



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

December 26, 2007

Mr. Brian DeBano
Chief of Staff and Chief Operating Officer
430 West Allegan, 4th Floor
Lansing, Michigan 48918

Mr. Christopher Thomas
Director of Elections
P.O. Box 20126
Lansing, Michigan 48901

Dear Messrs. DeBano and Thomas:

This refers to the relocation and subsequent closure of the Buena Vista Township Secretary of State's branch office ("Buena Vista office") and the photo identification procedures contained in Public Act 71 (S.B. 513) (2005) ("PA 71"), for Buena Vista and Clyde Townships in Saginaw and Allegan Counties, for the State of Michigan, submitted to the Attorney General, pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your responses to our September 18, 2007, request for additional information on September 28, 2007, October 13, 2007, and October 26, 2007. Additional information was received on November 9, 2007, November 27, 2007, December 7, 2007, December 12, 2007 and December 21, 2007.

Buena Vista Office Closure

With relation to the Buena Vista office, we note that there are actually two unprecleared changes that require review under Section 5, the office's relocation and the office's closure. The Department first precleared the creation of a voter registration site at a Secretary of State branch office in Buena Vista on September 13, 1993. While no street address for the Buena Vista office was submitted by the Township, Christopher Thomas, Michigan Director of Elections, indicated in a December 7, 2007 e-mail that the first Secretary of State branch office in Buena Vista was located at 3890 Dixie Highway, Saginaw, MI and existed as early as 1990. Mr. Thomas further explained that this office was relocated to the current address, 4212 Dixie Highway, Saginaw, MI 48601, some time in or around 1999. Our records indicate that this relocation was never submitted for preclearance.

In order for the Department to render a determination on the Buena Vista office closure, the Department must first issue a decision governing the relocation. Procedures for the Administration of Section 5 of the Voting Rights Act, 28 C.F.R. § 51.22. The December 7 e-mail from Christopher Thomas, however, provides adequate information for the Attorney General to review the relocation. The Attorney General does not interpose any objection to the Buena Vista office relocation that occurred in or around 1999. 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 the change. 28 C.F.R. § 51.41.

Turning to the office closure, the last precleared change is now the relocation of the Buena Vista office to its current location. This is the benchmark by which the office closure is measured. Your contention that the Buena Vista office closure does not constitute a change under Section 5 is contradicted by federal case law. You argue that the Department's guidelines provide that the benchmark for all voting changes is the practice or procedure in force or effect at the time the relevant jurisdiction became covered under Section 5. Under this interpretation, you assert that the office closure does not constitute a change because there was no branch office in Buena Vista when the Township became subject to Section 5. This interpretation of the benchmark standard is incorrect. Federal courts have stated that the benchmark for purposes of defining a change under Section 5 constitutes the last precleared change occurring after the date of coverage. *See Young v. Fordice*, 520 U.S. 273, 281 (1997); *Holder v. Hall*, 512 U.S. 874, 883-84 (1994) (plurality opinion); *Presley v. Etowah County Comm'n*, 502 U.S. 491, 495 (1992); *Kennedy v. Riley*, 445 F. Supp. 2d 1333, 1336 (M.D. Ala. 2006), *appeal pending*, No. 07-77; *Dotson v. City of Indianola*, 521 F. Supp. 934, 943 (N.D. Miss. 1981), *aff'd summarily*, 456 U.S. 1002 (1982); *NAACP v. Georgia*, 494 F. Supp. 668, 677-79 (N.D. Ga. 1980). The Department's guidelines also state that the benchmark by which a change is measured is the "last legally enforceable practice or procedure used by the jurisdiction." 28 C.F.R. § 51.54. Accordingly, the Secretary of State's reliance upon there being no branch office in the Township on the date of Section 5 coverage is misplaced. Indeed, the fact that the Township submitted the creation of a voter registration site at a Buena Vista Secretary of State office in 1993 undermines any argument that the appropriate benchmark is the absence of such an office.

With respect to the Buena Vista office closure, we have carefully considered the information you have provided, as well as census data, comments, and information from other interested parties. Under Section 5, the Attorney General must determine whether the submitting authority has met its burden of showing that the proposed change "neither has the purpose nor will have the effect" of denying or abridging the right to vote on account of race. *Georgia v. United States*, 411 U.S. 526 (1973); *see also* 28 C.F.R. § 51.52. "A change affecting voting is considered to have a discriminatory effect under Section 5 if it will lead to a retrogression in the position of the members of a racial or language minority group (*i.e.*, will make members of such a group worse off than they had been before the change) with respect to their opportunity to exercise the electoral franchise effectively." 28 CFR § 50 1.54(a) (citing *Beer v. United States*, 425 U.S. 130, 140-42 (1976)).

Several factors establish that the State has failed to sustain its burden of showing that the closure of the Buena Vista office will not have a retrogressive effect on minority electoral participation. First, the Buena Vista office closure will impair the ability of minorities to register to vote. The Buena Vista office conveniently allows citizens to register to vote or update their voter registration while using other Secretary of State services. While you have argued that there are numerous alternative registration locations throughout the County, registration statistics in your submitted materials indicate that Secretary of State branch offices are the primary source of voter registrations for Buena Vista residents. Since 2002, Secretary of State branches have accounted for 79.13% of total registrations for the Township, approximately four times the number of registrations as all other sources combined. These numbers demonstrate that closure of the Buena Vista office, which is the only branch office in a majority-minority township in the County, will significantly lower minority registration.

The next closest Secretary of State branch office for Buena Vista residents is the Saginaw Northwest office, an 18-mile round-trip from the Buena Vista office. Our analysis indicates that travel to the Saginaw Northwest office for Buena Vista residents will be significantly more difficult than visiting the current location. Public transportation between the Buena Vista branch office and the Saginaw Northwest office is time-consuming. Our analysis indicates that a round-trip between the two offices on public transportation would take a minimum of one hour and 40 minutes, assuming no delays. Additionally, contacts in Buena Vista have informed us that the drive to the Saginaw Northwest branch entails travel along highly congested streets.

The Frankenmuth and St. Charles branch offices are not viable alternatives to the Saginaw Northwest office. These offices are even farther away from Buena Vista Township in more rural parts of the county. According to submitted materials, the Frankenmuth office is a 24-mile round-trip from the Buena Vista branch, and the St. Charles office is a 42-mile round-trip from the branch. Both offices are in townships in which every census block has less than 35% black or Latino representation.

Second, the closure of the Buena Vista office will make it more difficult for minorities in Buena Vista who wish to comply with PA 71's ID requirement by showing photo identification, in lieu of signing an affidavit attesting to their identity, to obtain Michigan IDs. The Secretary of State's office is the only issuer of Michigan driver's licenses and personal identification cards ("PIDs"). Thus, closing the Buena Vista branch will require Buena Vista residents, 55.6% of whom are black and 9.6% of whom are Latino, to visit one of the other County or state branches to obtain an ID.

In light of the considerations discussed above, I cannot conclude that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object the closure of the Buena Vista office.

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 neither has 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. *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 closure of the Buena Vista Township Secretary of State's branch office continues to be legally unenforceable. *Clark v Roemer*, 500 US 646 (1991); 28 C.F.R. § 51.10.

Photo ID Requirement

With respect to the photo identification procedures contained in PA 71, we note that you have supplemented your submission with materials reflecting the Secretary of State's interpretation and planned implementation of the ID requirement. According to the materials you provided, acceptable identification under the new requirement includes: a Michigan driver's license, a Michigan chauffeur's license, a Michigan PID, a current driver's license or personal identification card from another state, a current federal or state government-issued photo identification card, a current U.S. passport, a current military photo identification card, a current student photo identification card or a current tribal photo identification card. Your materials state that individuals without one of the acceptable forms of identification, regardless of whether they do not have identification at all or merely did not bring it to the polls, will be able to vote on a regular ballot if they sign an affidavit affirming their identity. Your materials confirm the fact that signing the affidavit in lieu of showing identification is not an independent basis for challenging a voter.

The Attorney General does not interpose any objection to the photo identification requirement and accompanying implementation procedures. 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 the changes. In this case, where our decision not to object rests in part on the detailed implementation procedures you provided, and on effective education of poll workers and voters as to the new procedures, any change from these procedures must be precleared under Section 5. Further, to the extent that PA 71 includes provisions that are enabling in nature, any changes affecting voting that are adopted pursuant to this legislation require Section 5 review. *See* C.F.R. § 51.15.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the Secretary of State plans to take concerning this matter. If you have any questions concerning this letter, you should call Eric Rich (202-305-0107), an attorney in the Voting Section.

Sincerely,



Grace Chung Becker

Acting Assistant Attorney General