**U. S. Department of Justice**

Civil Rights Division

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

MAR 2 4 2010

Margarette L. Meeks, Esq.
Special Assistant Attorney General
P.O. Box 220
Jackson, Mississippi 39205-0220

Dear Ms. Meeks:

This refers to Chapter No. 469 (H.B. 877) (2009), insofar as it requires candidates for county boards of education and the board of trustees of certain municipal and special municipal separate school districts embracing an entire county to be elected by a majority of the votes cast in an election and to require a run-off election three weeks after the election if no candidate receives a majority of the votes, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your partial response to our August 28, 2009, request for additional information on October 28, 2009, and a partial response to our November 24, 2009, follow-up request for additional information on January 23, 2010.

We have carefully considered the information you have provided, as well as census data, comments and information from other interested parties, and other information, including litigation and previous submissions from the state and its subjurisdictions that indicate the prevalence of racially polarized voting in Mississippi elections. Under Section 5, the Attorney General must determine whether the submitting authority has met its burden of showing that the proposed changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color or membership in a language minority group. *Georgia v. United States*, 411 U.S. 526 (1973); *Procedures for the Administration of Section 5 of the Voting Rights Act,* 28 C.F.R. 51.52(c). For the reasons discussed below, I cannot conclude that the state's burden under Section 5 has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the proposed changes.

According to the 2000 Census, the State of Mississippi has a total population of 2,844,658 people, of whom 1,031,818 (36.3%) are African-American. The total voting age population is 2,069,471 people, of whom 682,789 (33%) are African-American. According to the American Community Survey (2006-2008), the state's total population is estimated to be 2,918,790, of whom 1,083,528 (37.1%) are African-American.

A change to a majority-vote requirement does not, *per se*, have a retrogressive effect on the ability of minority voters to exercise their electoral franchise effectively and to elect candidates of choice to office. Rather, such a determination depends on an individualized analysis of the affected jurisdiction's electoral structure, the racial composition of its electorate, and a review of its electoral history. The state's initial submission, however, contained only the statement that the change from a plurality to a majority-vote requirement would have neither the purpose nor the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. It did not provide a factual basis on which to conclude that the proposed changes in Chapter No. 469 met the standards under Section 5 in each of the affected school districts.

On August 28, 2009, we made a written request for additional information from the state designed to overcome the submission's shortcomings. The request sought information of the kind and character we typically request for the review of a change from a plurality to a majority-vote requirement. On October 28, 2009, we received the state's first response to our request. It was incomplete and, for the most part, not responsive to our requests. On November 24, 2009, we sent a follow-up letter identifying those items to which the state had not specifically responded and those items for which the state's responses were not responsive or included information that appeared to be not relevant.

On January 23, 2010, we received a further response to our August 28, 2009, request. Although this letter did provide some of the requested information, the state again failed to provide the critical items of information: the electoral schemes for the affected school districts, the demographics of those districts, and the information necessary to analyze voting behavior in each of the districts. In its January 23, 2010, response to our follow-up request, the state informed us that it did not have any additional information concerning the development or rationale for the change and that limited resources precluded providing the information necessary to provide the racial identity of school board candidates. The response was silent, however, on the request for the demographics and electoral schemes of the affected districts. In an effort to obtain enough information to make a determination with regard to at least some of the districts, we inquired if the state was able to provide any of that information. State officials responded that they would not provide that information either. The failure to provide this critical information precludes us from differentiating between those school districts where we could promptly determine if the change meets Section 5 standards from those districts where the question is more complex, requiring much closer scrutiny.

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. *Georgia* v. *United States*, 411 U.S. 526 (1973); 28 C.F.R. 51.52. The legislation mandates a state-wide, majority-vote requirement. As a result, the state, rather than each affected district, is responsible for providing sufficient information to establish that such a change meets the statutory burden in each jurisdiction. We believe that state has had more than an ample

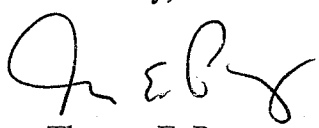
opportunity to provide the requested information necessary for an analysis of the proposed changes under Section 5. Because the state has elected not to provide certain information crucial to the analysis, the Attorney General is unable to conclude that the proposed changes have neither a discriminatory purpose nor will have a discriminatory effect. *Evers* v. *State Board of Elections*, 327 F. Supp. 640 (S.D. Miss. 1971).

In light of the considerations discussed above, I cannot conclude that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the proposed changes.

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 neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the submitted change continues to be legally unenforceable. *Clark* v. *Roemer*, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of Mississippi plans to take concerning this matter. If you have any questions, you should call Mr. Robert Berman (202-514-8690), a Deputy Chief in the Voting Section.

Sincerely,



Thomas E. Perez
Assistant Attorney General