U.S. Department of Justice

Civil Rights Division

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

Michael Crowell, Esq.
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P. O. Box 1151
Raleigh, North Carolina 27602

APR 06 1990

Dear Mr. Crowell:

This refers to the following voting changes for the board of commissioners and the board of education of Perquimans 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:

1. Act No. 104, H.B. No. 789 (1989), which provides for an increase in the number of county commissioners from five to seven, the elimination of the residency requirement, the use of plurality vote in primary elections, the method of staggering terms, the appointment of two interim board members, and the implementation schedule; and

2. Act No. 105, H.B. No. 790 (1989), which provides for an increase in the number of school board members from five to seven, the elimination of the residency requirement, the method of staggering terms, the appointment of two interim board members, and the implementation schedule.

We received the information to complete these submissions on February 9, 1990.

We have carefully considered the information you have provided as well as comments and information from other interested parties. At the outset, we note that presently both the board of commissioners and the school board are chosen in at-large elections, and further that each board member is elected from a particular residency district. Our analysis of the election returns indicates that, in the context of an apparent pattern of racially polarized voting, this election system has enabled the white majority of the electorate to control county elections to the extent of precluding black voters from electing candidates of their choice to county office. Indeed, despite numerous black candidacies, which have been supported in major part by black voters, no black person has been elected to either board.

As we understand it, it was in this setting that members of the black community approached county officials with their concerns that the at-large system denies black citizens an equal opportunity to participate in the political process, a result prohibited by Section 2 of the Voting Rights Act, 42 U.S.C. 1973. In response, a study committee was established to examine whether a district method of election should be adopted.

However, the steps taken by the county in pursuit of its stated goal of considering the adoption of a districting plan would appear to have been of a rather dubious nature. The only two districting options ever presented to the study committee for its consideration, by those retained by the county to advise them in this regard, were plainly flawed. One option was a malapportioned plan for five-member boards which contained a black majority district; the other was an unusually configured proposal for seven-member boards with a double-member district which would have a black population majority. These options were accompanied by a recitation of numerous problems that allegedly would result from adopting either districting concept and, in fact, the committee essentially was told that any districting of the county likely would pose practical as well as constitutional problems. These perceived problems also were impressed upon the minority group representatives who had been advocating the change to districts.

Relying on these less than candid representations, the study committee recommended and the legislature later enacted the instant changes which retain the at-large election method as modified by the elimination of the residency district requirement. However, contrary to the representations made by those advising the committee in behalf of the county, our analysis of the demographic patterns in the county indicates that none of the purported concerns advanced by the county poses any real obstacle to adopting a fairly drawn, constitutional districting plan. In fact, relatively simple and easily discernible modifications to the options put forth by the county would result in a plan under either the 5-member or 7-member format which would have black majorities in districts electing one of five members or two of seven members. The county seems readily to concede that such districting plans would afford black voters a more realistic opportunity to elect representation of their choice than does the at-large system even as modified by the removal of the restrictive residency district feature.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change neither has 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). The effect standard requires that a change not "lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 130, 141 (1976). The submitted changes, by removing the residency district requirement and thus allowing blacks to utilize the election device of single-shot voting, do not have a prohibited retrogressive effect. However, even though the change here cannot be said to be retrogressive, the manner in which it was accomplished seems to have been calculated to maintain black voting strength at a minimum level and such an intent cannot be countenanced under the Voting Rights Act. City of Richmond v. United States, 422 U.S. 358 (1975); Busbee v. Smith, 549 F. Supp. 494 (D.D.C. 1982), sum. aff'd, 459 U.S. 1166 (1983). In any event, under the circumstances involved here, I cannot conclude, as I must under the Voting Rights Act, that the Section 5 burden has been satisfied in regard to purpose. Therefore, on behalf of the Attorney General I must object to the changes in the method of electing both boards occasioned by Act Nos. 104 and 105. With regard to the other submitted changes (the increase in the size of the boards, and the implementation and appointment provisions), no determination is appropriate because they are directly related to the changes to which an objection is being interposed.

Of course, as provided by Section 5 of the Voting Rights Act, the board of commissioners and the board of education have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes do not have the purpose and will not 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 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 submitted changes continue to be legally unenforceable. 28 C.F.R. 51.10.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the Perquimans County Board of Commissioners and the Perquimans County Board of Education plan to take with respect to this matter. In that regard, I have asked the Voting Section to consider whether the at-large system violates Section 2 of the

Act, should the boards determine to take no further action toward changing that system. If you have any questions, feel free to call Mark A. Posner (202-724-8388), an attorney in the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division