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 your submission on July 13, 1984. Although we noted your request for expedited consideration, we have been unable to respond until this time.

According to your submission letter, Act R522 (1984) which amends §7-13-770 of the 1976 South Carolina Code of Law was enacted to bring the State of South Carolina into compliance with Section 208 of the Voting Rights Act. Section 208 states:

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.

Section 7-13-770, as amended by Act No. R522, would allow a South Carolina voter needing assistance to receive such assistance from anyone he or she chooses except that a manager selected by the chairman of the managers must accompany the voter and helper into the voting booth (unless the person selected is a family member).

Earlier this year this provision of South Carolina law was brought to our attention by the Democratic Party of South Carolina with a request for our view on the provision's compliance. Our response, a copy of which was supplied to your office, set forth our view that the instant provision contravenes Section 208 of the Voting Rights Act, since this oversight provision would compromise the principle established by Section 208 that the voter is entitled to decide who will accompany him or her into the voting booth. We have detected nothing in our present analysis which would alter that view. For your convenience, another copy of that earlier letter is enclosed.

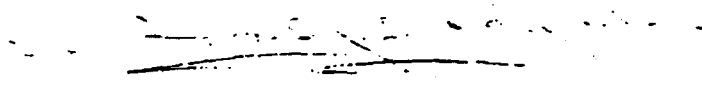
Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)). In the administration of this provision, the Attorney General has taken the position that voting changes which are inconsistent with other provisions of the Voting Rights Act cannot be considered to have met the Section 5 standard for preclearance. Therefore, on behalf of the Attorney General, I must interpose an objection to Act No. R522 (1984).

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 this change has neither 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, 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 Act No. R522 legally unenforceable. 28 C.F.R. 51.9.

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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 South Carolina plans to take with respect to this matter. If you have any questions, feel free to call Sandra S. Coleman (202-724-6718), Deputy Director of the Section 5 Unit of the Voting Section.

Sincerely,

  
Wm. Bradford Reynolds  
Assistant Attorney General  
Civil Rights Division

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OCT 10 1984

C. Havird Jones, Jr., Esq.  
Assistant Attorney General  
State of South Carolina  
P. O. Box 11549  
Columbia, South Carolina 29211

Dear Mr. Jones:

This refers to your request that the Attorney General reconsider his objection to Act No. R522 (1984), which relates to the assistance to voters in the State of South Carolina. We received your letter on September 17, 1984, and in accordance with your request, expedited consideration has been given this matter pursuant to the Procedures for the Administration of Section 5 (28 C.F.R. 51.32).

We have reviewed carefully the information that you have provided to us, as well as comments and information provided by other interested parties. However, our current analysis has disclosed nothing which would warrant a change in our previous determination. We continue to believe that Act No. R522 is facially inconsistent with Section 208 of the Voting Rights Act which, with certain exceptions, requires that those providing assistance be "a person of the voter's choice." Therefore, on behalf of the Attorney General, I must decline to withdraw the objection.

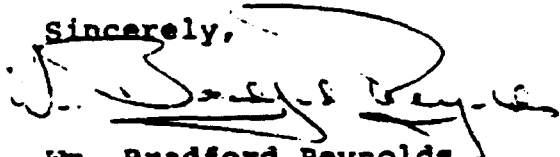
Although we are unable to withdraw the objection under Section 5, we fully understand the State's legitimate interest in preventing voter fraud and otherwise assuring the integrity of its electoral process as set forth in Chapter 25 of the State's Election Code and elsewhere. For that reason, I emphasize that the Attorney General's objection to the routine use of poll managers to "assist the voter" under Act No. R522 should not be considered as precluding the State from taking appropriate action to enforce its referenced laws dealing with fraud and other improprieties in the electoral process.

In this connection, such enforcement activities might include selective use of poll managers to monitor assistance provided to blind, disabled or illiterate voters where there is credible evidence that the assistance provided is part of a scheme to miscast voters' ballots and where such a monitoring effort is permissible under state law. In light of the explicit language of Section 208 of the Voting Rights Act, however, monitoring of assistors should be handled, if at all, by someone other than a voter's employer or union official. Moreover, any abuse of the electoral process by those engaged in monitoring activity must be dealt with promptly and harshly under available civil and criminal statutes.

Of course, the Voting Rights Act permits you to seek a declaratory judgment from the United States District Court for the District of Columbia that, notwithstanding this objection, the change is not inconsistent with Section 208 of the Act and merits Section 5 preclearance. As previously noted, however, until such a judgment is obtained from that court, the legal effect of the objection by the Attorney General is to render the change in question legally unenforceable. See also 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 South Carolina plans to take with respect to this matter. If you have any questions, feel free to call Sandra S. Coleman (202/724-6718), Deputy Director of the Section 5 Unit of the Voting Section.

Sincerely,



Wm. Bradford Reynolds  
Assistant Attorney General  
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