U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

February 14, 1994

Mr. James C. Drennan
Director
Administrative Office of the Courts
P. O. Box 2448
Raleigh, North Carolina 27602

Dear Mr. Drennan:

This refers to Chapter 321 (1993), which provides for the creation of an additional judicial district (District 9A) for the superior and district courts, and the associated redistricting of judicial districts; the establishment of eight additional superior court judgeships (in Districts 3B, 9A, 10A, 15A, 17B, 20B, 25B, and 27B); the establishment of eight additional district court judgeships in judicial districts that include one or more covered counties (Districts 1, 3A, 6B, 8, 12, 18, 20, and 30); the reallocation of district court judges among Districts 9, 9A, and 17A; the establishment of a district attorney position in District 9A; and the implementation schedules for the changes in the State of 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 responses to our request for additional information on December 14, 1993, and February 2, 4, and 8, 1994.

We have considered carefully the information you have provided, as well as information from other interested persons. Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also Procedures for the Administration of Section 5 (28 C.F.R. 51.52).

In addition, Section 5 preclearance must be withheld where a change presents a clear violation of the results standard of Section 2 of the Voting Rights Act, 42 U.S.C. 1973. 28 C.F.R. 51.55(b)(2). Where the submitted changes involve additional elective positions, those changes must be reviewed in light of the method by which the positions will be elected.

With these standards in mind, the Attorney General does not interpose any objection to the submitted changes, except for the establishment of additional district court judgeships in Districts 1, 3A, 8, 12, 18, and 20, and the implementation schedules therefor. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. 28 C.F.R. 51.41 and 51.43.

The district court system was established in 1965 as a junior trial court partner to the superior court and the election system crafted at that time for the district court closely tracked the system then in effect for the superior court. The existing superior court judicial districts were used to define the election constituencies for district court elections and, as with the superior court, candidates for the district court were to run at large within these districts in partisan elections. The numbered position requirement which was adopted for superior court elections in 1965 was added to the district court election system in 1969. Subsequently, when additional judicial districts were created, they were created in tandem for both trial court systems. The only difference between the two election systems was the statewide election feature of superior court general elections.

In 1987, following the preclearance a year earlier of the establishment of the district court system, the state made significant changes to the election system for the superior court which are relevant to the instant review. The 1987 legislation altered the superior court election system enhancing substantially the opportunity of minority residents to elect candidates of their choice to that court. The legislation created eight districts that have black voting age population

majorities and a ninth district that has a combined black and Native American majority in voting age population. Two of these districts are composed of whole counties and seven were drawn by creating partial-county subdistricts. The legislation also allowed for minority voters to use the election technique of single-shot voting in certain multi-judge districts. These changes were adopted after the Attorney General interposed a Section 5 objection, on April 11, 1986, to the state's adoption of anti-single-shot provisions for superior court elections (the 1965 numbered position requirement and the use of staggered terms in certain multi-judge judicial districts). The legislation also followed the filing of a private suit challenging the superior court method of election under Section 2 of the Voting Rights Act.

It appears that in the seven years since these changes were adopted for the superior court, they generally have been recognized as having successfully enabled minority voters to gain a voice in the election of superior court judges while not hindering the ability of the superior court system fairly and impartially to administer justice. Whereas at the time the legislation was adopted only one black person had been elected to the superior court, currently 13 of the court's 82 judges are minorities (ten elected from the majority-minority districts).

In adopting these changes for the superior court, however, the state chose to partially sever the historic link between the election systems for the two trial courts. The two majority-minority superior court districts that were created by reallocating whole counties (Districts 6B and 16B) also have been established for district court elections. But the state has left unaltered for district court elections those districts from which majority-minority subdistricts were created for the superior court, and also has maintained the use of numbered positions and staggered terms in district court elections. This apparently has resulted in minority voters having substantially less opportunity to elect candidates of their choice to the district court. For example, while the district court has over twice as many judges as the superior court (180 to 82), the number of minorities currently serving on the district court is only one more than now serve on the superior court.

The state has set forth a number of reasons for declining to apply, except to a limited extent, the 1987 superior court changes to the district court. The state contends that at-large elections and anti-single-shot provisions insulate district court judges from undue influence at the polls from particular advocacy groups. The state also contends that the ability of district

court judges to impartially administer justice might be compromised if, by creating subdistricts in certain areas, some district court judges no longer both served in and were elected from the same geographic area; the concern, in this regard, is that a judge might be biased in favor of litigants who reside in his or her subdistrict. Further, the state asserts that the use of numbered positions and staggered terms assures that incumbent judges need not oppose each other for election, which in turn, the state asserts, promotes cooperation and collegiality among the district judge corps.

Each of these concerns, however, appears to be rebutted by the state's effective implementation of the 1987 changes to the superior court election system, or by the state's long standing system of rotating superior court judges outside the judicial districts in which historically they have been nominated. Furthermore, we note that information we have obtained about the adoption in 1969 of the numbered position requirement for district court elections suggests that, at least in part, it was invidiously motivated. In that regard, we note that numbered positions were generally regarded at that time as a means for limiting the opportunity of minority voters to effectively participate in state elections, and that this feature of the district court election system was added immediately following the election in 1968 of the first black member of the district court bench, in an election (in District 18) where black voters effectively made use of the single-shot device.

It is in this context that we have reviewed the eight district court judgeships which the state proposes to add to covered judicial districts. As stated above, two of the judgeships are being precleared in this determination letter; one is being added to black-majority District 6B, where black voters have a substantial electoral opportunity, and the other is being added to District 30, which is only 1 percent black in voting age population.

The other six districts range in voting age population between 18 percent and 33 percent black, and it appears that in these districts black voters have only a limited electoral opportunity. Our analysis indicates that elections in the counties that compose these districts are characterized by a pattern of polarized voting. Two of the districts, Districts 12 and 18, have been divided into subdistricts for superior court

elections. District 12, where the state proposes to elect seven district court judges, has three subdistricts, one of which is 46 percent black in voting age population but includes the generally nonvoting population of Fort Bragg. District 18, where the state proposes to elect eleven district court judges, is divided into five superior court subdistricts, one of which is 63 percent black in voting age population. Similarly, it appears that in Districts 1 (three proposed judges), 3A (four proposed judges), 8 (six proposed judges), and 20 (seven proposed judges), the black population may be sufficiently large and geographically compact to constitute a majority in a subdistrict. In addition, it appears that the electoral opportunity of black voters would be enhanced in these districts were the state to eliminate its anti-single-shot provisions (numbered positions and staggered terms).

In light of these considerations, I cannot conclude, as I must under the Voting Rights Act, that the state has made the necessary showing under Section 5. Therefore, while we do not in any way question the state's need for establishing additional district court judgeships, I must, on behalf of the Attorney General, object to the additional judgeships for Districts 1, 3A, 8, 12, 18, and 20 in the context of the existing at-large election system.

With respect to the implementation schedules for these judgeships, the Attorney General will make no determination since these changes are directly related to the establishment of the judgeships. 28 C.F.R. 51.35.

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 objected-to 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, the objected-to changes continue to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of North Carolina plans to take concerning this matter. If you have any questions, you should call Special Section 5 Counsel Mark Posner, at (202) 307-1388.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

MAY 30 1995

Mr. James C. Drennan
Director
Administrative Office of the Courts
P. O. Box 2448
Raleigh, North Carolina 27602

Dear Mr. Drennan:

This refers to the request that the Attorney General reconsider and withdraw the February 14, 1994, objection interposed under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, to Chapter 321 (1993) insofar as that legislation provides for the establishment of an additional district court judgeship in judicial District 1 in the State of North Carolina. We received your request on March 28, 1995; supplemental information was received on May 23, 1995.

The state's request is based on the election in November 1994 of the Honorable J.C. Cole, a black individual, to an existing district court position in this district. Judge Cole succeeded his wife, the Honorable Janice Cole, who stepped down from the bench in 1994 to become United States Attorney for the Eastern District of North Carolina.

District 1 covers seven counties in the northeastern portion of the state and, according to the 1990 Census, is 25 percent black in voting age population. The judgeship created by Chapter 321 would be the district's fourth. We have carefully considered the election of Judge Cole in 1994, as well as the election of Ms. Cole in 1990, other information in our files, and comments from interested persons. Based on this review, we conclude that the establishment of the fourth District 1 judgeship satisfies the Section 5 preclearance standards. Accordingly, pursuant to Section 51.48(b) of the Procedures for the Administration of Section 5 (28 C.F.R.), the objection interposed to this change is hereby withdrawn. In addition, the Attorney General does not

interpose any objection to the schedule for implementing this change. However, we note that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of these changes. See 28 C.F.R. 51.41.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

JAN 1 1 1996

The Honorable Jack Cozort
Acting Director
Administrative Office of
the Courts
P.O. Box 2448
Raleigh, North Carolina 27602

Dear Judge Cozort:

This refers to your request that the Attorney General reconsider and withdraw the February 14, 1994, objection interposed under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, to Chapter 321 (1993), insofar as that legislation provides for the establishment of an additional judgeship in North Carolina District Court Districts 3A, 8, 12, 18 and 20. We received your request on November 7, 1995; supplemental information was received on December 20, 1995, and January 3, 1996.

We have reconsidered our earlier determination in this matter based on the information and arguments you have advanced in support of your request, along with the other information in our files and comments received from other interested persons. Accordingly, pursuant to Section 51.48(b) of the Procedures for the Administration of Section 5 (28 C.F.R.), the objection interposed to Chapter 321 (1993), insofar as that legislation provides for the establishment of an additional judgeship in North Carolina District Court Districts 3A, 8, 12, 18 and 20, is hereby withdrawn. However, we note that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See 28 C.F.R. 51.41.

Sincerely,

Loretta King

for Deval L. Patrick
Assistant Attorney General
Civil Rights Division