U.S Department of Justice

Civil Rights Divis ..

Office of the Assistant Attorney General

Washington, D.C. 20530

September 23, 1991

George Daly, Esq.
Suite 226, One North McDowell
101 North McDowell Street
Charlotte, North Carolina 28204

Dear Mr. Daly:

This refers to Chapter 33 (1991), which provides for a method of election for the county board of education with seven single-member districts and two at-large positions, the districting plan, a 40-percent plurality vote requirement, concurrent terms for the at-large positions, the procedure for filling vacancies, and the implementation schedule in Anson County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on July 24, 1991.

We have carefully considered the information you have provided, as well as information from the Census, other interested parties, and the federal court litigation concerning the county school board's method of election. At the outset, we note that this submission follows two previous Section 5 objections to the method of electing the county school board. In December 1987, we interposed an objection to the majority vote requirement contained in Chapter 216 (1977). In May 1990, we interposed an objection to the revised method of election contained in Chapter 288 (1989) insofar as it included at-large elections with staggered terms and a 40-percent plurality vote requirement for two of the nine seats on the school board. On both occasions, we found that black voters had limited success electing candidates of their choice for local offices in countywide elections due to prevailing patterns of racially polarized voting.

The election plan in the current submission retains the same features as the plan contained in Chapter 288 (1989), except that the elections for the two at-large seats would be held concurrently, thereby affording voters the opportunity to engage in single-shot voting for those seats. Under Section 5, the board has the burden of showing that the proposed changes do not have a racially discriminatory purpose and will not have a racially 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).

To meet this burden, the board has asserted that black voters would have a reasonable opportunity to elect a candidate of their choice to an at-large seat due in part to a reduction in polarized voting, which it contends was exhibited in recent elections for statewide office. We have analyzed the board's assertion in light of the evidence that, as was the case with the previous decision to retain two at-large seats, the current proposal is based upon the self-preservation interests of incumbent white board members, five of whom reside in the same single-member district. Our analysis of elections for local offices since 1980 shows a pattern of racially polarized voting, with the candidates for such offices supported by black voters usually being defeated. This pattern continued through the most recent election and, coupled with the interests of white incumbents in retaining the at-large seats for their perceived benefit, it raises concerns that the opportunity for single-shot voting contained in the present proposal still does not provide to black voters a realistic opportunity to elect a candidate of their choice to one of those positions. While we recognize that incumbency preservation is not necessarily an inappropriate consideration, it may not be accomplished at the expense of minority voting potential. See Garza v. County of Los Angeles, 918 F.2d 763 (9th Cir. 1990), cert. denied, 59 U.S.L.W. 3461 (1991); Ketchum v. Bryne, 740 F.2d 1398, 1408-09 (7th Cir. 1984), cert. denied, 471 U.S. 1135 (1985).

In addition, the school board has failed to establish that interests other than incumbency protection would be served by retaining the at-large seats. For example, the school board has not attempted to show that the county commission has been hampered in any way by its use of a single-member district system. Moreover, we are aware that, notwithstanding the settlement of the litigation concerning the board's method of election, leaders of the black community continue to oppose the inclusion of the two at-large seats in the proposed system.

In these circumstances, we are unable to conclude that the Board has met its burden under Section 5. Therefore, on behalf of the Attorney General, I must object to Chapter 33 (1991) insofar as it includes two at-large positions and the 40-percent plurality requirement for nomination for those positions.

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 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, you may 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, Chapter 33 (1991) continues to be legally unenforceable. Clark v. Roemer, 59 U.S.L.W. 4583 (U.S. June 3, 1991); 28 C.F.R. 51.10 and 51.45.

Because the districting plan and the other proposed changes are related to the objectionable method of election, the Attorney General will make no determination regarding those changes at this time. 28 C.F.R. 51.22(b).

To enable this Department to meet its responsibilities to enforce the Voting Rights Act, please inform us, within 20 days, of the course of action the Anson County Board of Education plans to take with respect to these matters. If you have any questions, feel free to call David Marblestone (202-307-3113), an attorney in the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

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Office of the Assistant Attorney General

Washington, D.C. 20530

JAN 27 1992

George Daly, Esq.
Suite 226, One North McDowell
101 North McDowell Street
Charlotte, North Carolina 28204

Dear Mr. Daly:

This refers to your request that the Attorney General reconsider the September 23, 1991, objection under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, to Chapter 33 (1991), which provides for a method of election for the Board of Education of Anson County, North Carolina. We received your letter on November 27, 1991.

We have reconsidered our earlier determination in this matter based on the information and arguments you advanced in support of your request, along with other information in our files. After reviewing the information available to us, we do not see any arguments that would provide a basis for changing our original determination.

In light of these considerations, I remain unable to conclude that the Anson County Board of Education has carried its burden of showing that the submitted changes have neither 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). Therefore, on behalf of the Attorney General, I must decline to withdraw the objection to Chapter 33.

As we previously advised, you may seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. We remind you that until such a judgment is rendered by that court, the objection by the Attorney General remains in effect and the proposed change continues to be legally unenforceable. 28 C.F.R. 51.10 and 51.48(d).

We are concerned that no elections for the Board have been held since 1988, and Board members who have been elected under the at-large election system are continuing to hold over in

office. Your November 21, 1991, letter states that our "failure to reconsider [the objection] may well mean that the Board decides to wait and see what happens next, rather than spend scarce money looking for a solution." We believe that the better course would be for the Board to seek to implement an election plan that satisfies the Voting Rights Act. In any event, in light of the Board's course of conduct and your representations, we have a responsibility to consider what further action may be necessary and appropriate to ensure prompt compliance with the Voting Rights Act.

To enable us to meet our responsibility under the Voting Rights Act, please inform us at your earliest convenience of the action the Board plans to take regarding this matter. If you have any questions, you should call Steven H. Rosenbaum (202-307-3143), Deputy Chief of the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division