U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

MAR 10 1986

M. H. Hood Ellis, Esq.
Wilson & Ellis
P. O. 1365
Elizabeth City, North Carolina 27909-1365

Dear Mr. Ellis:

This refers to the change in the method of election to four single-member districts and four at large with residency districts, the method of staggering the positions, the districting plan and the utilization since 1965 of the majority vote requirement in the City of Elizabeth City, Pasquotank County, North Carolina, 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 January 9, 1986.

The Attorney General does not interpose any objection to the 1965 adoption and subsequent use of the majority vote requirement. 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 changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.48).

With regard to the other changes involved, we note at the outset that in order to obtain preclearance pursuant to Section 5, the city must demonstrate that the submitted voting procedures are nondiscriminatory in both effect and purpose. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.39(e). Our analysis confirms that the submitted voting procedures, when compared to the at-large election structure, will enhance the opportunity for black political participation and thus will not have a discriminatory effect within the meaning of Section 5. Beer v. United States, 425 U.S. 130, 141 (1976). We are unable to conclude, however, that the changes were not accomplished with the proscribed purpose.

As we understand it, the change in the method of election and the districting plan are outgrowths of a consent decree entered into by the parties to NAACP v. City of Elizabeth City, N.C., No. 83-39-CIV-2 (E.D. N.C. 1984). The primary purpose of the consent decree was to resolve the legal challenge, under Section 2 of the Voting Rights Act, to the previously existing at-large election structure. In spite of that agreed resolution, however, the city has proposed, without satisfactory explanation and over the opposition of the plaintiffs in the litigation, to continue to elect one half of the governing body on an at-large basis and in a manner identical to that which the decree was designed to eliminate.

While the retention of some at-large seats is not, by itself, indicative of a prohibited racial purpose, the at-large system chosen here contains the very features that characterized the plan abandoned by the consent decree and was chosen over other readily available alternatives which would have allowed some at-large representation without unnecessarily limiting the potential for blacks to elect representatives of their choice to office. We are aware that representatives of the black community informed city officials of the discriminatory features of the at-large portion of the adopted plan, and that the plan was enacted with knowledge of the disparate impact on black voters that the at-large portion likely would have.

In these circumstances, the city has not shown and I cannot conclude that the submitted voting procedures were adopted without the purpose of denying or abridging the right to vote on account of race. See, e.g., Busbee v. Smith, 549 F. Supp. 494 (D. D.C. 1982), aff'd, 459 U.S. 1166 (1983). Therefore, on behalf of the Attorney General, I must object to the proposed new method for electing the city council of Elizabeth City, North Carolina, insofar as it incorporates the at-large positions to be elected in the manner set forth in your submission.

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 none of 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 51.44 of the guidelines 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 legally unenforceable the 4-4 system, insofar as it incorporates the presently proposed residency districts, the staggering method adopted, and the majority vote requirement in the election of at-large members to the council. 28 C.F.R. 51.9.

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 Elizabeth City 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,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division