U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

February 10, 1986

Cartledge W. Blackwell, Jr., Esq.
Hugh A. Lloyd, Esq.
Blackwell & Keith
P. O. Box 592
Selma, Alabama 36702

Dear Messrs. Blackwell and Lloyd:

This refers to the increase in the number of members from five to six, the election of members from five single-member districts with one at-large position, and the districting plan for the county commission and the county board of education in Marengo County, Alabama, 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 initial submission on January 13, 1986; supplemental information was received on January 22, 1986.

We have considered carefully the information you have provided, as well as comments and information from other sources and interested parties. We recognize, of course, that the submitted voting changes had their genesis in findings and conclusions by federal courts that the existing at-large election structure is violative of Section 2 of the Voting Rights Act, 42 U.S.C. 1973, in that it denies black citizens an opportunity equal to that afforded white citizens to participate in the political process and to elect candidates of their choice to office. United States v. Marengo County Commission, 731 F.2d 1546 (11th Cir. 1984), on remand, Civ. Nos. 78-455-H and 78-474-H (S.D. Ala. Sept. 5, 1985). In order to obtain preclearance pursuant to Section 5, the county must demonstrate that the submitted voting changes "[do] 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. See also, Georgia v. United States, 411 U.S. 526 (1973); Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)).

The submitted voting procedures, when compared to the at-large election structure, obviously will enhance the

opportunity for effective black political participation and thus will not have a discriminatory effect within the meaning of Section 5. Beer v. United States, 425 U.S. 130, 141 (1976). At the same time, however, "[i]n a case where lines are drawn to establish discrete electoral units and to distribute racial ... populations among districts, the ways in which these lines are drawn may become independent indicia of discriminatory intent" (Ketchum v. Byrne, 740 F.2d 1398, 1405 (7th Cir. 1984)), and we have received allegations that a primary purpose of the submitted voting procedures was to minimize, to the extent possible in light of the established Section 2 violation, the opportunity for effective political participation by black citizens.

Information provided by the submitting authority alleges that the configuration of the proposed single-member districts results from an effort to balance population and to avoid, to the extent possible, splitting census enumeration districts. Our own analysis, however, reveals that the proposed plan splits 10 of the 25 census enumeration districts within Marengo County and yet the boundaries of the districts remain contorted. Moreover the contorted shapes of the districts needlessly fragment black residential concentrations in Demopolis and in the southern portion of the county, thereby insuring that the redistricting will not fairly reflect black voting strength. Cf. Ketchum v. Byrne, supra, 740 F.2d at 1409. Finally, the proposal insists on retaining an at-large position, notwithstanding the conclusion that black citizens in Marengo County do not have a fair opportunity to participate effectively in the at-large structure (see City of Port Arthur v. United States, 459 U.S. 157, 168 (1982)).

An alternative plan submitted on behalf of black citizens for the county's consideration contained more compact districts, and also demonstrated that it is necessary to split few, if any, census enumeration districts to obtain population equality. That plan, which projected a substantial black voting age majority in two districts and a slight black voting age majority in another district, apparently received little consideration from county officials. In that regard, we are aware that black citizens of the county repeatedly have requested the opportunity for input in the plan-drawing process but the submitted plan was devised without input from representatives of the black community.

In these circumstances, the county has not shown and I cannot conclude that the submitted voting procedures were devised without the purpose of denying or abridging the right

to vote on account of race. See, e.g., Busbee v. Smith, 549 F. Supp. 494 (D. D.C. 1982), aff'd, 459 U.S. 1166 (1983). Therefore, on behalf of the Attorney General, I must object to the changes submitted.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.44 of the guidelines permits you to 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 effect of the objection by the Attorney General is to make the increase in the number of members and the submitted election and districting plan for the Marengo County Commission and Board of Education legally unenforceable. 28 C.F.R. 51.9.

In view of the pending vote dilution litigation, we are forwarding a copy of this letter to the Honorable W. B. Hand. If you have any questions, feel free to call Sandra S. Coleman (202-724-6718), Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division