



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20535

NOV 25 1991

Mr. David Taylor
Senior Planner
Gulf Regional Planning Commission
1232 Pass Road
Gulfport, Mississippi 39501

Dear Mr. Taylor:

This refers to the redistricting of supervisor districts and the realignment of voting precincts in Pearl River 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 your responses to our July 22, 1991, request for additional information on September 26 and November 5, 1991.

We have considered carefully the information you have provided as well as data from the 1990 Census and information from other interested parties. At the outset, we note that racial bloc voting appears to characterize elections in Pearl River County. We further note that although there are significant concentrations of blacks in and near the city of Picayune, the proposed redistricting plan, which was developed with little or no involvement or input by the minority community, fragments this population among three of the five districts (Districts 2 through 4) with the result that no district is greater than 26.7 percent black.

It appears that this fragmentation not only could have been avoided without difficulty but would have resulted in a plan that would have provided black voters with an equal opportunity to participate in the electoral process and elect candidates of their choice to the board. Indeed, our information is that, subsequent to the submission of this plan, the county did develop an alternative which went a substantial way toward creating such a district but failed to adopt the plan. No nonracial justification has been offered for the county's failure to adopt such a plan, and it appears that one consideration behind this failure was the desire to protect one or more incumbent board

members. While incumbency protection is not in and of itself an inappropriate consideration, it may not be accomplished at the expense of minority voting strength. See Garza v. Los Angeles County, 918 F.2d 763, 771 (9th Cir. 1990), cert. denied, 111 S. Ct. 681 (1991).

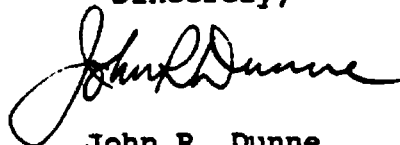
Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 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 supervisor redistricting plan.

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 supervisor redistricting plan continues to be legally unenforceable. Clark v. Roemer, 59 U.S.L.W. 4583 (U.S. June 3, 1991); 28 C.F.R. 51.10 and 51.45.

The Attorney General will make no determination at this time with regard to the realignment of voting precincts since it is directly related to the objected-to change. See 28 C.F.R. 51.22(b) and 51.35.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Pearl River County plans to take concerning this matter. If you have any questions, you should call Daniel M. Harris (202-514-3870), an attorney in this office.

Sincerely,



John R. Dunne
Assistant Attorney General
Civil Rights Division