



U.S. Department of Justice
Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

December 4, 1992

Nicholas H. Cobbs, Jr., Esq.
1110 Main Street
Greensboro, Alabama 36744

Dear Mr. Cobbs:

This refers to the change in method of election from five councilmembers elected at large to five councilmembers elected from single-member districts and the districting plan for the City of Greensboro in Hale 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 response to our request for additional information on October 5 and November 19 and 20, 1992.

We have considered carefully the information you have provided, as well as comments and information from other interested persons. The 1990 Census reports that black residents constitute 62 percent of the total population and 56 percent of the total voting age population in Greensboro. Our analysis reveals that elections in Greensboro and Hale County are characterized by racially polarized voting and that no black candidates were elected to office under the city's at-large election system. Moreover, in 1987, the city conceded in a consent decree that its present at-large method of election violates Section 2 of the Voting Rights Act, 42 U.S.C. 1973.

With regard to the change from at-large elections to single-member districts, the Attorney General does not interpose any objection. However, we note that the failure of the Attorney

General to object does not bar subsequent litigation to enjoin the enforcement of this change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

With respect to the proposed districting plan, however, we cannot reach the same conclusion. Although the city council had no black members at the time, the city proceeded to develop its proposed plan without public participation. The plan provides for two districts (Districts 1 and 3) in which the black voting age population percentage is in excess of 75 percent, and for another district (District 2) in which the black voting age population percentage is 58 percent. The remaining two districts have white voting age population majorities. The city reports that it decided to configure District 2 with a predetermined black population percentage, so as to reflect the black population percentage in the city as a whole. In doing so, however, it appears to have fragmented black population concentrations in order to lower the black percentage in District 2 to produce the city's desired result.

Our analysis of the proposed plan indicates that it would provide black voters the opportunity to elect candidates of their choice in District 1 and District 3 but that the same cannot be said for District 2. This analysis is supported by the August 1992 election using the proposed plan as a court-ordered interim plan. While black-supported candidates were elected to the city council from Districts 1 and 3, a black-supported candidate in District 2 was defeated. Your submission has identified no special circumstances that distinguish the 1992 election from the pattern of minority vote dilution that occasioned the at-large system's violation of Section 2. It appears therefore that the proposed districting plan, particularly the goal of limiting the number of black potential voters in District 2, would restrict black voters to an opportunity to elect no more than two members of the city council, of which the mayor is a sixth voting member, in future elections.

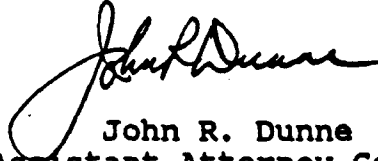
Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); 28 C.F.R. 51.52. In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance with regard to the proposed districting plan. Therefore, on behalf of the Attorney General, I must object to the proposed city council districting 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 change 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 districting plan continues 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 City of Greensboro plans to take concerning this matter. If you have any questions, you should call Robert Kengle (202-514-6196), an attorney in the Voting Section.

Because the objected-to plan is the subject of ongoing litigation, Dillard v. City of Greensboro, No. 87-T-1223-N (M.D. Ala) (Thompson, J), we are providing a copy of this letter to the Court and to plaintiffs' counsel.

Sincerely,



John R. Dunne
Assistant Attorney General
Civil Rights Division

cc: Honorable Myron H. Thompson
United States District Judge