

1984 WL 249872 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 27, 1984

*1 James B. Ellisor
Executive Director
State Election Commission
Post Office Box 5987
Columbia, South Carolina 29250

Dear Mr. Ellisor:

Your recent letter to Mr. Medlock concerning the 1982 Amendments to the Voting Rights Act and its effect on South Carolina's bystander laws has been referred to me for reply. You have requested an opinion concerning several questions you have raised concerning this amendment.

1. Would the Amendment to the Voting Rights Act still permit the chairman of the managers in a precinct to appoint one of the managers to go into the voting booth with the voter and the person selected by the voter to give him assistance?

The 1982 Amendment to the Voting Rights Act does not specify if the assistance to be given under this provision is the sole assistance that can be given. The provision reads as follows:

Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union.

The legislative history regarding this Act does not clarify the question. The legislative history is set out in 1982 U.S. Code Congressional and Administrative News, at pages 240-242. This history sets out in part that

. . . people requiring assistance in some jurisdictions are forced to choose between casting a ballot under the adverse circumstances of not being able to choose their own assistance or forfeiting their right to vote. The Committee is concerned that some people in this situation do in fact elect to forfeit their right to vote. Others may have their actual preference overborne by the influence of someone assisting them or be misled into voting for someone other than the candidate of their choice.

To limit the risks of discrimination against voters in these specified groups and avoid denial or infringements of their right to vote, the Committee has concluded that they must have the assistance of a person of their own choice . . . The Committee recognizes the right of any state to establish necessary election procedures, subject to the overriding principle that such procedures shall be designed to protect the rights of voters.

State provisions would be preempted only to the extent that they unduly burden the right recognized by this section, with that determination being a practical one dependent upon the facts . . . The Committee has simply concluded that, at the best, members of each group are entitled to assistance from a person of their own choice.

It does appear from this language that the intent of the amendment is to preserve the integrity of the election and to prevent fraud so that the person needing assistance actually votes for the persons for whom he wants to vote. The legislative history expressly provides that state laws are only to be preempted to the extent they burden this right. ¹

*2 With this in mind, we need to look at our statute and its purpose. South Carolina Code of Laws, 1976, Section 7-13-770 provides for assistance to voters entitled to such assistance. This provision provides in part that A voter . . . may appeal to the managers for assistance in voting, and the chairman of the managers shall appoint one of the managers and a bystander, who must be an elector of that precinct, to be designated by the voter to assist him in preparing his ballot.

The purpose behind having the manager and a bystander accompany a voter needing assistance into the voting booth is to insure that the person's choices are actually being voted. By having two people accompany the voter, one of the elector's own choosing, is a safeguard to the integrity of the election.

Another provision of the [Code, Section 7-13-800](#), requires that a write-in ballot that is cast for a person needing assistance, be cast ' . . . in the handwriting of a duly authorized manager . . . '

The Amendment to the Voting Rights Act would appear to simply replace the bystander as defined by statute as a person who is an elector of that precinct to anyone at all, elector or not, of the voter's own choosing. A manager could, therefore, apparently still accompany that person designated by the voter to give assistance into the voting booth.

2. Would the person chosen by the voter have to be a registered elector in the precinct?

No. See answer to 1 above.

3. Could more than one voter in a precinct who are illiterate or physically handicapped choose the same person during the course of the voting day?

Yes. There would be no prohibition to this practice.

4. Would the person chosen by a voter to give him assistance have to be a bystander or could the person be someone who is outside of the voting place?

The person giving assistance could be anyone inside or outside of the voting place that is a 'person of the voter's choice.'
Sincerely,

Treva G. Ashworth
Senior Assistant Attorney General

Footnotes

- 1 It should be noted that in footnote 207 of the legislative history at page 241, it states that [t]he Committee received information indicating that having assistance provided by election officials discriminates against those voters who need such aid because it infringes upon the right to a secret ballot and can discourage many from voting for fear of intimidation or lack of privacy. [Cite omitted]
It is unknown but presumed the situation to which they refer is when only the election officials accompany a voter needing assistance into the polling place. Nowhere in the body of the legislative history is the practice of having an election official provide assistance when he is only one of two assistants, prohibited.

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