U.S. Department of Justice

Civil Rights Division

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

October 15, 1990

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

Dear Mr. Jones:

This refers to Act No. 678 (1988) which changes the qualifications to serve as a probate judge from an elector in the county to an elector who is (1) 21 years old and (2) has a four-year college degree or has four years' experience as an employee in a probate judge's office 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 the information to complete your submission on August 14, 1990.

At the outset we note that currently the sole qualification for a person to be a candidate for the position of probate judge in South Carolina is that a person be a registered voter. Presently, 26 percent of the registered voters in the state are black, according to our information. The state now proposes to change those qualifications so that a person must be 21 years of age and either possess a degree from a four-year college or at least four years' experience working in a probate judge's office. According to the 1980 census, there are 232,629 persons who have completed four or more years of college, and of this number only 28,771 (12%) are black. Thus, the four-year college degree requirement would reduce the percentage of black citizens who meet the qualification to run for the office of probate judge by 14 percent. Requiring that persons who wish to run for the office of probate judge demonstrate that they have completed four years of college, therefore, would appear to have a disparate impact on black citizens of the state.

The optional qualification criterion proposed under Act No. 678, four years of experience in a probate judges's office, would have a similar effect. Only 2 of 46 (4%) probate judges in the state are black, and only 17 percent of the employees working in probate judges' offices throughout the state are black. Furthermore, more than half of the state's counties have no black employees in the probate judge's office. In the 12 South Carolina counties which have a black majority population, where black voters would seemingly have the greatest prospect of electing a candidate to the county-wide office of probate judge, 7 of those counties (Allendale, Calhoun, Clarendon, Fairfield, Hampton, Lee, and Marion) have no black employees. Thus, the optional criterion of four years of employment in the probate judge's office, rather than providing to black voters a potentially less restrictive source of candidates of their choice, would appear to operate like a "grandfather clause" by expanding further the available pool of white potential candidates.

While we recognize the state's interest in establishing reasonable qualifications for those who are to hold office, especially those of the nature here, it cannot do so in a manner which weighs disparately upon its black constituents, absent a convincing reason. See Dougherty County Board of Education v. White, 439 U.S. 32, 42 n.12 (1978). 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. 51.52). We are not yet persuaded that the state's legitimate interest cannot be met through other means which do not produce the "undesirable racial effect[]" of the qualifications proposed. See Wards Cove Packing Co. v. Atonio, 109 S. Ct. 2115 (1989). In light of the considerations considered above, I cannot conclude, as I must under the Voting Rights Act, that the state's burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the implementation of the changed qualifications to serve as probate judge as defined in Act No. 678.

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 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 effect of the objection by the Attorney General is to make the proposed qualifications legally unenforceable. 28 C.F.R. 51.10.

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 (202-307-3718), Deputy Chief of the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division