

DEC 16 1977

Mr. W. L. Ferguson
Attorney for the Terrell
County Board of Education
Dawson, Georgia 31742

Dear Mr. Ferguson:

This is in reference to the changes affecting voting in Terrell County, Georgia resulting from the Local Amendment to Article VIII, Section 5, Paragraph II (Sec. 2-5302) of the Constitution of the State of Georgia, Georgia Laws, 1965 Session, page 746 ratified November 8, 1976, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on October 17, 1977.

According to our analysis, this Local Amendment has resulted in the following new practices or procedures with respect to voting, under the standards of Section 5:

1. The election rather than the appointment of the Board of Education for Terrell County;
2. The increase in the size of that Board from five members to seven members;
3. The method of election for that Board, including any practices or requirements of State law not previously followed or applied with respect to that Board;
4. The method of selecting the Chairman of the Board;
5. The method of filling vacancies on the Board; and
6. The appointment rather than the election of the County School Superintendent for Terrell County.

cc: Public File

With respect to the changes indicated by numbers 1, 2, 4, 5, and 6, the Attorney General does not interpose any objection. However, we feel a responsibility to point out that Section 3 expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes.

With respect to the method of election for the Board of Education, we have been unable to reach a similar result. It is our understanding that the seven members of the Board are elected at large in the County, that five members of the Board are required to reside in the five districts described in the Local Amendment, and that the terms of office for the members of the Board are staggered. In addition, pursuant to Sec. 34-1013 of the Georgia Election Code the two positions not elected from districts are considered separate offices for electoral purposes, and, pursuant to Sec. 34-1313(a) of that Code a majority vote is required for nomination and election. We have examined this electoral system in view of circumstances in Terrell County that, under the legal principles by which we are guided, we must consider relevant. See Beer v. United States, 475 U.S. 130, 141 (1976); City of Richmond v. United States, 422 U.S. 353 (1975); White v. Register, 412 U.S. 755 (1973); Alien v. State Board of Elections, 393 U.S. 366, 369 (1969); Kirksey v. Board of Commissioners of Blaine County, 554 F.2d 139 (5th Cir. 1977) (en banc), cert. denied, 46 U.S.L.W. 3357 (U.S. Nov. 12, 1977) (No. 77-499).

According to the information you have provided, information and comments from other interested persons, research conducted by our staff, and data contained in the 1970 census, the following circumstances in Terrell County appear to exist: The population of Terrell County is 11,616. Blacks constitute 33.5 percent of this population. Residential patterns in the county are such that the creation of seven fairly-drawn single-member districts satisfying applicable legal requirements could be expected to result in some districts having a black majority in population. No black has been elected to the Board of Education or to any other office in the County. Prior to 1965 blacks were not permitted to serve on the County Grand Jury, which prior to the adoption of this Local Amendment appointed members of the Board of Education; a court order was required to desegregate the Grand Jury. In 1967 Terrell County was designated by the Attorney General, pursuant to Section 6 of the Voting Rights Act, 42 U.S.C. 1973c, for the appointment of Federal Examiners. Public schools in Terrell County were not desegregated until the 1970-71 school year, and a court order was required for such desegregation. An analysis of precinct election returns for elections in which there were black candidates supports an inference that white voters in the County are generally reluctant to vote for black candidates. The voting changes resulting from the Local Amendment have been enforced in violation of Section 5 of the Voting Rights Act.

In these circumstances, we are unable to conclude that the method of election for the Board of Education will not have a discriminatory effect. Accordingly, on behalf of the Attorney General, I must interpose an objection to the method of election of the Board of Education of Terrell County resulting from the adoption of the Local Amendment described in the first paragraph of this letter.

Of course, as provided by Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this method of election has neither the purpose nor the effect of denying or abridging the right to vote on account of race or color. In addition, pursuant to the Attorney General's Section 5 guidelines (28 CFR 51.21, 51.23, and 51.24), you may request that this objection be reconsidered. However, until such time as the objection may be withdrawn or a favorable judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the method of election for the Board of Education of Terrell County legally unenforceable.

Because the present members of the Board of Education are holding office in violation of Section 5 of the Voting Rights Act, we request that you notify us within 30 days of your receipt of this letter of the steps the Board of Education plans to take to comply with this objection.

In addition, because the method of election of the Board of Education is the subject of litigation under the Voting Rights Act, Merritt v. Faust, C.A. No. 76-28-Amer. (M.D.Ga.), we are sending a copy of this letter to the Court and to counsel for the plaintiffs.

Finally, if you have any questions concerning the matters discussed in this letter, feel free to telephone Voting Section Attorney David H. Hunter, at 202/739-3849.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

cc:
United States District Court, Middle District
of Georgia, Americus Division
Neil Bradley, Esquire