Criticism of Voting Law Was Overruled

Justice Dept. Backed Georgia Measure Despite Fears of Discrimination

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A team of Justice Department lawyers and analysts who reviewed a Georgia voter-identification law recommended rejecting it because it was likely to discriminate against black voters, but they were overruled the next day by higher-ranking officials at Justice, according to department documents.

The Justice Department has characterized the "pre-clearance" of the controversial Georgia voter-identification program as a joint decision by career and political appointees in the Civil Rights Division. Republican proponents in Georgia have cited federal approval of the program as evidence that it would not discriminate against African Americans and other minorities.

But an Aug. 25 staff memo obtained by The Washington Post recommended blocking the program because Georgia failed to show that the measure would not dilute the votes of minority residents, as required under the Voting Rights Act.

The memo, endorsed by four of the team's five members, also said the state had provided flawed and incomplete data. The team found significant evidence that the plan would be "retrogressive," meaning that it would reduce blacks' access to the polls.

A day later, on Aug. 26, the chief of the department's voting rights section, John Tanner, told Georgia officials that the program could go forward. "The Attorney General does not interpose any objection to the specified changes," he said in a letter to them.

Eric Holland, a Justice Department spokesman, said in a statement this week that "disagreements are healthy in a debate" and that voting rights decisions are made "after reviewing both the pros and cons very carefully."

"At the end of the day, the section chief is responsible for tendering a recommendation" to the assistant attorney general for civil rights, he said.

The Georgia voter ID program has been the subject of fierce partisan debate since it was approved by the state's Republican-controlled legislature in March. The plan was blocked on constitutional grounds in October by a U.S. District Court judge, who compared the measure to a Jim Crow-era poll tax. A three-judge appellate panel, made up of one Democratic and two Republican appointees, upheld the lower court's injunction.

The program requires voters to obtain one of six forms of photo identification before going to the polls, as opposed to 17 types of identification currently allowed. Those without a driver's license or other

photo identification are required to obtain a special digital identification card, which would cost $20 for five years and could be obtained from motor vehicle offices in only 59 of the state's 159 counties.

Proponents said the measure was needed to combat voter fraud, but opponents charged that Republicans were trying to keep black voters, who tend to vote Democratic, away from the polls.

Section 5 of the Voting Rights Act of 1965 requires Georgia and eight other states, mostly in the South, to submit any voting rule changes that might affect minority groups to the Justice Department for review. The department can either halt the proposed changes with an objection or issue a "pre-clearance" letter allowing them to proceed. Portions of the act, including Section 5, are up for renewal in Congress, and Attorney General Alberto R. Gonzales has said that he supports reauthorizing the law.

The Justice Department's decision to approve the Georgia measure was the latest in a series of disputes within the Civil Rights Division, which lost nearly 20 percent of its lawyers in 2005 and has assigned dozens of those who remain to handle immigration cases instead of civil rights litigation. In the voting rights section, which handles election-related issues such as the Georgia plan, political appointees also overruled career lawyers in approving GOP-backed redistricting maps in Mississippi and Texas in recent years, current and former employees have said.

The Voting Rights Act puts the legal burden on Georgia to show that proposed election-related changes would not be retrogressive. According to the Aug. 25 memo from the Justice review team, Georgia lawmakers and state officials made little effort to research the possible racial impact of the proposed program.

The 51-page memo recommended several steps that Georgia could take to make the ID program fairer to minority voters, such as continuing to allow the use of non-photo identification, such as birth certificates and Social Security cards, that have not been shown to pose security problems.

Those in favor of issuing an objection were Robert Berman, deputy chief of the voting rights section; Amy Zubrensky, a trial lawyer; Heather Moss, a civil rights analyst; and Toby Moore, a geographer, according to the memo. A fifth member of the team, trial lawyer Joshua Rogers, recommended approval, but the memo does not include his reasoning.

Berman did not return a call made to his office.

A key area of disagreement between the staff and their supervisors appears to be the reliability of data provided by the Georgia Department of Driver Services and other state agencies.

The staff memo noted that the records were riddled with errors, including the unexpired licenses of dead people, and were "of a quality far below what we are accustomed to using in the Voting Section." And other sources, including the U.S. Census Bureau, showed that Georgia blacks were much less likely than whites to own vehicles and also less likely to have photo IDs, the memo said.

"While no single piece of data confirms that blacks will [be] disparately impacted compared to whites, the totality of the evidence points to that conclusion," the memo said. It added later: "The state has failed to meet its burden of demonstrating that the change is not retrogressive."

But Assistant Attorney General William E. Moschella cited the state's data in an Oct. 7 letter to a senator that argues the number of eligible voters without a photo ID is "extremely small."
"All individual data indicates that the state's African-American citizens are, if anything, slightly more likely than white citizens to possess one of the necessary forms of identification," Moschella wrote to Sen. Christopher S. Bond (R-Mo.) in defense of the department's decision.

State Sen. Bill Stephens, a Republican who helped win passage of the legislation, said the Justice Department's approval was vital because of the restrictions faced by Georgia under the Voting Rights Act.

"That is the most crucial part of any elections legislation we pass," said Stephens, who is a candidate for secretary of state. "We know we have to await the Justice Department's pre-clearance of virtually anything we do."

State Rep. Tyrone L. Brooks Sr., a Democrat and president of the Georgia Association of Black Elected Officials, said he was not surprised by the Justice Department's position in the case.

"Some of my colleagues told me early on that, because of politics in the Bush administration, no matter what the staff recommendation was, this would be approved by the attorney general," Brooks said. "It's disappointing that the staff recommendation was not accepted, because that has been the norm since 1965."

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