U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20035*

August 29, 1994

The Honorable Michael J. Bowers
Attorney General for the State
of Georgia
40 Capitol Square SW
Atlanta, Georgia 30334-1300

Dear Mr. Attorney General:

This refers to Act No. 774 (1994), which provides for a change from a majority to a plurality vote requirement (defined generally as more than 45 percent of the votes cast) in partisan and nonpartisan general elections (except for certain state constitutional offices), and eliminates straight political party voting for the State of Georgia, 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 response to our May 31, 1994, request for additional information on June 28, 1994.

We have carefully considered the information you have provided, as well as data from the 1990 Census, comments received from interested persons, and information in our Section 5 and litigation files. Based on this review, the Attorney General does not interpose any objection to the provisions of Act No. 774 that eliminate straight political party voting. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of this change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

We are unable to reach the same conclusion, however, with respect to the provisions of Act No. 774 that establish a 45 percent plurality requirement for general elections. According to the 1990 Census, Georgia has a total population of 4,543,425 persons, of whom 26.8 percent are black. Prior to 1964, the Georgia election code did not include any provision specifying the threshold vote percentage that a candidate was required to obtain in order to be nominated or elected to public office. In

1964, the state adopted the current provision governing partisan elections, now codified at O.C.G.A. §21-2-501, which provides that in any partisan election (primary, general, or special), a candidate must obtain a majority of the vote to be declared the winner, and if no candidate receives a majority, a runoff election is held between the two top votegetters. Subsequently, when the nonpartisan election method was adopted for judgeship elections, the majority vote requirement was carried over to these elections as well.

The state now proposes to alter a limited portion of this majority vote system, by providing that in general elections only (except for certain state constitutional offices where the majority vote requirement has been included in the constitution) a 45 percent threshold will govern instead. In considering this change, minority legislators in the state house proposed that the vote threshold be lowered uniformly for all elections governed by the current provision, but this amendment was defeated. Minority legislators similarly have previously proposed unsuccessfully that the majority vote requirement be eliminated.

It is well-established that a majority vote requirement, operating in the context of racially polarized voting in a majority-white election constituency, minimizes the opportunity of minority voters to elect candidates of their choice by increasing the probability of head-to-head runoff contests in which the minority preferred candidate is defeated by a white bloc vote. See, e.g., City of Port Arthur v. United States, 459 U.S. 156 (1982); Rogers v. Lodge, 458 U.S. 613, 627 (1982); City of Rome v. United States, 446 U.S. 156 (1980).

In Georgia, our analysis indicates that because elections at all levels in the state generally are characterized by racially polarized voting, the majority vote requirement has such a discriminatory effect. Thus, for example, the Attorney General has interposed numerous Section 5 objections to the adoption of a majority vote requirement by Georgia municipalities (for whom state law does not mandate the use of such a requirement). In addition, there is substantial information that the majority vote requirement was adopted in 1964 specifically for the purpose of limiting black electoral opportunity and, as you are aware, the United States has brought suit to enjoin the requirement. United States v. State of Georgia, C.A. No. 1:90-CV-1749-RCF (N.D. Ga.). The suit is based on the state's adoption and maintenance of the requirement for racial reasons, and the requirement's discriminatory result.

It is in this context, following the 1992 general election runoff for the United States Senate, that the state enacted Act No. 774 lowering the runoff threshold in the general election from 50 to 45 percent. In support of the proposed change, the state cites the cost of conducting runoff elections and the concern that voter turnout in a runoff may be low. Thus, the state indicates that its concern for protecting "majority rule" as part of the democratic process should, at least in some circumstances, give way to competing concerns to ensure that elections are held in a just and fair manner.

However, the concerns cited by the state would appear to also apply to runoff elections in primaries and special elections and, especially in the context of the background discussed above, the state has not provided an adequate nonracial explanation for limiting the proposed change to general elections. In addition, the state has not provided an adequate explanation for the amendments to the instant legislation which altered the new vote threshold from its initial plurality level to 40 percent and then 45 percent, although the lower thresholds would appear to more appropriately address the concerns as to the discriminatory effect of the majority vote requirement.

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. Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the provisions of Act No. 774 that provide for a 45 percent plurality requirement in general elections.

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 the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. See 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 proposed 45 percent plurality requirement continues 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 the State of Georgia intends to take concerning this matter. If you have any questions, you should call Ms. Zita Johnson-Betts (202-514-8690), an attorney in the Voting Section.

Sincerely,

Isabelle Katz Pinzler
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20035*

September 11, 1995

The Honorable Michael J. Bowers
Attorney General for the State
of Georgia
40 Capitol Square SW
Atlanta, Georgia 30334-1300

Dear Mr. Attorney General:

This refers to your request that the Attorney General reconsider and withdraw the August 29, 1994, objection interposed under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, to those portions of Act No. 774 (1994) that provide for a change from a majority to a plurality vote requirement (defined generally as more than 45 percent of the votes cast) in partisan and nonpartisan general elections (except for certain state constitutional offices). We received your request on July 13, 1995.

We have reconsidered our earlier determination in this matter based on the information and arguments you have advanced in support of your request, along with the other information in our files and comments received from other interested persons. Accordingly, pursuant to Section 51.48(b) of the Procedures for the Administration of Section 5 (28 C.F.R.), the objection interposed to the provisions of Act No. 774 that provide for a 45 percent plurality vote requirement for general elections is hereby withdrawn. However, we note that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. See 28 C.F.R. 51.41.

Sincerely,

Loretta King

Loretta King
Acting Assistant Attorney General
Civil Rights Division