



U.S. Department of Justice
Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

April 21, 1992

James R. Trotter, Esq.
General Counsel
State of North Carolina
Office of the Governor
116 West Jones Street
Raleigh, North Carolina 27611

Dear Mr. Trotter:

This refers to the change in the length of terms of the judges elected in 1990 to fill vacancies in Districts 3A and 7A of the Superior Court of the State of North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your response to our request for additional information on February 21, 1991.

We have considered carefully the information you have provided, as well as information received from other interested persons, and our prior Section 5 reviews of superior court changes. In your submissions, you suggest that there has not been any change affecting voting within the meaning of Section 5 as a result of the Governor's decision to provide for eight-year terms of office for the judges at issue. We do not agree. In the past, those superior court judges who were elected to fill vacancies served only the remainder of the eight-year term. The submitted changes provide that the judges at issue will serve for a full eight-year term. These changes determine when elections will be held for the two affected judgeships and, with regard to the positions in District 3A, whether the elections will be concurrent or staggered. These kinds of changes are covered by Section 5.

The Attorney General does not interpose any objection to the granting of an eight-year term of office to the superior court judge elected in 1990 to fill a vacancy in single-member superior court District 7A. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does

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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).

We cannot, however, reach a similar conclusion with regard to the granting of an eight-year term of office to the superior court judge elected in 1990 to fill a vacancy in multimember judicial District 3A, which is comprised of Pitt County. This proposed change would have the effect of eliminating concurrent terms in District 3A, thereby eliminating the opportunity to single-shot vote.

As you know, we previously have interposed an objection to the use of numbered posts in multimember districts of the state's superior court. Numbered posts in multimember election districts eliminate the opportunity for minority voters to employ single-shot voting. Such a change may, in the context of racially polarized voting, adversely affect minority voters' attempts to elect representatives of their choice. We note that the state subsequently abandoned the use of numbered posts.

In District 3A, the staggering of terms, like numbered posts, would have the effect of eliminating the opportunity to single-shot vote. Our analysis of election returns in District 3A indicates that racially polarized voting exists in Pitt County. In the context of such polarized voting patterns, single-shot voting provides minority voters an opportunity to attempt to elect representatives of their choice. Therefore, the staggering of terms of superior court judges in multimember District 3A will "lead to a retrogression in the position of ... minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 130, 141 (1976).

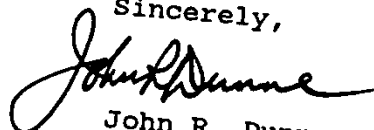
Section 5 requires the state to demonstrate that the proposed change "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color." 42 U.S.C. 1973c. In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the burden has been sustained in this instance. Accordingly, on behalf of the Attorney General, I must object to the change in the length of the term of the judge elected in 1990 to fill a vacancy in multimember superior court District 3A.

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. In addition, you may 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 change in the length of the term of the judge elected in 1990 to fill a vacancy in multimember superior court District 3A continues to be legally unenforceable. Clark v. Roemer, 111 S.Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of North Carolina plans to take concerning this matter. If you have any questions, please call J. Gerald Hebert (202-307-6292), Deputy Chief of the Voting Section. Refer to File Nos. 91-3884 and 91-3885 so that your correspondence will be channeled properly.

Sincerely,



John R. Dunne
Assistant Attorney General
Civil Rights Division