U.S. Department of Justice

Civil Rights Division

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Voting Section
P.O. Box 66128
Washington, D.C. 20035-6128

October 1, 1987

Douglas J. Smith, Jr., Esq.
Robertshaw, Terney, Noble & Smith
P. O. Drawer 1498
Greenville, Mississippi 38702-1498

Dear Mr. Smith:

This refers to the change in the method of electing the board of alderpersons from at large to single-member districts, the districting plan, the creation of five voting precincts, and the establishment of four polling places for the City of Belzoni in Humphreys County, Mississippi, 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 the information to complete your submission on September 3, 1987.

The Attorney General does not interpose any objection to the change in method of electing the board from at large to single-member districts. 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 respect to the remaining submitted changes, we note that under the districting plan offered for preclearance by the city, two of the five districts have substantial black majorities and would seem to provide to those black constituencies a realistic opportunity to elect candidates of their choice. In the context of the shift from the current at-large election system, under which the city's black population has been unsuccessful in electing candidates of their choice to office, the submitted districting plan clearly is not retrogressive and thus does not offend the "effects" standard under Section 5.

However, under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change not only has no discriminatory effect but likewise has no discriminatory purpose. See Georgia v. United States, 411 U.S. 526 (1973); see also Section 51.52 (52 Fed. Reg. 497-498 (1987)). The manner in which the instant plan's districts were constructed raises troublesome concerns regarding the purpose of the plan's configuration, primarily as it relates to the treatment of District 3.

With respect to that district, there is ample evidence that, due to the departure from the city of a significant number of black residents since the 1980 Census because of housing developments outside the city, the black proportion of that area which has been incorporated into District 3 is substantially less than the city represents it to be by using 1980 Census data. Moreover, there are considerable indications that the city is aware of that defect and has failed to develop, or at least to share with us, information bearing on that issue. Indeed, the inferences are that District 3 was calculated to relegate blacks to a distinct voting minority in that district as opposed to the 55 percent voting age majority suggested by the 1980 Census data offered in support of the plan. Of particular relevance to our consideration here is our understanding that this result was accomplished through modifications unilaterally made by the city to a compromise plan worked out earlier by representatives of the city and the black community which would not have had such a dilutive effect.

In light of these considerations, I cannot conclude, as I must under the Voting Rights Act, that the city has sustained its burden of showing that the submitted districting plan was adopted without the proscribed purpose. Therefore, on behalf of the Attorney General, I must object to the implementation of the plan.

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 51.45 of the guidelines (52 Fed. Reg. 496-497 (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 districting plan legally unenforceable. See Section 51.10 (52 Fed. Reg. 492 (1987)).

Because the voting precinct and polling place changes are dependent upon the objected-to districting plan, the Attorney General is unable to make a determination regarding these changes now. Section 51.22(b) (52 Fed. Reg. 493 (1987)).

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the City of Belzoni plans to take with respect to this matter. 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