



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

November 21, 1994

Sheri Marcus Morris, Esq.
Assistant Attorney General
P. O. Box 94125
Baton Rouge, Louisiana 70804-9125

Dear Ms. Morris:

This refers to the submission to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, of Act No. 10 (1994) of the State of Louisiana, which adopts changes (listed in Attachment A) to voter registration and related procedures to, inter alia, implement the National Voter Registration Act of 1993 ("NVRA"), 42 U.S.C. 1973gg et seq. We received your response to our September 6, 1994, request for additional information on September 22, 1994; supplemental information was received on November 16 and 17, 1994.

We have given careful consideration to the information you provided, as well as Census data and information and comments from other interested persons. Except as set forth below, the Attorney General does not interpose any objection to the specified changes. 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. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41). In this regard, the granting of Section 5 preclearance does not preclude the Attorney General or private individuals from filing a civil action pursuant to Section 11 of the NVRA, 42 U.S.C. 1973gg-9.

We cannot reach the same conclusion with respect to the requirement that first-time voters who register by mail in order to identify themselves at the polls present a current driver's license or other picture identification card. The state indicates that persons who do not present such identification will not be permitted to vote. Currently, voters are not required to present picture identification in order to vote. Presentation, for example, of a voter's current voter registration card or other non-picture identification card will suffice.

According to the 1990 Census, the State of Louisiana has a total population of 4,219,973 of whom 30.6 percent are black. Our review of relevant socio-economic data and information on the number of currently licensed drivers in the state indicates that black persons are four to five times less likely than white persons in the state to possess a driver's license or other picture identification card, such as the picture identification cards we understand are issued by some employers or institutions of higher education. Consequently, the imposition of the driver's license/picture identification requirement is likely to have a disproportionately adverse impact on black voters in the state, and will lessen their political participation opportunities. Thus, under the proposed change, minority voters -- the very group of voters whose political participation in federal elections the NVRA seeks to encourage through increased access to voter registration opportunities -- will be less likely to vote than white voters. It appears, therefore, that the proposed driver's license/picture identification requirement will eliminate certain of the gains to minority voters mandated by Congress in enacting the NVRA and "would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 130, 141 (1976).

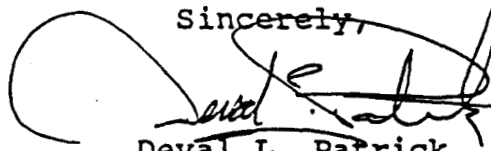
Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained with regard to the specified picture identification requirement. Therefore, on behalf of the Attorney General, I must object to the driver's license/picture identification requirement for first-time voters who register by mail proposed by Act No. 10.

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 objected-to change continues to be legally unenforceable. See Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

Finally, we note that the preclearance of those provisions of Act No. 10 that enable or permit the state or its political subdivisions to adopt future voting changes does not constitute preclearance of those future changes and, accordingly, Section 5 review will separately be required when those changes are adopted or finalized. See 28 C.F.R. 51.15. The matters for which Section 5 review will be required include, but are not limited to, the following: the designation of additional locations where registration may occur or changes in existing locations; the statewide voter registration application (including mail registration application) and any other forms or notices developed to implement the NVRA; and any rules or regulations promulgated to implement the NVRA.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of Louisiana plans to take concerning this matter. If you have any questions, you should call Ms. Zita Johnson-Betts, an attorney in the Voting Section, at (202) 514-8690.

Sincerely,

A handwritten signature in black ink, appearing to read "Deval L. Patrick", written over a horizontal line.

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Attachment A -- Changes Enacted by Act No. 10 (1994)

1. Assignment of responsibility to the Louisiana Commissioner of Elections to coordinate the state's implementation of the NVRA;
2. Adoption of the registration form prescribed by the Federal Election Commission (R.S. 18:103(A));
3. Amended voter registration procedures for the state Department of Public Safety and Corrections so as to make voter registration services available at all driver's license facilities in the state (including the adoption of procedures by the Louisiana Commissioner of Elections and a voter registration application form pursuant to R.S. 18:114(E) and (I));
4. Voter registration by mail (including the promulgation of a state mail voter registration form by the Louisiana Commissioner of Elections pursuant to R.S. 18:115(A)(1));
5. Voter registration at "voter registration agencies," including every office that provides public assistance, every office that provides state funded programs primarily engaged in providing services to persons with disabilities, every armed forces recruitment office, and other offices to be designated by the Louisiana Commissioner of Elections (including promulgation of a voter registration inquiry/declination form pursuant to R.S. 18:116(C)(1)(b));
6. Standards governing the receipt of voter registration applications and the acceptance of voter registration applications, and the preparation of voter registration lists;
7. Procedures for determining voter eligibility where the applicant registers by mail, including the use of verification mailing procedures and requiring first-time voters who register by mail to vote in-person and present photo identification;
8. Amended procedures when insufficient information is provided on a voter registration application;
9. Amended procedures governing changes of address, name changes, and party affiliation changes;
10. Amended procedures concerning registrants who move or whose registration record reflects that they have moved;
11. Amended complaint procedures for persons denied registration to include claims concerning NVRA violations;
12. Administrative procedures for the Louisiana Commissioner of Elections and registrars of voting, including the

development of all voter registration training programs concerning acceptance of voter registration applications and the provision of training to personnel in the state Department of Public Safety and Corrections, and voter registration agencies;

13. Standards governing the inspection of voter registration applications;

14. Procedures for notifying the Louisiana Commissioner of Elections of persons convicted of a felony in federal court (for purposes of determining voter qualifications);

15. Amended procedures for voter registration list maintenance, including the placement of registrants on and the use of an inactive registration list, and the removal of names from the list of eligible registered voters;

16. Amended procedures governing challenges to the eligibility of persons to register and vote;

17. Amended procedures for federal postcard registration applications;

18. Abolition of the prior system of volunteer deputy registrars; and

19. Penalties for unlawful voter registration conduct.