

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, DC 20530

November 2, 2001

John B. Duggan, Esq.
Love, Thornton, Arnold & Thomason
P.O. Box 449
Greer, South Carolina 29652-0449

Dear Mr. Duggan:

This refers to the 2001 redistricting plan for the City of Greer in Greenville and Spartanburg Counties, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your responses to our August 20, 2001, request for additional information through October 17, 2001. We have considered carefully the information you have provided, as well as census data, and comments and information from other interested parties. Based on the information available to us, I am compelled to object to the submitted redistricting plan on behalf of the Attorney General.

According to the 2000 Census, the City of Greer has a population of 16,843, of whom 19.7 percent are black and 8.2 percent are Hispanic. The demographic data indicates that the city's black population percentage has declined since the previous decennial census. As a result, we understand that it is no longer feasible to devise a redistricting plan, which complies with one-person, one-vote standards, and which contains two districts in which minority voters can elect candidates of choice. However, as set forth below, the sole remaining majority minority district in the proposed plan will not continue to allow minority voters to elect candidates of their choice. As a result, the plan is retrogressive. See, Guidance Concerning Redistricting and Retrogression under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, 66 Fed. Reg. 5411. 5413 (Jan. 18, 2001).

Proposed District 2, the majority minority district in the proposed plan, includes much of the area previously included in District 1. Thus, the voting patterns of former District 1 are particularly relevant to our determination of future voting behavior in District 2, which the city presents as the district in which minority voters will retain the ability to elect candidates of their choice. Accordingly, we have examined elections for both municipal elections in Greer as well as other elections in which voters in Districts 1 and 2 participated. Our analysis indicates that voting in these elections in those areas are marked by a

pattern of racial polarization.

An analysis of the 1995 and 1999 election returns for District 1 shows a significant correlation between the demographics of the area, the race of the voters, and the race of the candidate. In the 1995 election, Perry Dennis received 98.8 percent of his votes from Spartanburg County, which is comprised of 95.6 percent of the total registered black voters of District 1. Conversely, Mr. Dennis received 1.16 percent of his votes from Greenville County where black voters comprised 4.37 percent of the total registered voters in District 1. The 1999 election data also indicate strong racial bloc voting tendencies. Mr. Dennis received 91.6 percent of his votes from the portion of District 1 in Spartanburg County, which had 98.4 percent of the district's total black registered voters. Conversely, 8.3 percent of his total votes were from the Greenville portion of the district which had 1.6 percent of the district's total black registered voters.

We also note that in the 1999 election, the candidate supported by the minority community won election by only 14 out of 158 votes cast. At that time, the district was approximately 59 percent black. Further, our analysis of recent election returns demonstrates a significant disparity in the turnout rates of white and black voters. For example, our analysis of a 1994 election showed that white voters turned out at a rate of 63 percent, whereas black voters turned out at a rate of 30 percent. Given this pattern of electoral behavior, black voters will lose the opportunity to elect their candidate of choice in District 2. Accordingly, we have concluded that the city has not carried its burden of establishing that its redistricting plan would not lead to retrogression in the ability of minority to exercise their electoral franchise.

In addition, the city has failed to meet its burden of establishing an absence of a purpose to retrogress minority voting strength in the adoption of the plan. It appears that the city council was aware that the minority elected officials and community were deeply concerned that at least one remaining district be maintained in which minority voters would have a meaningful opportunity to elect their candidates of choice. Yet, its actions do not support any contention that it was attempting to be responsive to these concerns.

During the redistricting process the city appears to have been more responsive to the concerns of white individuals than to the concerns expressed by minorities. For example, in the first proposed plan, created by the state redistricting office, a white incumbent was drawn out of his district and the area of Burgess Hills, a virtually all-white area, was drawn into the proposed minority District 1. When white citizens raised concerns about these changes, the city took immediate action to address these concerns, and the resulting plan was ultimately adopted. Yet, the city rejected alternative redistricting plans supported by the minority community.

The city's asserted reasons for dismissing the minority-preferred plan which included a stronger minority district appear inconsistent with the standards applied to the plan eventually adopted by the city. First, the city contends that its redistricting plan was necessary in order to align certain communities of interest. Yet, some actions taken in furtherance of that goal appear to split them instead. For example, the city claims that it was important to pair Greer and Victor Mills, two non-adjacent areas that had never been in

the same district previously. In the course of making this change, the city, in fact, split Victor Mills into proposed Districts 2 and 3, thereby disrupting a recognized and existing community of interest.

Similarly, any claim that the minority preferred plan would violate the principles of the Shaw v. Reno line of cases is also without merit. The minority district set forth in the plan preferred by the minority community is in fact more compact and more viable district than that under the submitted plan.

Finally, the alternative plans, rejected by the city demonstrate that it is possible to draw a plan that meets the city's legitimate redistricting criteria and that also includes a district in which minority voters will continue to have the opportunity to elect their candidates of choice. Given the concerns about the viability of District 2 discussed above, the presence of such alternative plans is an important factor.

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); Reno v. Bossier Parish School Board, 528 U.S. 320 (2000); 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 that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the submitted redistricting plan.

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 of Columbia Court is obtained, the changes 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 the City of Greer plans to take concerning this matter. If you have any questions, you should call Ms. Judybeth Greene (202-616-2350), an attorney in the Voting Section. Refer to File No. 2001-1777 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

Ralph F. Boyd, Jr.
Assistant Attorney General
Civil Rights Division