1974 WL 27962 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
September 18, 1974

***1 Re: No. 78—Elections**

Honorable James B. Ellisor
Executive Director
State Election Commission
P. O. Drewer 5987
Columbia, South Carolina 29250

Dear Mr. Ellisor:
On August 12, 1974, Governor John C. West approved an act amending various election laws of this State. See, 58 STAT. Act No. ___ at _____ (1974); see also Act bearing Ratification Number R1470, approved April 12, 1974. Among the election laws that were altered by the aforementioned act were subsection A(5) of Section 2 of Act 971 of 1966, as amended. See CODE OF LAWS OF SOUTH CAROLINA, Cumulative Supplement, Section 23-400.15 (1962). Subsection A(5), as amended in 1968 (see, 55 STAT. Act No. 955, Section 31 at 2335 (1968)), requires candidates nominated by either the primary or convention method to be certified to the State Election Commission at least thirty-five days prior to the date of the holding of the general election in the case of candidates for election to State-wide offices. Prior to its recent amendment, therefore, nominees to State offices for the general election to be conducted this year were required by subsection A(5) to be certified to the State Election Commission by October 1, 1974. The recent amendment to subsection A(5) would require all nominees to be certified to the State Election Commission by no later than twelve o'clock noon, September 18, 1974.

A question has arisen as to whether or not the State Election Commission should accept certifications which are made to it after the twelve o'clock noon deadline on September 18, 1974.

The State of South Carolina, of course, is one of the several states of the United States that is subject to the 1965 Voting Rights Act. See, 42 U.S.C. Sections 1971 et seq. Section 5 of that Act (42 U.S.C. Section 1973c) prohibits the enforcement in South Carolina, which is one of the jurisdictions covered by Section 4(a) of the Act (see, 42 U.S.C. 1973b), of any voting qualification, prerequisite to voting, standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, until the State either obtains from the United States District Court for the District of Columbia a declaratory judgment that the voting qualification, prerequisite to voting, standard, practice or procedure 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 or the voting qualification, prerequisite to voting, standard, practice or procedure has been submitted to the Attorney General of the United States and that officer has interposed no objection during a sixty-day period following submission. See, 42 U.S.C. 1973c; see also, 28 C.F.R. 51.1 at 136, 137.

As of this date no action has been instituted by the State of South Carolina in the United States District Court for the District of Columbia seeking a declaratory judgment from that court that the voting procedures contained in the new amendment to subsection A(5) do not have the purpose and will not have the effect of denying or abridging anyone's right to vote on account of race or color. A submission of that amendment and the entire act of which it is a part was made to the United States Attorney General on August 22, 1974, by South Carolina Assistant Attorney General Treva G. Ashworth. To date, the United States Attorney General has neither approved nor interposed any objection to that submission.

***2** In our opinion, the State Election Commission cannot lawfully enforce the provisions of the statute that further amends subsection A(5) until one of the requisites of Section 5 of the Voting Rights Act of 1965 has been met. The amendment is without question a change in voting practice and procedure within the meaning of Section 5 of the Voting Rights Act; and under that Act, its 'implementation is proscribed, unless those changes are approved by the Attorney General of the United States or are declared by the District Court for the District of Columbia . . . to be in compliance with the standards of that Act.' Johnson v. West, Civil Action Number 72-680, Slip Op. at 4 (D. S. C., filed June 14, 1972).

We conclude, therefore, that the State Election Commission must accept for inclusion upon the appropriate ballots the names of these State candidates certified by political parties to it by October 1, 1974.
Kind regards,

C. Tolbert Goolsby, Jr.

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