



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

June 28, 1993

Jesse Bowles III, Esq.
Bowles & Bowles
P. O. Drawer 99
Cuthbert, Georgia 31740

Dear Mr. Bowles:

This refers to Act No. 7 (1993), which changes the method of selecting the superintendent of schools from elected to appointed, changes the method of selecting the members of the Randolph County School Board from grand jury appointment to election in nonpartisan primaries and general elections, adopts single-member districts as the method of electing the members of the school board, provides for a districting plan, an implementation schedule, staggered four-year terms for school board members, a method of filling vacancies on the school board, a majority-vote requirement, a minimum residency requirement, a minimum education requirement, a minimum age requirement and the procedures for a special election; and to Act No. 10 (1993), which provides for a redistricting plan for the Randolph County Commission in Randolph County, Georgia, 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 responses to our request for more information on April 27, June 8, and June 18, 1993.

Our analysis indicates that the changes from an appointed to an elected board of education and from an elected to an appointed superintendent of education received the requisite Section 5 preclearance on June 28, 1991, as part of Act No. 49 (1991). Accordingly, no further determination by the Attorney General is required or appropriate under Section 5 regarding these changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.35).

We have carefully considered the information you have provided, as well as Census data and information provided by other interested parties. According to 1990 Census data, black persons comprise approximately 58 percent of the total population and 52 percent of the voting age population in Randolph County. The five members of the Randolph County Commission are elected from single-member districts; Act 10 provides for a redistricting of the county commission districts and Act 7 adopts the same district boundaries for election of members of the county school board.

The Attorney General does not interpose any objection to the provisions of Act No. 7 that provide for the school board to be elected in nonpartisan primaries and general elections from five single-member districts to staggered, four-year terms with a majority-vote requirement, the method of filling vacancies on the school board, minimum residency requirement and minimum age requirement. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See 28 C.F.R. 51.41.

With regard to the proposed redistricting plan for the county commission and districting plan and educational requirement for the school board, however, we cannot reach the same conclusion. The 1990 Census shows that the current redistricting plan for the county commission has three majority-black districts and is malapportioned. District 5, which is 64.5 percent black in voting age population, is overpopulated by 21 percent. Black persons constitute approximately 61 percent of the total population removed from existing District 5. In particular, several concentrations of politically-active black population in and near the City of Cuthbert are transferred from District 5 to District 2 and District 4, both of which remain majority white in population under the proposed plan. At the same time, the proposed plan retains several majority-white areas along the border of District 5 which, if they had been transferred to other districts rather than the majority-black areas transferred under the proposed plan, would have resulted in a significantly higher black percentage in District 5 than under the proposed plan.

There appears to be a pattern of racially polarized voting and substantially lower levels of participation by black voters relative to white voters in Randolph County elections. In this context, the identified fragmentation of black population concentrations has the effect of limiting the opportunity for black voters to elect candidates of their choice. Our examination of the information in your submission fails to show that this fragmentation was required in order to comply with the county's legitimate redistricting criteria.

Act 7 also provides that school board members must possess a high school diploma or general educational development (GED) equivalent. We recognize the interest in establishing reasonable qualifications for those who are to hold office. Because such requirements have the potential to discriminate against minority citizens, they must be reviewed carefully. See Dougherty County Board of Education v. White, 439 U.S. 32, 42-43, n.12 (1978). It does not appear that state law generally requires or endorses the proposed educational qualification. In addition, the existing system of grand jury appointments to the school board has no such requirement, and it appears that in practice persons have been appointed to the school board who did not meet this requirement.

According to the 1990 Census, approximately 65 percent of black persons age 25 and older do not possess a high school diploma or its equivalent, compared to only 36 percent of white persons age 25 and over. Hence, requiring that persons who wish to run for the school board demonstrate that they have a high school diploma or a GED equivalent would appear to have a disparate impact on black residents of Randolph County. Moreover, it appears that a number of candidates of choice among black voters in previous elections would be barred from serving on the school board by this provision. Under these circumstances, where the pronounced disparate impact of the proposed educational requirement appears to have been well-known, your submission does not provide an adequate non-racial justification for this requirement.

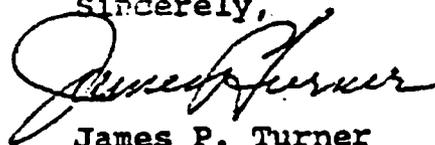
Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the 1993 redistricting plan for the county commission, the 1993 districting plan for the county school board, and the requirement in Act 7 that school board members must possess a high school diploma or GED equivalent.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed 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, you may 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 1993 districting plan for the county commission and school board and the requirement that school board members possess a high school diploma or GED equivalent continues to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

Since the provisions of Act No. 7 that provide for an implementation schedule and the procedures for a special election are dependent on the objected-to districting plan, the Attorney General will make no determination with regard to these matters. See 28 C.F.R. 51.22.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Randolph County plans to take concerning these matters. If you have any questions, you should call Robert Kengle (202-514-6196), an attorney in the Voting Section. Refer to File Nos. 93-0300 (county commission) and 93-0299 (school board) in any response to this letter so that your correspondence will be channeled properly.

Sincerely,



James P. Turner
Acting Assistant Attorney General



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

SEP 13 1993

Jesse Bowles III, Esq.
Bowles & Bowles
P. O. Drawer 99
Butler, Georgia 31740

Dear Mr. Bowles:

This refers to your request that the Attorney General reconsider the June 28, 1993, objections under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, to Act No. 10 (1993), insofar as it adopted a redistricting plan for the county board of commissioners, and to Act No. 7 (1993), insofar as it adopted the same districting plan for the county board of education and a requirement that school board members possess a high school diploma or a GED equivalent, in Randolph County, Georgia. We received your request on July 14, 1993; supplemental information was received on August 10, 1993.

Under Section 5 the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. Where a jurisdiction requests reconsideration of an objection, the objection shall be withdrawn if it is demonstrated that the submitted change satisfies the standards for preclearance. See 28 C.F.R. 51.48.

As explained in the June 28, 1993, objection letter, we concluded that Randolph County had not met its burden with regard to the redistricting/districting plan based on the plan's minimization of black voting strength in District 5. That

conclusion, in turn, was based on a number of factors, including our analysis of voting and participation patterns in county elections, the fragmentation of black concentrations in the plan between District 5 and white-majority Districts 2 and 4, and the fact that District 5 was overpopulated in the existing plan and the county chose to remove from the district predominantly black population.

The information provided by the county in its written submittals and in the meeting held with Division attorneys on July 27, 1993, does not contradict these factual determinations. Indeed, the information provided appears to reinforce our prior conclusion that the aim in redistricting was to maintain the black percentage in District 5 at its existing level which, most recently, had resulted in the election of a candidate who was not the choice of black voters.

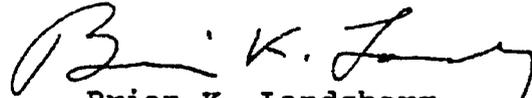
With regard to the high school diploma/GED requirement, the June 28, 1993, letter cited the clear disparate impact that this change would have on potential black candidates, the fact that this requirement is atypical in the state and was not used by the county under the previous appointment system, and the absence of an adequate nonracial justification. Your reconsideration request appears generally to present facts that were before us when the objection was interposed, and our reconsideration of this matter does not indicate that our prior conclusion was incorrect.

Accordingly, on behalf of the Attorney General, I must decline to withdraw the June 28, 1993, objections to the 1993 redistricting plan for the board of commissioners, and the 1993 districting plan for the board of education and the minimum education requirement to serve as a school board member.

As we previously advised, the board of commissioners and the board of education retain the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the objected-to 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, we remind you that unless and until a judgment from the District of Columbia Court is obtained, the objections remain in effect and the objected-to changes continue to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.48(d).

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Randolph County plans to take concerning these matters. If you have any questions, you should call Mark Posner (202-307-1388), Special Section 5 Counsel in the Voting Section.

Sincerely,

A handwritten signature in cursive script, appearing to read "Brian K. Landsberg".

Brian K. Landsberg
Acting Assistant Attorney General
Civil Rights Division