



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

MAY 01 1992

John E. Pilcher, Esq.  
Pilcher and Pilcher  
P. O. Box 1346  
Selma, Alabama 36702-1346

Dear Mr. Pilcher:

This refers to the 1992 redistricting plan for the board of education in Dallas County, Alabama, 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 submission on March 2, 1992

We have considered carefully the information you have provided, as well as Census data and information received from other interested parties. Between 1980 and 1990, the black share of Dallas County's population increased from 54.5 percent to 57.8 percent. Under the existing plan, blacks constitute a significant majority of the population in Districts 1, 2 and 3 (83%, 65% and 71% black, respectively). Despite the increase in the county's black population proportion, the proposed plan reduces the black percentage in District 2 from 65.3 percent to 57.6 percent. In the context of the electoral history and the pattern of racially polarized voting in Dallas County, this reduction appears to minimize the opportunity afforded black voters to elect a candidate of their choice in this district. See United States v. Dallas County Commission, 850 F.2d 1433 (11th Cir. 1988).

The Supreme Court, in Beer v. United States, 425 U.S. 130, 141 (1976), explained that "the purpose of § 5 has always been to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise."

While we recognize that District 2 in the existing plan is underpopulated, our review of the county's demography reveals that an eight percentage point reduction in the black percentage in District 2 was not necessary to comply with the one person, one vote requirement of the United States Constitution. In fact, during the redistricting process, the school board considered and rejected an alternative plan that balanced the county's population among the districts without reducing the black percentage in District 2. The proposed plan also appears to overconcentrate black residents in Districts 1 and 3 (84% and 76% black, respectively), and fragments contiguous black populations in the Selma area between Districts 3 and 5.

In addition, our information suggests that the school board's redistricting decisions were motivated, in part, by a desire to protect the incumbent board member from District 2. While we recognize that the desire to protect incumbents may not in and of itself be an inappropriate consideration, it may not be accomplished at the expense of minority voting potential. Garza v. Los Angeles County, 918 F.2d 763, 771 (9th Cir. 1990), cert. denied, 111 S. Ct. 681 (1991); Ketchum v. Byrne, 740 F.2d 1398, 1408-09, (7th Cir. 1984), cert. denied, 471 U.S. 1135 (1985). Where, as here, the protection afforded an incumbent is provided at the expense of black voters, the school board bears a heavy burden of demonstrating that its choices are not tainted, at least in part, by an invidious racial purpose.

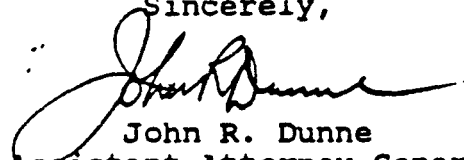
In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the county's burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the 1991 redistricting plan for the Dallas County Board of Public Education.

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 redistricting plan 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, 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 1992 redistricting plan continues to be legally unenforceable. Clark v. Roemer, 111 S.Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

- 3 -

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the Dallas County Board of Public Education plans to take concerning this matter. If you have any questions, you should call Richard Jerome (202-514-8696), an attorney in the Voting Section.

Sincerely,

A handwritten signature in dark ink, appearing to read "John R. Dunne", with a stylized, flowing script.

John R. Dunne  
Assistant Attorney General  
Civil Rights Division