



U.S. Department of Justice

Civil Rights Division

JRD:GS:CM:lrj
DJ 166-012-3
Z2046

Voting Section
P.O. Box 66128
Washington, D.C. 20035-6128

Aubrey S. Tomlinson, Jr., Esq.
Davis, Sturges & Tomlinson
P.O. Drawer 708
Louisburg, North Carolina 27549

JUN 28 1990

Dear Mr. Tomlinson:

This refers to Chapter 306, H.B. No. 555 (1967), which provides for a change from a plurality to a majority-vote requirement in primary elections for the board of commissioners in Franklin 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 your initial submission on February 6, 1990; supplemental information was received on March 21 and 22, and May 3, 1990.

We have carefully considered the information you have provided as well as information from the Census and other interested parties. We note at the outset that while the population of Franklin County is 41% black, no black has ever been elected to the Franklin County Commission, although in May of this year for the first time ever a black has received his party's nomination for a seat on the commission. The five commission members are elected at large by residency districts in partisan elections. Prior to the adoption of Chapter 306, a plurality of the vote was sufficient to obtain nomination for a position on the commission. Since 1968, however, because Chapter 306 was enforced despite the absence of Section 5 preclearance, nomination has required a majority vote in the primary, and this was interpreted as authorizing runoff elections in cases where no candidate received a majority. In 1978 the enforcement of this change denied the Democratic Party nomination to a black candidate who received a plurality of the vote in the primary but who was subsequently defeated in a runoff.

In jurisdictions where elections are characterized by racial bloc voting a majority-vote requirement has been recognized as having the potential to dilute minority voting strength by producing head-to-head contests in which the victor is determined by the white voting majority. See, e.g., City of Port Arthur v. United States, 459 U.S. 159 (1982); Rogers v. Lodge, 458 U.S. 613, 627 (1982); S. Rep. No. 417, 97th Cong., 2d Sess. 6 (1982). Our review of Franklin County election returns indicates that while blacks have achieved some success in contests for county positions, racial bloc voting remains present to a significant degree. Thus the change from a plurality-win system to a majority-vote requirement appears to effect a retrogression in the position of minority voters in Franklin County, especially since, in school board elections where the plurality-win system continues in effect, black voters have enjoyed a fair degree of success.

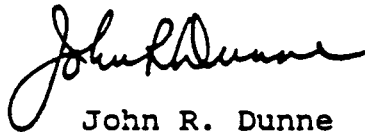
Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the adoption of a majority-vote requirement in primary elections for the Franklin County Commission.

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 this 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, 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 change continues to be legally unenforceable. 28 C.F.R. 51.10.

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To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Franklin County plans to take with respect to this matter. If you have any questions, feel free to call George Schneider (202-307-2385), an attorney in the Voting Section. Refer to File No. Z2046 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

A handwritten signature in cursive script, appearing to read "John R. Dunne".

John R. Dunne
Assistant Attorney General
Civil Rights Division