



U.S. Department of Justice
Civil Rights Division

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DJ 166-012-3
2011-2495

*Voting Section - NWB
950 Pennsylvania Avenue, NW
Washington, DC 20530*

August 29, 2011

C. Havird Jones, Jr., Esq.
Assistant Deputy Attorney General
P.O. Box 11549
Columbia, South Carolina 29211-1549

Dear Mr. Jones:

This refers to Act R54 (A27 H3003) (2011), relating to domicile factors, duplicate registration, consideration of challenges, the State Election Commission voter registration card system implementation, photograph identification requirements and provisional ballots, special identification card provisions, the State Election Commission voter education program, and the State Election Commission registered voter list, for the State of South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. We received your submission on June 30, 2011; supplemental information was received through August 25, 2011.

The Attorney General does not interpose any objection to Sections 1 and 3 of Act R54, which deal with factors to consider when determining a person's domicile for voting purposes and consideration of challenges regarding the qualifications of an elector. 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. Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 C.F.R. 51.41.

With regard to amendments in Sections 2, 4, 5, 6, 7, and 8 of Act R54, concerning issuance of a duplicate registration notification card, implementation of the State Election Commission photo voter registration card system, photograph identification requirements and provisional ballots, special identification card provisions, the State Election Commission voter education program, and the State Election Commission registered voter list, our analysis indicates that the information sent is insufficient to enable us to determine that the proposed changes have 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, as required under Section 5. Thus, additional information is necessary so that we may complete our review of your submission.

The information initially provided by the State in its written submission did not include a substantial amount of detail concerning the State's plans for carrying out the new voter identification requirements of Act R54. Subsequently, in a telephone conversation on August 3, 2011, and a follow-up telephone conversation on August 9, 2011, the Executive Director of the South Carolina State Election Commission indicated that the Election Commission had already begun its planning for implementation of the State's new photo voter registration card system, provided for in Section 4 of the law. The Executive Director advised that this system, when implemented, will include, for certain current and future registered voters, the ability to obtain a free photo voter registration card at all county boards of registration and elections and that the requirements for the card will be the same as the current requirements to register to vote. On August 25, 2011, the State supplemented its submission by providing the Department with draft procedures for issuing photo voter registration cards, as provided in Section 4 of Act R54. In order to assist us in determining whether these procedures as well as the other additional information that the State has provided concerning implementation of Act R54 will obviate any potential retrogressive effects, please provide the following information regarding the planned photo voter registration card system that will be implemented by the State Election Commission:

1. Describe how already registered voters applying for an initial photo voter registration card or requesting a duplicate voter registration card (with or without photo) may confirm social security number and date of birth (including required forms of identification, if applicable), as contemplated by the draft procedures submitted on August 25, 2011.

With regard to the issuance of duplicate registration notification, we note that Section 2(B) of Act R54 states: "[i]f an elector loses or defaces his registration notification, he may obtain a duplicate notification from his county board of registration upon request in person, or by telephone or mail," and does not describe any additional requirements or identification needed to obtain a duplicate voter registration card. In contrast, as indicated above, the draft procedures indicate that in order for an already registered voter to obtain a duplicate voter registration card (with or without photo), the "[v]oter must verify identification by confirming social security number and date of birth." Please provide an explanation of the apparent difference in requirements for issuance of a duplicate voter registration card between Section 2(B) of Act R54 and the draft procedures for issuing photo voter registration cards prepared by the State Election Commission.

2. Indicate the dates when and locations where the photo voter registration card will be available to applicants, including a description of all means of dissemination that will be used to distribute the card and equipment, materials and funding necessary to implement the system, as well as any renewal procedures, if applicable;

3. Provide information about procedures and materials that will be used to notify voters of the system and the availability of the photo voter registration cards; and

4. Describe the efforts the State will undertake, including issuance of any rules, regulations, or written guidance, to inform and train state and county election officials regarding voter identification requirements and implementation of the photo voter registration card system.

Additionally, please provide the following information regarding the special identification card available from the Department of Motor Vehicles (DMV), as well as the State Election Commission's voter education program and registered voter list provided for in Sections 6, 7 and 8 of Act R54:

5. Information on the specific requirements needed to apply for the DMV-issued special identification card, including what forms of "other evidence" in addition to a birth certificate, as specified in Section 6 of Act R54, will be acceptable as proof of name and date of birth;

6. A detailed description of the State Election Commission's voter education program regarding the voter identification provisions of Act R54; and

7. A copy of the State Election Commission's registered voter list, to the extent it has been compiled pursuant to Section 8 of Act R54, containing all registered voters of South Carolina, by race, who are otherwise qualified to vote but do not have a South Carolina driver's license or other form of identification containing a photograph issued by the DMV, as well as a description of how the list was compiled, and an explanation of how voters identified on the list will receive notice regarding the provisions of Act R54 and the availability of free DMV-issued identification or a photo voter registration card.

8. Additionally, on August 16, 2011, the State supplemented its submission by providing the Department with an opinion of the South Carolina Attorney General, issued on that date, which provides guidance on the definition of "reasonable impediment" in Section 5(D)(1)(b) of Act R54. The opinion defines "reasonable impediment" as "any valid reason, beyond the voter's control, which created an obstacle to the voter's obtaining the necessary photographic identification in order to vote," including the inability to obtain a birth certificate, the presence of a physical disability, or the short time frame between the preclearance of the law and the date of the next election. To complete our review of this provision of Act R54, please provide a description of how the "reasonable impediment" exemption standard will be applied, how voters will be notified of the standards and procedures, and the nature and schedule for training of county boards of registration and elections and county boards of canvassers regarding the "reasonable impediment" exemption standard.

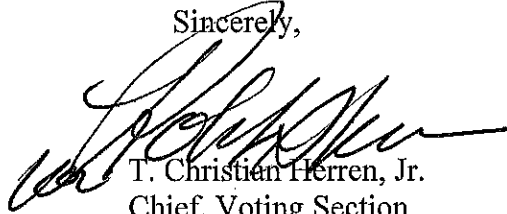
In addition to the information requested above, the State is, of course, welcome to provide any additional information that may assist in our determination of whether the State has met its burden of demonstrating that Act R54 has neither a discriminatory purpose nor will have a retrogressive effect.

The Attorney General has sixty days to consider a completed submission pursuant to Section 5. This sixty-day review period will begin when we receive the information specified above. 28 C.F.R. 51.37. However, if no response is received within sixty days of this request, the Attorney General may object to the proposed changes consistent with the burden of proof placed upon the submitting authority. 28 C.F.R. 51.40 and 51.52(a) and (c). Changes that affect voting are legally unenforceable unless and until the appropriate Section 5 determination has been

obtained. *Clark v. Roemer*, 500 U.S. 646 (1991); 28 C.F.R. 51.10. Therefore, please inform us of the action the state plans to take to comply with this request.

If you have any questions concerning this letter or if we can assist you in obtaining the requested information, please call Ms. Arati Naik Jain at 202-305-7543 or Ms. Catherine Meza at 202-305-0132 of our staff. Refer to File No. 2011-2495 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,



T. Christian Herren, Jr.
Chief, Voting Section