U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

19 APR 1982

Jerris Leonard, Esquire
Jerris Leonard & Associates, P.C.
900 Seventeenth Street, NW
Suite 1020
Washington, D.C. 20006

Dear Mr. Leonard:

This is in reference to your submission on behalf of the State of North Carolina of the redistricting plans for the North Carolina Senate (Senate Bill 1) and the State House of Representatives (House Bill 1), and a law changing the candidate filing period and primary election dates for 1982 (House Bill 3). Your submission, pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, was received on February 23, 1982, and was supplemented with requested additional information received on April 6, 1981. As requested, we have given your submission expedited consideration.

At the outset, we believe it is appropriate to review recent Section 5 objections interposed by the Attorney General to voting changes in North Carolina, inasmuch as the bases for those objections provide a relevant context for our review of the submitted Senate and House redistricting plans. As you know, on November 30, 1981, an objection was interposed to a 1967 amendment to the North Carolina Constitution that prohibited the State from dividing counties during redistricting of the House and Senate. Our analysis of that amendment showed that adherence to the prohibition necessarily required the use of large multi-member districts, which in turn had the predictable effect of submerging the voting strength of cognizable concentrations of black citizens throughout the State.

On December 7, 1981, objections were interposed to the Senate reapportionment plan and to the Congressional redistricting plan. With respect to the Senate plan, our analysis showed that the State's reliance on the constitutional prohibition against dividing counties had resulted in a submergence of black voting strength in several covered areas of the State. Subsequently, on January 20, 1982, an objection was interposed to the House plan because it, too, would have resulted in a submergence of black voting strength. Both the Senate and House plans had employed large multi-member districts, a forseeable consequence of the State's adherence during redistricting to the 1967 constitutional amendment.

Following these objections to the 1967 constitutional amendment, and to the earlier reapportionment plans, the State of North Carolina formulated the new redistricting plans under submission here. In contrast to the earlier objected-to plans, the plans developed in 1982 by the State divide numerous counties. Consequently, a simple comparison of the racial statistics in the "old" and the newly-proposed plans does little to shed light on whether the submitted plans "fairly reflect the strength of black voting power as it exists." State of Mississippi v. United States, 490 F. Supp. at 581.

The submitted plans are a substantial improvement over the objected-to plans because, in several covered areas, the State has endeavored to create districts in which black voters are now given a reasonable opportunity to elect candidates of their choice where they had none before. The Senate and House plans in Guilford County create such districts, for example. On the other hand, each plan continues to have a single objectionable feature under Section 5, as those plans affect some of the covered counties. We briefly describe below the bases for these objections.

With respect to the submitted Senate plan, the State proposes to create a majority black district in the northeast area. This district, No. 2, contains a 51.7% black population. Our analysis shows that during the Senate Redistricting Committee's consideration of this district it was widely recognized that at least a 55% black population was necessary in this district if black voters were to have a reasonable chance of electing a candidate of their choice and the record before us contains substantial evidence that such a compact, non-gerrymandered district easily could be drawn in this area. Notwithstanding these facts, however, the State enacted a plan which, as noted above, provides for only a 51.7% black population percentage.

Respecting the House plan, the State proposes to create one single-member district in Cumberland County, with the remainder of the county's population to elect 4 representatives in a multi-member district. While the single-member district appears to be overwhelmingly black in its actual voting population (due to the inclusion of traditionally non-voting population from Fort Bragg), the State's plan leaves nearly three-fourths of Fayetteville's black community with their voting strength submerged in the white majority multi-member district. Several reasonable alternatives to the State's proposal are available, including the drawing of a second single-member district wherein black voters would have a fair opportunity of, at a minimum, strongly influencing the outcome of the election in that district.

In light of the above, I am unable to conclude, as I must under Section 5 of the Voting Rights Act, that the Senate and House reapportionment plans are free of a racially discriminatory purpose and effect. Accordingly, on behalf of the Attorney General, I must interpose an objection to both plans.

Finally, the State has proposed to change the candidate filing period and to change the date on which primary elections will be held. Those changes are contingent upon the State obtaining preclearance of the Senate and House redistricting plans, an event which has not yet taken place. Accordingly, it is our view that these changes are not ripe for Section 5 review. See, e.g., 28 C.F.R. 51.7. We stand ready to examine these changes on an expedited basis together with any modifications to the Senate and House plans that the State may wish to make.

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 voting changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.21(b) and (c), 51.23, and 51.24) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia court is obtained, the effect of the objection by the Attorney General is to make the redistricting plans for the Senate and State House of Representatives legally unenforceable in the covered counties.

If you have any questions concerning this letter, please feel free to call Mr. J. Gerald Hebert, the attorney in the Voting Section (202-724-6292) who is assigned to this matter.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division