U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

NOV 20 1990

Cynthia Young Rougeou, Esq.
Assistant Attorney General
P.O. Box 94125
Baton Rouge, Louisiana 70804-9125

Dear Ms. Rougeou:

This refers to Act No. 8, S.B. No. 345 (1990), which creates a seventh at-large judgeship position (Division G) for the 22nd Judicial District in the State of Louisiana, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Supplemental information was received on November 5 and 8, 1990.

We have carefully considered the information you have provided, as well as comments and information from the Bureau of Census and other interested parties. At the outset, we note that the state proposes to elect this position under the existing at-large/designated post system with a majority vote requirement and, thus, its implementation serves as an expansion of that system. We further note that the provisions of Act 8 (1990) were adopted in the context of the concerns expressed in our September 23, 1988, letter to the state, in which we interposed Section 5 objections to the creation of numerous additional judgeship positions, although we precleared the creation of a sixth judgeship position (Division C) for the 22nd Judicial District.

In that letter we advised the state that our review of the sixth judgeship position in the 22nd Judicial District had "raised concerns" that the at-large/designated post/majority vote election method may well have violated Section 2 of the Voting Rights Act, 42 U.S.C. 1973. We explained how it is generally well recognized that the use of a majority vote requirement and anti-single-shot voting requirements, such as designated posts, enhance the opportunity to discriminate against minority voters in an at-large electoral system characterized by racially polarized voting. We noted that the court in Clark v. Roemer, No. 86-435-A (M.D. La.), indeed had found the existence of racially polarized voting in the 22nd Judicial District.

Furthermore, in our September 23, 1988, letter, we explicitly advised the state that preclearance of the sixth judgeship position did not "relieve the state of its responsibility to consider appropriate remedial measures" in any judicial district where "such action is necessary to afford black voters an opportunity to elect candidates of their choice." We suggested that such adjustments might include the use of single-member districts or "other corrective measures" (e.g., limited or cumulative voting schemes) and "the elimination of restrictive election features, such as anti-single-shot voting devices and the majority vote requirement, that impede minority participation."

Our analysis indicates, first of all, that the addition of a seventh judgeship position to be elected under the at-large/designated post/majority-vote system makes this most recent expansion of that system an even clearer violation of Section 2 and, secondly, that the state has taken no measures to ensure that the election method in the 22nd Judicial District affords black voters an opportunity equal to that of white voters to elect candidates of their choice to any of the judicial positions in the district. Rather, the state has merely expanded an election system that appears to deny black voters such an opportunity, and has done so in apparent disregard of the wishes of black citizens and of the concerns raised by our September 23, 1988, letter.

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 the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In addition, under our guidelines a submitted change may not be precleared if its implementation would lead to a clear violation of Section 2 of the Act. See also 28 C.F.R. 51.55. As we advised the state on September 17, 1990, while we do not in any way question the state's need for creating new judgeship positions, we do find ourselves unable to conclude that the state has carried its

burden of showing the absence of proscribed purpose in its insistence on maintaining and expanding an election system which does not afford black voters a realistic opportunity to elect their preferred candidates. In light of all the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the state has satisfied its Section 5 burden with regard to the seventh judgeship position in the 22nd Judicial District. Therefore, on behalf of the Attorney General, I must object to Act 8 (1990), to the extent that it requires implementation of the seventh judicial position (Division G) under the existing at-large/designated post/majority-vote election system in the 22nd Judicial District.

We hasten to add, however, that we have noted your argument for Section 5 preclearance based on the decision in League of United Latin American Citizens Council No. 4434 v. Clements (LULAC), No. 90-8014 (5th Cir. Sep. 28, 1990) (en banc), in which the court held that the Section 2 results standard does not apply to judicial election systems. The LULAC court, however, expressly recognized that "Section 5 of the Act applies to state judicial elections," id. slip op. at 20, and until this matter is clarified further by the courts, we see no basis for altering our Section 5 procedural requirements insofar as they relate to Section 2.

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 the change does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.45 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 further expansion of the at-large/designated post/majority-vote election system through the additional judgeship under Act 8 (1990) for the 22nd Judicial District continues to be legally unenforceable.

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 Louisiana plans to take with regard to this matter. If you have any questions, feel free to call Ms. Lora L. Tredway (202-307-2290), an attorney in the Voting Section.

Because this matter remains pending before the court in Clark, we are sending a copy of this letter to the court and counsel of record in that case.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

cc: Honorable John V. Parker
Chief Judge, United States District Court

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