

August 4, 2000

By Federal Express

Mr. Joseph Rich
Chief, Voting Section
Civil Rights Division
Department of Justice
320 First Street, N.W.
Room 818A
Washington, D.C. 20001

Re: File No. 2000-2495
Comment letter under Section 5 of Voting Rights Act

Dear Mr. Rich:

On behalf of the NAACP, the Georgia Rural-Urban Summit, the Southern Regional Council, and the Fannie Lou Hamer Project, we are writing to urge you to object, under Section 5 of the Voting Rights Act, to Act 883 of the 2000 Georgia General Assembly, insofar as it raises the limits on the amounts of money that donors may contribute to candidates for office in Georgia. Under Section 5 of the Voting Rights Act, a covered state may not implement a change in its election laws unless it carries the burden of demonstrating that the change will be free of any racially discriminatory purpose or effect. *Georgia v. United States*, 411 U.S. 526, 538 (1973). As explained in this comment letter, Georgia's proposed changes will have a retrogressive impact on minorities' effective exercise of the franchise, and therefore should not receive preclearance under Section 5. *Beer v. United States*, 425 U.S. 130, 141 (1976).

The National Association for the Advancement of Colored People (NAACP) is the nation's oldest and largest civil rights organization. Its half-million adult and youth members throughout the United States and the world are the premier advocates for voting rights and civil rights in their communities.

The Georgia Rural Urban Summit was founded in 1994 and has offices in Athens and Decatur, Georgia. The Summit works on issues of importance to low income people, grassroots organizations and community groups throughout Georgia. The Summit organizes around a wide range of issues including the environment, civil rights, health care, welfare reform, and education.

The Southern Regional Council, based in Atlanta, Georgia, has worked for 80 years to promote racial justice, protect democratic rights and broaden civic participation in the southern United States.

The Fannie Lou Hamer Project, founded in 1999 and located in Atlanta, Georgia, is dedicated to promoting the understanding of campaign finance as a civil rights issue. The Project educates the public as to how the current campaign finance system restricts civic and political participation and has a disparate impact on communities of color. The Project serves to promote the involvement of traditional civil rights organizations and communities of color in campaign finance reform initiatives.

The voting law changes under submission would represent a step backward for the political rights of persons of color in Georgia by increasing the role and influence of money in Georgia campaigns. As Nelson Rivers, III, then the NAACP's southeast regional director, said in 1997 concerning the role of money in politics:

This is, first of all, a civil rights issue for us. It has an impact across the board in every community across the nation The South is a natural battlefield for this, because money absolutely dictates who wins in the South. And since African-Americans have proportionately less income, proportionately fewer spending dollars, if money is the number-one determinant in whether you can win an election, then we will always come up last.

(Quoted in Sharon Basco, "The Color of Money," *The Nation*, February 1, 1999, 22).

Georgia's existing contribution limits permit candidates for statewide office to accept contributions of \$5,000 per donor in an election year and \$1,000 in each non-election year, for a total of \$8,000 per donor in an election cycle. Candidates for the General Assembly and other non-statewide office can receive \$2,000 contributions per donor in an election year and \$1,000 in non-election years, for a total of \$3,000 in a two-year election cycle. See Exhibit B-4 to State of Georgia's Section 5 Submission of Act No. 883 (hereafter, "Section 5 Submission"), O.C.G.A. 21-5-41. These limits were established in 1994, and are hardly outdated; indeed, even candidates for federal office currently can accept individual donations no greater than \$1,000 each for the primary and general election under FECA.

Under Act 883, however, money would play an even greater role in the electoral process in Georgia than it did previously. Candidates for statewide office would be able to take contributions of \$5,000 per donor for the primary and another \$5,000 for the general election, with an additional \$3,000 for any primary runoff and \$3,000 for any

general election runoff – potentially allowing a single contributor to give \$16,000 to a statewide candidate in a single election cycle. Candidates for the General Assembly and other non-statewide offices, under Act 833, would be able to take contributions of \$2,000 per donor for the primary and another \$2,000 for the general election. They could also receive an additional \$1,000 for any primary run-off and another \$1,000 for any general election runoff, potentially allowing a single contributor to give \$6,000 to a General Assembly candidate in a single election cycle.¹

The impact of these campaign finance changes on racial minorities in Georgia must be analyzed in the context of two political realities. First, in the context of Georgia elections, numerous studies have demonstrated that voting patterns are racially polarized, with African American candidates receiving strong electoral support from African American voters but far less support from white voters. *See, e.g.*, David A. Bositis, “The future of majority-minority districts and black and Hispanic legislative representation,” in *REDISTRICTING AND MINORITY REPRESENTATION: LEARNING FROM THE PAST, PREPARING FOR THE FUTURE* (Joint Center for Political and Economic Studies 1998), 11-14; Chandler Davidson & Bernard Grofman, eds., *QUIET REVOLUTION IN THE SOUTH: THE IMPACT OF THE VOTING RIGHTS ACT, 1965-1990* (Princeton University Press 1994). Thus, African American voters face substantial impediments to electing their preferred candidates to office in statewide elections and in districts where they do not comprise a majority of the population.

Second, campaign donations have become a more and more important means of exercising electoral influence, both by contributing to the likelihood that a particular candidate will win election, and by increasing the contributor’s access to and influence over the candidate to whom a donation is made. *See* National Institute on Money in State Politics, *Summary of Campaign Funding Patterns, Georgia State Senate, 1992, 1994, 1996*, 1 (attached as Exhibit 1) (finding that funding advantage of winning candidates compared to losing candidates in Georgia senate elections increased from a 55% funding advantage in 1992 to a 324% funding advantage in 1996); *cf. Nixon v. Shrink Missouri Gov’t PAC*, 120 S. Ct. 897, 908 (2000) (“[T]here is little reason to doubt that sometimes large contributions will work actual corruption of our political system”); *Daggett v. Comm’n on Governmental Ethics and Election Practices*, 205 F.3d 445, 456-459 (1st Cir. 2000) (citing evidence of how legislators feel pressured to vote in favor of large contributors, and upholding limits of \$250 per election for state legislative elections in Maine).

Changes in campaign regulations that increase the importance and prevalence of money in the electoral process thus work to the detriment of minority voters, who as a group are far less likely than white voters to have sufficient funds to contribute at any level to political campaigns. In addition, because large campaign donations flow disproportionately to white candidates rather than candidates of color, higher contribution limits provide a disproportionate electoral advantage to white candidates. Raising the

¹ Please note that we do not object to those portions of Act 883 that establish new electronic filing and other disclosure and reporting requirements.

current limits on campaign contributions thus will add to the comparative disadvantages faced by the preferred candidates of minority voters. As a result, Georgia's effort to double the amounts that contributors can give to political candidates will have a retrogressive impact on minorities' effective exercise of the franchise, whether viewed from the perspective of minorities as candidates or the perspective of minorities as voter/contributors.²

Numerous studies have documented the adverse impact of money-centered elections on minority citizens and candidates. For example, a 1998 study published by Public Campaign examined patterns of campaign contributions by zip code of the contributor, allowing a comparison of contribution patterns in heavily white and heavily minority zip codes. The analysis used federal campaign contribution information from campaign finance reports submitted to the FEC, matching that information to U.S. Census data on the percentage of minority population in zip codes across the United States. The ten cities that were analyzed in detail included Atlanta, Georgia.

Atlanta has a predominately black population. Eighteen of its zip codes are comprised predominately of persons of color. These eighteen zip codes have a combined population of 433,578. Yet the study showed that a single Atlanta zip code with a population of 18,908, which is 91.53% white (zip code 30305), contributed 33% more political funds than all 18 of Atlanta's predominately minority zip codes put together (\$1,567,509 compared to \$1,182,491). *The Color of Money*, at 136 (excerpts and news article attached as Exhibit 2).

In 18 of Atlanta's 38 zip codes, the average per capita campaign contribution was \$2 or less; 14 of those 18 zip codes had populations that were predominately minority. Of the six Atlanta zip codes where the average contribution per capita was zero,³ all were predominately minority in population, with populations ranging from 68.5% to 99.7% minority. By comparison, the average per capita contribution in Atlanta's highest-giving zip code (again, an overwhelmingly white zip code, 30305) was \$82.90. *See id.*, at 133-136. A comparison of maps that show minority population concentrations in Greater Atlanta with maps that show heavy concentrations of political donors produces almost a mirror image, with almost no overlap between the two. *Id.* at 130-131. Clearly, minority citizens in Georgia are far less likely than white citizens to be able to influence elections through monetary contributions.

² Of course, the fact that Georgia's contribution limits are not facially discriminatory does not shield them from review under Section 5 of the Voting Rights Act. *Dougherty County Bd. of Educ. v. White*, 439 U.S. 32 (1978) (holding that a change in a school board's personnel regulations that affected ability of staff members to run for office was subject to Section 5 preclearance requirement); *Hadnot v. Amos*, 394 U.S. 358 (1969) (state statute setting new dates for candidate qualification subject to Section 5 preclearance requirement); *Dotson v. City of Indianola*, 521 F. Supp. 934 (N.D. Miss. 1981) (three-judge court) (noting Attorney General's objection to municipal annexation that would have the effect of decreasing minority voting strength by adding a predominately white area to the city).

³ The study listed the per capita contribution as zero if the average per capita contribution was less than one dollar. *Color of Money* at 13.

A 1994 study of contributors to Georgia campaigns also found that African Americans make up only a miniscule fraction of those making donations to political candidates. “If money is the mother’s milk of politics, the milkman is overwhelmingly white, middle-age, male, wealthy and conservative,” noted a news report detailing the results of the study. *See* “ ‘Typical’ donor no average Georgian,” *The Atlanta Constitution*, December 12, 1994, C2 (Exhibit 3). The survey, conducted by University of Georgia political science professor John A. Clark and Georgetown University professor John M. Bruce, showed that 97 % of contributors were white while only 2% were black. The median annual income of contributors was \$100,000, with 40% reporting incomes between \$100,000 and \$250,000. Only seven-tenths of one percent of African-American households in Georgia have incomes of \$100,000 or more, according to 1990 Census figures. (1990 U.S. Census Data, Database C90STF3C1.)

Not surprisingly, the campaign funds raised by African American candidates as compared to white candidates in Georgia show a disparity similar to that between African American and white contributors. The National Institute on Money in State Politics studied campaign contributions in Georgia state senate elections in 1992, 1994, and 1996. The study found that white candidates for the state senate raised an average of 73 percent more funds than African American candidates in 1992, 16 percent more funds in 1994, and 106 percent more funds in 1996. The average white candidate for state senate in 1996 was able to raise \$45,772, compared to only \$22,199 for African American candidates. National Institute on Money in State Politics, *Summary of Campaign Funding Patterns, Georgia State Senate, 1992, 1994, 1996*, 4 (Exhibit 1). Thus, not only are campaign contributions far more likely to be made by white voters than by African American voters in Georgia, they are also far more likely to flow to white candidates than to African American candidates.

Nationwide studies further document the disproportionate racial impact of money in politics. Researchers conducting a careful statistical study of campaign contributions in congressional elections have found “a pattern of racial discrimination” in the allocation of individual campaign contributions, with black candidates receiving fewer campaign contributions from individual donors even when controlling for nonracial factors that might affect the level of campaign donations. *See* John Theilmann and Al Wilhite, *DISCRIMINATION AND CONGRESSIONAL CAMPAIGN CONTRIBUTIONS* (Praeger 1991), 78 (excerpts attached as Exhibit 4). As Theilmann and Wilhite explain:

The results show racial funding differentials The coefficient on the black variable was negative in all elections and significantly so in four of the five cases. The size of the shortfall ranged from a low of \$7,000 to a high of nearly \$30,000. Apparently, being a black candidate in 1988 reduced a candidate’s campaign contributions by nearly \$30,000. [*Id.* at 76-77.]

[T]here does seem to be a pattern of racial discrimination in the allocation of total campaign contributions. After controlling for attributes such as candidate strength, opposition strength, party affiliation, and the incumbency advantage, black candidates received substantially lower levels of funds than did nonblack

candidates. Because the primary determinants of candidates' fund-raising abilities are included in the analysis, the differential appears to be racially motivated. [*Id.* at 78.]

In the same study, Theilmann & Wilhite noted that the negative impact of race on contributions was more pronounced when they specifically examined large contributions, defined as contributions of \$500 or more. As Theilmann & Wilhite found:

When the race or sex of a House candidate had an impact on contributions from individuals in the eighties, that impact was negative. Furthermore, this negative result was more prevalent for large contributions. These results suggest two things: first, individuals appear to discriminate against black candidates (and to a smaller extent women challengers), and second, black and female candidates appear to be dependent on smaller contributions. [*Id.* at 146.]

Individual contributors apparently discriminate against black candidates. This result holds up after electability issues and demographic characteristics are taken into account. On one level the ability to discriminate against black candidates is perfectly legal, if undesirable. However, since individual contributions make up the largest portion of all contributions, a shortfall in this category portends a gloomy future for increasing black representation. [*Id.* at 148-149.]

Despite the wealth of evidence that voters and candidates of color are at a substantial disadvantage when money dominates electoral politics, the State of Georgia's Section 5 submission makes no mention of the impact of the submitted changes on racial minorities in Georgia. Indeed, although the submission contains a heading entitled "A statement of the anticipated effect of the change on members of racial or language minority groups," the entry under the heading merely states "Not applicable." Section 5 Submission at 4. The State has simply disregarded the requirement of the Section 5 guidelines for an explanation of the impact of the change on racial minorities.

As is evident from the findings of the studies cited above, the State cannot carry its burden of demonstrating that its proposed changes are free of any retrogressive effect. Far from being "not applicable," as the State's Section 5 submission declares, the impact of money-centered electoral politics on racial and ethnic minorities is severe. Laws that limit the amount that a donor may contribute to a political campaign help ameliorate the disparity between white and minority citizens in the electoral arena, by placing some bounds on the financial advantages enjoyed by white voters and white candidates. Georgia's effort to double the amounts that contributors may give, by contrast, is clearly retrogressive with respect to minorities' effective exercise of the franchise, because it will only increase the disparity that now exists between minority and white voters and candidates with respect to the funding of elections.

Similarly inaccurate is the statement in Georgia's Section 5 Submission that there was no controversy over the adoption of the changes under submission. In fact, HB 1630 was very publicly denounced as "a grand fraud against the citizens of Georgia," whose

title should have been not the “Ethics in Government Act” but the “Fat Cat Enhancement and Incumbent Retention Act.” “ ‘Reform’ goes amok,” The Atlanta Constitution, March 12, 2000. This and other news articles reporting on public objections to raising the contribution limits are attached as Exhibit 5.

For all these reasons, we respectfully urge the Attorney General to object, under Section 5 of the Voting Rights Act, to Act 883 of the 2000 Georgia General Assembly, insofar as it raises the limits on the amounts of money that donors may contribute to candidates for office in Georgia.

Very truly yours,

Brenda Wright
Managing Attorney
National Voting Rights Institute

Attachments

cc: Attorney General, State of Georgia