U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

SEP 12 2006

Tommy Coleman, Esq.
Hodges, Erwin, Hedrick & Coleman
P.O. Box 2320
507 North Jefferson Street
Albany, Georgia 31703-2320

Dear Mr. Coleman:

This refers to the change in voter registration and candidate eligibility regarding the proposed reassignment of Board of Education Chair Henry Cook from District No. 5 to District No. 4 in Randolph County, Georgia, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on July 14, 2006, and supplemental information through August 23, 2006.

We have carefully considered the information you have provided, as well as information and materials from other interested parties. Under Section 5 of the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006 ("Voting Rights Act"), the Attorney General must determine whether the submitting authority has met its burden of showing that the proposed change "neither has the purpose nor will have the effect" of denying or abridging the right to vote on account of race. As discussed further below, we cannot conclude that the County has sustained its burden of showing that the proposed change does not have a discriminatory purpose. Therefore, based on the information available to us, we are compelled to object to the proposed reassignment on behalf of the Attorney General.

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. *Georgia v. United States*, 411 U.S. 526 (1973). See also Procedures for the Administration of Section 5 of the Voting Rights Act (28 C.F.R. 51.52). In *Village of Arlington Heights v. Metropolitan Housing Authority*, 429 U.S. 252, 256-57 (1977), the Supreme Court identified a non-exhaustive list of factors that may serve as indicia of a discriminatory purpose. Those factors include the following: (1) the impact of the official action and whether it bears more heavily on one race than another; (2) the historical background of the action; (3) the sequence of events leading up to the action; (4) whether the challenged decision departs, either procedurally or substantively, from the normal practice; and (5) contemporary statements and viewpoints held by the decision-makers.

In analyzing the available information in light of *Arlington Heights*, we conclude that sufficient factors are present to prevent the County from meeting its burden of proving the absence of a discriminatory purpose. In the first place, the sequence of events here is highly unusual. The boundaries of districts for electing members of the Randolph County Board of Education were redrawn following the 2000 Census. An issue arose as to which district the Board Chairperson, Henry Cook, resided. Mr. Cook, who is black, is a "liner," in that his property is divided between Districts 4 and 5. During our Section 5 review of the redistricting, the County formally determined – and advised this Department – that Mr. Cook was an eligible voter and candidate for office in District 5, the district which he has long represented on the school board. On August 1, 2002, Mr. Cook received a new voter registration card that retained him in District 5.

The same issue arose again in a 2002 lawsuit. In that action, Judge Gary C. McCorvey of the Superior Court of Tift County heard evidence in an adversarial hearing, considered the law, and ruled that Mr. Cook was eligible to vote and run for office in District 5:

> [F]or purposes of running for election to the Board of Education from "new" district five as enacted by the General Assembly of the State of Georgia and as approved by the Department of Justice of the United States of America, the residence of Henry L. Cook is within the boundaries of such "new" district five as contemplated by the Laws and Constitutions of both the State of Georgia and the United States of America.

In re: Henry L. Cook, Candidate for Board of Education for the County of Randolph, Decision of Gary C. McCorvey, Chief Judge, Superior Courts, Tifton Judicial Circuit, Sitting by Designation as Superintendent of Elections, Randolph County, Georgia, slip op. (Oct. 28, 2002) at 7 ¶ 22. An appeal to the Randolph County Superior Court was dismissed as moot. *Jordan v. Cook*, 277 Ga. 155, 587 S.E.2d 52 (2003). The dismissal was affirmed by the Georgia Supreme Court. *Id.* The election was duly held and the candidate supported by the voters won.

Notwithstanding these court decisions, and despite the lack of any change in relevant facts or law, in January 2006 the three-member Randolph County Board of Registrars met in a special meeting called for the sole purpose of determining anew the proper voter registration location of Mr. Cook and his family members living at his address. Neither Mr. Cook nor his family were specifically notified of the meeting or invited to present evidence on their own behalf. The Board of Registrars, all of whose members were white, voted unanimously to change the voter registration status of Mr. Cook and his family members from District 5, where over 70 percent of the voters are African American, to District 4, where over 70 percent of the voters are white.

This sequence of events is procedurally and substantively unusual. The Board resurrected the issue of Mr. Cook's residency after it had been settled for three years, without any intervening change in fact or law, and without notifying Mr. Cook that it was doing so. Moreover, it is particularly unusual for officials with no legal training to overturn, in effect, a decision by a judge in order to disturb an incumbent officeholder.

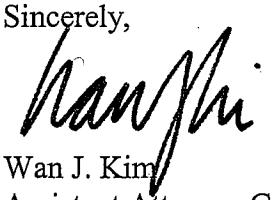
In addition, the Board's contemporaneous statements undermine their purported reasons for seeking to reassign Mr. Cook. One of the stated bases for the Board's decision was the purported fact that all neighbors who surround Mr. Cook's residence are in District 4, although the Board has since acknowledged that Mr. Cook's District 4 neighbors do not in fact encircle his house. Another stated basis for the Board's decision was to prevent a "liner" from voting in any district where he owns property or from voting in multiple districts at the same time. The Board presented no evidence indicating that any "liner" has attempted to change his registration status or vote in multiple districts, and certainly nothing in Judge McCorvey's decision warrants an interpretation that multiple voting is permissible.

For these reasons, and in light of the history of discrimination in voting in the County, we cannot conclude that the County has sustained its burden of showing that the submitted change lacks a discriminatory purpose. Therefore, on behalf of the Attorney General, we must object to the change in voter registration and candidate eligibility regarding the proposed reassignment of Board of Education Chair Henry Cook from District No. 5 to District No. 4 in Randolph County, Georgia.

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 neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District Court for the District of Columbia is obtained, the change in voter registration and candidate eligibility regarding the proposed reassignment of Board of Education Chair Henry Cook from District No. 5 to District No. 4 in Randolph County, Georgia will continue to be legally unenforceable. *Clark v. Roemer*, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Randolph County plans to take concerning this matter. If you have any questions, please call Maureen Riordan (202-353-2087), an attorney in the Voting Section.

Sincerely,



Wan J. Kim
Assistant Attorney General