U.S. Department of Justice

Civil Rights Division

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

MAR 16 1984

Kenneth C. DeJean, Esq.
Assistant Attorney General
P. O. Box 44005
Baton Rouge, Louisiana 70804

Dear Mr. DeJean:

This refers to Senate Concurrent Resolution No. 4 of the Second Extraordinary Session of the Louisiana Legislature of 1983, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Senate Concurrent Resolution No. 4 suspends, during 1984, the application of Louisiana Revised Statutes §§18:1280.21 through 18:1280.27, which provide for the holding of presidential preference primaries on April 7, 1984. Information completing your submission was received on March 5, 1984. In accordance with your request, expedited consideration has been given this submission pursuant to the Procedures for the Administration of Section 5 (28 C.F.R. 51.32).

Act No. 684 (Louisiana Acts, 1979), codified as R.S. §§18:1280.21 through 18:1280.27, requires the holding of presidential preference primaries on the first Saturday in April 1980 and every four years thereafter. The primaries are to be conducted under the state election law and are open only to members of the political party in which a preference is to be expressed. The allocation of delegates to the national party conventions is to be "according to the results of the presidential primary and according to guidelines established by the governing bodies of the respective parties." Act No. 684 received Section 5 preclearance on October 23, 1979.

The effect of Senate Concurrent Resolution No. 4 (hereinafter S. Con. Res. No. 4) is to suspend the 1984 application of Act No. 684. Thus, under S. Con. Res. No. 4, the state would not conduct presidential preference primaries in 1984 but resume conducting such primaries in future presidential election years.

In our analysis of this proposed voting change, we have given careful consideration to the information provided to us by you as well as by other interested parties. Our attention has focused, as it must under Section 5 of the Voting Rights Act, on whether the temporary suspension of the State's general election laws would, if approved, have a discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.39(e).

The State's principal argument to counter claims of racial discrimination is a monetary one: i.e., that suspension of the primary election laws was intended to save the State between 1.3 million and 2.0 million dollars. There are, however, difficulties with that explanation. Foremost among them is the fact that the State carefully considered such a move almost a year ago, and, notwithstanding the financial constraints now deemed so important, declined to suspend the primaries and their attendant costs. No evidence has been introduced to indicate a markedly different financial picture for Louisiana today, or at least one that would justify the proposed change on economic grounds.

In this connection, we cannot help but note the timing of the proposed change, coming in the midst of a political campaign and on the heels of the announcement of the Reverend Jesse Jackson to enter the presidential race. The suspension of primaries in Louisiana, if approved, will undeniably reduce the opportunities for blacks to participate meaningfully in the delegate selection process. Not only is use of a large number of polling places eliminated, but voting hours are shortened as well. Where, as here, the State has made no effort to develop a comprehensive alternative process that assures minorities full and equal participation in the franchise, it cannot be said that a temporary suspension of general election laws is free of discriminatory effect.

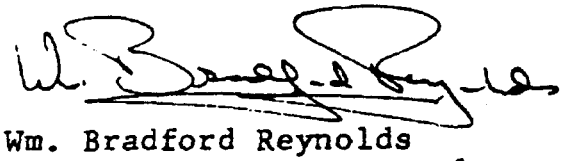
Of course, the burden in a Section 5 case is on the submitting authority to prove that the proposed change has no discriminatory purpose or effect. See Georgia v. United States, supra. Here, Louisiana has fallen short of meeting that burden -- even after full consideration of the additional information submitted to us. Accordingly, on behalf of the Attorney General, I must object to S. Con. Res. No. 4.

We note that this letter is not intended to suggest that as a general matter primaries are to be preferred under Section 5 to conventions or caucuses as a method of selecting party officials or party nominees for public office. We also note that the submission of S. Con. Res. No. 4 did not bring before us under Section 5 the question of how delegates to national party conventions are to be allocated.

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 the suspension of the requirement that presidential preference primaries be conducted on the first Saturday in April 1984 legally unenforceable. 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 Louisiana plans to take with respect to this matter. If you have any questions, feel free to call Carl W. Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,



Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division