

**ASSOCIATION OF COMMUNITY ORGANIZATIONS
FOR REFORM NOW, ET AL.**

v.

CATHY COX, ET AL.

EXHIBIT 8

To Plaintiffs' Brief in Support of
Motion for Preliminary Injunction



THURBERT E. BAKER
ATTORNEY GENERAL

Department of Justice
State of Georgia

SECTION 5 SUBMISSION
NO. 2005-14461

40 CAPITOL SQUARE SW
ATLANTA, GA 30334-1300

By Federal Express Overnight Delivery

December 7, 2005

**SUBMISSION UNDER SECTION 5
OF THE VOTING RIGHTS ACT**

Mr. John Tanner
Chief, Voting Section
Civil Rights Division
Room 7254 - NWB
Department of Justice
1800 G Street, N.W.
Washington, D.C. 20006

2005 DEC -9 PM 2:41
CIVIL RIGHTS DIVISION
VOTING SECTION

Re: Georgia Sec. 5 Submission 2005-15: Amendment of State Election Board Rules 183-1-6.03(3)(c), 183-1-12-.02(3)(b)(1), 183-1-12.02(5)(d), 183-1-12-.02(10) 183-1-19-.01.

Dear Mr. Tanner:

In my capacity as chief legal officer of the State of Georgia and as the official authorized to make this submission, I hereby submit for preclearance pursuant to Section 5 of the Voting Rights Act of 1965, as amended (42 U.S.C. § 1973c), the amendment of State Election Board Rules 183-1-6.03(3)(c), 183-1-12-.02(3)(b)(1), 183-1-12.02(5)(d), 183-1-12-.02(10), and the adoption of a new Rule 183-1-19-.01.

In accordance with the required contents for submission set forth in 28 C.F.R. § 51.27, the State of Georgia hereby submits the following with respect to this request.

- (a) A copy of any ordinance, enactment, order, or regulation embodying a change affecting voting.

Copies of each of the new Rules promulgated by the State Election Board are enclosed and identified as follows:

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- Exhibit A-1:** Proposed Rule 183-1-6-.03(3)(o)
- Exhibit A-2:** Proposed Rule 183-1-12-.02(3)(b)(1)
- Exhibit A-3:** Proposed Rule 183-1-12-.02(5)(d)
- Exhibit A-4:** Proposed Rule 183-1-12-.02(10)
- Exhibit A-5:** Proposed Rule 183-1-19-.01

- (b) A copy of any ordinance, enactment, order or regulation embodying the voting practice that is proposed to be repealed, amended or otherwise changed.

Certified copies of the previous versions of the existing Rules are enclosed as **Exhibit B**.

- (c) If the change affecting voting either is not readily apparent on the face of the documents provided under paragraphs (a) and (b) of this section or is not embodied in a document, a clear statement of the change explaining the difference between the submitted materials adequate to disclose to the Attorney General the difference between the prior and proposed situation with respect to voting.

The changes are readily apparent on the face of the documents provided with this submission. For the convenience of the Attorney General in reviewing the submission, a synopsis of the proposed rule changes as well as a "red-lined" version, where available, of the rule showing the language changed is included with each rule as a part of **Exhibit A-1** through **5**.

Generally, the amendment to Rule 183-1-6-.03(3)(o) provides that completed voter registration applications collected by someone other than an authorized voter registrar must be sealed before they are collected, cannot be copied and must be submitted with 72 hours of their collection. This will help preserve the security of the personal identifiable information which a prospective voter provides during the registration process, such as a social security number, and prevent its improper dissemination for uses other than for voter registration purposes.

The amendment to Rule 183-1-12-.02(3)(b)(1) is intended to preserve security while assuring public observation when local election officials are testing the setup of DRE voting equipment.

Rule 183-1-12-.02(5)(d) is amended to assure the quicker submission of election results to the Secretary of State after the polls have closed. These unofficial returns are submitted electronically and are intended to give the public a quick and reliable idea of the results of the various elections.

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Under the amendment to Rule 183-1-12-.02(10), the State Election Board has mandated that demonstration machines may not be programmed to show an actual official ballot. This is to avoid any demonstrations by election officials seeming to indicate preferences for any candidates or questions that are actually appearing on the ballot in that election.

Finally, the adoption of new Rule 183-1-19-.01 clarifies that the providing of postage for use in the mailing of voter registration applications is not to be considered a gift or payment for purposes of voter registration, which would otherwise be illegal under O.C.G.A. § 21-2-570.

- (d) The name, title, address and telephone number of the person making the submission.

Thurbert Baker
Attorney General of Georgia
40 Capitol Square, S.W.
Atlanta, Georgia 30334-1300
404-656-3300

Please mail all communications to:

Dennis R. Dunn
Deputy Attorney General
40 Capitol Square, S.W.
Atlanta, Georgia 30334-1300
404-656-5614

- (e) The name of the submitting authority and the name of the jurisdiction responsible for the change, if different.

The submitting authority is the Georgia Attorney General. The jurisdiction responsible for the change is the State Election Board of the State of Georgia.

- (f) If the submission is not from a state or county, the name of the county and state in which the submitting authority is located.

Not applicable.

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- (g) Identification of the person or body responsible for making the change and the mode of decision (e.g., act of state legislature, ordinance of city council, administrative decision by registrar).

The State Election Board promulgated these rules pursuant to its authority provided under O.C.G.A. § 21-2-31(2).

- (h) A statement identifying the statutory or other authority under which the jurisdiction undertakes the change and a description of the procedures the jurisdiction was required to following in deciding to undertake the change.

The changes are to clarify various provisions of Georgia law as provided the Board under the authority cited above.

- (i) The date of the adoption of the change affecting voting.

The State Election Board approved the adoption of these rule changes on September 14, 2005.

- (j) The date on which the change is to take effect.

Under the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-6(a), a rule takes effect 20 days after its approval by an agency, which in this case would be October 4, 2005.

- (k) A statement that the change has not yet been enforced or administered, or an explanation why such a statement cannot be made.

To the best of my knowledge, none of these proposed rule changes have been put into effect.

- (l) Where the change will affect less than the entire jurisdiction, an explanation of the scope of the change.

The change will affect all voters in Georgia.

- (m) A statement of the reasons for the change.

The rule changes were made to clarify specific provisions of Georgia law which are not directly addressed by state law, but which as practical matters have arisen as issues of concern to the State Election Board.

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- (n) A statement of the anticipated effect of the change on members of racial or language minority groups.

The proposed changes will affect all of Georgia's voters.

- (o) A statement identifying any past or pending litigation concerning the change or related voting practices.

There have been two separate cases which have influenced the development of the amendment to Rule 183-1-6-.03(3)(c), which deals with the sealing of voter registration applications, timely delivery of the applications and the prohibitions against copying of the registration forms.

The first case was *Charles H. Wesley Education Foundation, Inc. et al. v. Cathy Cox et al.*, Civil Action No. 1:04-CV-1780-WCO (N.D. Ga. filed June 23, 2004). A copy of the amended complaint in that case is enclosed as **Exhibit C-1**. On July 1, 2004, the district court issued a preliminary injunction in that case requiring the Secretary of State to forward for registration the Plaintiffs' applications to register which had not individually been mailed to the Secretary and to accept for registration purposes in the future mail-in voter registration applications that were not individually mailed, but instead were submitted in a bundle, or which were collected by individuals who were not deputy registrars. *Charles H. Wesley Education Foundation, Inc. et al. v. Cathy Cox et al.*, 324 F. Supp. 2d 1358 (N.D. Ga. 2004). A copy of that opinion is enclosed as **Exhibit C-2**. The Secretary of State appealed that decision to the United States Court of Appeals for the Eleventh Circuit, which affirmed the granting of the preliminary injunction on May 12, 2005. *Charles H. Wesley Education Foundation et al. v. Cathy Cox et al.*, 408 F.3d 1349 (11th Cir. 2005). A copy of that opinion is enclosed as **Exhibit C-3**.

Given that the district court had required the Secretary of State to accept "bundled" voter registration applications that were designed to be mailed in by individual voters, and which contain individual personally identifiable information such as the voter's social security number for identification purposes, the State Election Board adopted the rule in question to help secure that information and to prevent its misuse for purposes other than for voter registration.

As noted below, there was discussion about the passage of the Rule, with the Plaintiffs and other groups opposing the Rule because they wanted to review, verify and possibly correct the information that was to be submitted for voter registration purposes. The Plaintiffs filed a second

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lawsuit, this time in the Superior Court of DeKalb County, alleging that their comments on the proposed rule were not properly considered by the State Election Board. *Charles H. Wesley Education Foundation, Inc. et al. v. State Election Board et al.*, Civil Action No. 05CV11931-08 (Superior Court of DeKalb County filed October 17, 2005). A copy of that complaint is enclosed as **Exhibit C-4**. A copy of the Wesley Foundation's position on the Rule is attached to the complaint. The State Election Board has answered that case (**Exhibit C-5**) and it is currently pending in the superior court.

- (p) A statement that the prior practice has been precleared (with the date) or is not subject to the preclearance requirement and a statement that the procedure of the adoption of the change has been precleared (with the date) or is not subject to the preclearance requirement, or an explanation of why such statements cannot be made.

These specific State Election Board Rules have been previously precleared by the Attorney General. The current version of Rule 183-1-6-.03 was precleared under DOJ File No. 2003-4681 by letter dated February 17, 2004, which is enclosed as **Exhibit D-1**. The current version of Rule 183-1-12-.02 was precleared under DOJ File No. 2003-4135 by letter dated January 6, 2004, which is enclosed as **Exhibit D-2**. Rule 183-1-19-.01 is a new rule.

- (q) For redistrictings and annexations: the items listed under § 51.28(a)(1) and (b)(1) [Demographic information and Maps]; for annexations only, the items listed under § 51.28(c)(3).

Not applicable.

- (r) Other information that the Attorney General determines is required for an evaluation of the purpose or effect of the change.

Not applicable.

Pursuant to 28 C.F.R. § 51.28, the following additional information is submitted:

- (a) Demographic information.

Not applicable.

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(b) Maps.

Not applicable.

(c) Annexations.

Not applicable.

(d) Election returns.

Not applicable.

(e) Language usage.

To the best of my knowledge, the action does not affect the use of the language of a minority group in the elective process.

(f) Publicity and participation.

Minutes of the September 14, 2005, meeting of the State Election Board where the proposed rules were considered and adopted are enclosed as Exhibit E-1. Attached to this exhibit are also the reviewed minutes of the previous State Election Board meeting of July 27, 2005, where the rule changes were discussed.

Enclosed as Exhibit E-2 is a September 14, 2005, letter from the associate general counsel of the Service Employees International Union, CLC, opposing the adoption of Rule 183-1-6-.03(3)(o) because the union wanted to be able to assist persons in completing their voter registration applications. The union identified the voters they were concerned about as being the elderly, disabled, those with limited English proficiency or those with a limited ability to read.

Enclosed as Exhibit E-3 is a letter to the Secretary of State from the Advancement Project opposing the adoption of the Rule because the sealing requirement would not permit the Project to review the application prior to its submission and because the prohibition on copying would prevent them from tracking the applicants they assist through the registration process. The project also opposed the time limits in the proposed rule for submitting the applications.

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(g) Availability of the submission.

The submission will be advertised by a legal advertisement in the Atlanta Journal and Constitution, as shown in Exhibit F.

(h) Minority group contacts.

A minority group contact for this submission is:

Rep. Stan Watson
House District 91
509 Legislative Office Building
Atlanta, GA 30334
(404) 656-0220

There is no further information that is known to be relevant to the consideration of this submission.

Sincerely,



THURBERT BAKER
Attorney General

TB:DRD
Enclosures

SYNOPSIS OF RULE 183-1-6-.03(3)(c)

MAIN PURPOSE: This proposed amendment to the rule provides that completed voter registration applications collected by any person other than a voter registrar or deputy registrar must be sealed before collection, cannot be copied, and must be submitted to the county voter registrar within 72 hours of being collected.

MAIN FEATURES: The proposed amendment to the rule provides that completed voter registration applications must be sealed before being collected by someone other than a voter registrar or deputy registrar. The proposed rule provides that copies of the completed applications cannot be made. The proposed rule also provides that a completed voter registration application must be returned to the voter registrar's office within 72 hours after the date of execution by any person other than a voter registrar or deputy registrar. The proposed rule further provides that a valid registration application timely received by the Secretary of State or registrar shall be accepted.

Amendment to Rule 183-1-6-.03(3)(c)

(c) In order to ensure that the same degree of supervision and security provided at the main office of the board of registrars to prevent voter registration irregularities is maintained for the additional voter registration places, the following rules shall apply:

1. ~~Completed~~ Except as provided in this rule, completed registration applications may be maintained only by registrars and deputy registrars and only:

(i) at the additional voter registration place during the hours of operation;

(ii) in transit to the main office of the board of registrars in the possession of a registrar or deputy registrar;

(iii) at the main office of the board of registrars;

(iv) at permanent additional voter registration places overnight but not beyond the end of the next business day; and

(v) at sites mandated as voter registration sites under O.C.G.A. §§ 21-2-221 and 21-2-222 but not longer than the time permitted under those Code sections.

2. ~~No person may accept a completed registration application from an applicant unless such application has been sealed by the applicant. No copies of completed registration applications shall be made. This paragraph shall not apply to registrars and deputy registrars.~~

3. ~~Transit time shall be kept at a minimum. Completed registration applications shall not be kept at any time in a private residence. Registration applications shall be mailed or delivered to the registrars as soon as reasonably practicable, but, in any event, not later than 72 hours after the date of the execution of the application by the applicant.~~

4. ~~Notwithstanding any provision of this rule to the contrary, a valid registration application that is timely received by the Secretary of State or the registrars shall be accepted.~~