U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

June 1, 1987

John E. Pilcher, Esq.
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P. O. Box 1346
Selma, Alabama 36702-1346

Dear Mr. Pilcher:

This refers to the election of board of education members from five single-member districts and the districting plan for the board in Dallas 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 submission on March 31, 1987.

We have considered carefully the information you have provided, as well as comments and information from other sources and interested parties. We are aware, of course, that the submitted voting changes were developed in response to the order of the federal district court which found that the board of education's existing at-large structure for electing board members violates Section 2 of the Voting Rights Act, as amended. In that context, we find nothing to suggest that the adoption of the single-member district method of election was driven by any racially discriminatory purpose and, if fairly implemented, that method of election would enhance the potential for blacks to participate equally in the electoral process. Consequently, the Attorney General does not interpose any objection to the change in the method of election. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change. See Section 51.41 of the Procedures for the Administration of Section 5 (52 Fed. Reg. 496 (1987)).

With regard to the districting plan adopted by the board to implement the changed method of election, we do not reach a similar conclusion. At the outset, we note that the board of education held several hearings at which blacks were allowed to express their concerns to the board regarding the proposed districting plan. Unfortunately, these hearings appear to have served no purpose, since we understand that the districting plan was adopted as initially proposed with no apparent consideration or accommodation being given to the comments made

by blacks in attendance. Indeed, our information is that the demographer who drafted the plan was not even informed of the suggestions raised by black residents of the school district. Yet, as we understand it, the board was not only aware of these concerns but, in light of them, agreed repeatedly at the hearings that a fair five-district plan should provide for two predominantly black districts and a third constituting an effective swing district. In spite of this, the plan submitted by the board overly concentrates blacks into District 4 and fragments the remaining black population in Selma between Districts 2 and 5 resulting in a plan that minimizes the opportunity for blacks to participate equally in the electoral process. Even so, you have declined to provide any nonracial justification for the submitted configuration.

Finally, we understand that these districts were drawn to protect incumbent board members. While efforts to protect incumbency do not, per se, evidence discriminatory purpose, the circumstances here suggest that the county school district's actions were motivated, at least in significant part, by racial considerations. See, e.g., Ketchum v. Byrne, 740 F.2d 1398, 1405 (7th Cir. 1984).

In order to obtain the required preclearance pursuant to Section 5, the board of education 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); Section 51.52 of the guidelines (52 Fed. Reg. 497-498 (1987)). In view of the considerations discussed above, I cannot conclude that the board of education has met its burden of showing that the submitted plan was not enacted for the purpose of denying or abridging the right to vote of the black citizens of the Dallas County School District. Accordingly, on behalf of the Attorney General, I must interpose an objection to the districting plan as drawn.

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 this change has 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 51.45 of the guidelines (52 Fed. Reg. 496 (1987)) 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 election of members of the Dallas County Board of Education from the five single-member districts as proposed in the submitted districting plan legally unenforceable. See Section 51.10 (52 Fed. Reg. 492 (1987)).

In view of the pending 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