

Law/Analysis

It is this Office's opinion that the provisions of the 1988 amendment to S.C. Code § 14-23-1040 which added qualifications for serving as a probate judge remain unenforceable,

The Honorable Brenda S. Griffith

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(emphasis added). An April 3, 1998, letter authored by this Office confirmed that no request for reconsideration had been submitted to the DOJ. In 2002, we opined, “The United States Supreme Court has held that ‘[f]ailure to obtain... preclearance renders the change unenforceable.’ Clark v. Roemer, 500 U.S. 646 (1991). This holding by the Supreme Court appears to be applicable to the

Finally, a November 18, 2005, letter stated “there has been no change by the Justice Department

preclearance provisions in § 5 were not found to be unconstitutional. Id.¹ However, Justice

rendered the preclearance provisions in § 5 unenforceable. Id. at 587 (Ginsburg, J., dissenting) (“The Court stops any application of § 5 by holding that § 4(b)’s coverage formula is unconstitutional.”).

The Shelby County decision did not directly address whether previously enacted legislation that was objected to by the DOJ may now be enforced. The Court’s decision only applied to the 2006 reauthorization rather than earlier iterations of the Voting Rights Act. See Shelby County, 570

of any controlling precedent to the contrary, it is this Office's opinion that the provisions of the 1988 amendment to S.C. Code § 14-23-1040 which added qualifications for serving as a probate judge remain unenforceable.³

Conclusion

As is discussed more fully above, it is this Office's opinion that the provisions of the 1988 amendment to S.C. Code § 14-23-1040 which added qualifications for serving as a probate judge remain unenforceable, notwithstanding the United States Supreme Court's ruling in *Shelby*

County, Alabama, Holder 570 U.S. 520, 123 S. Ct. 2610, 186 L. Ed. 2d 651 (2013), 711 P.2d

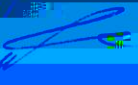
submitted Act No. 678 of 1988 to the United States Department of Justice, Civil Rights Division

(DOJ) to obtain preclearance and received a response dated October 15, 1990. The DOJ objected to the Act stating, "While we recognize the state's interest in establishing reasonable qualifications for those who are to hold office, especially those of the nature here, it cannot be said

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Genera

Sincerely,



Matthew K. [unclear]
Assistant Attorney

REVIEW AND APPROVE

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