U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

August 13, 1993

Milton F. "Rick" Gardner, Jr., Esq.
Gardner & Gardner
P. O. Box 631
Milledgeville, Georgia 31061

Dear Mr. Gardner:

This refers to Act No. 165 (1993), which provides for a change in the method of selecting the chief magistrate from appointed by the governor to elected at large by majority vote in nonpartisan elections, procedures for filling magistrate vacancies and a special election on November 2, 1993 for Baldwin County, Georgia, 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 initial submission on June 14, 1993; supplemental information was received on August 10, 1993.

We have considered carefully the information you have provided, as well as Census data, other information available to us and information provided by other interested persons. According to the 1990 Census, black persons comprise 42 percent of the total population and 40 percent of the voting age population in Baldwin County. In creating an elected chief magistrate position, the state has chosen to employ nonpartisan elections and to impose a majority vote requirement.

Our concern focuses on the majority vote requirement in light of the pattern of racially polarized voting in the county. In United States v. State of Georgia, Civil Action No. 1:90-cv-1749-RCF (N.D. Ga.), we have claimed, inter alia, that the majority vote requirement for positions elected countywide in Baldwin County provides black citizens less opportunity to participate in the political process and to elect candidates of their choice in violation of Section 2 of the Voting Rights Act. 42 U.S.C. 1973. As a member of the defendant class in that lawsuit Baldwin County has been on notice of our claim.

The imposition of a majority vote requirement for the new elective position of chief magistrate would appear to have the same potential for discrimination as the existing requirement has for other countywide offices because it would increase the probability of "head-to-head" contests between a candidate supported by black voters and a candidate supported by white voters. See, e.g., Rogers v. Lodge, 458 U.S. 613, 627 (1982); City of Port Arthur v. United States, 459 U.S. 156 (1982). Moreover, this potential for discrimination could have been avoided. Just as the legislation opted for a nonpartisan system instead of a partisan system, the legislation could have allowed election with a plurality vote and no nonracial justification has been proffered for not doing so.

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); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In addition, preclearance must be withheld where a change presents a clear violation of Section 2. 28 C.F.R. 51.55(b)(2). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the proposed method of electing the chief magistrate in Baldwin County meets the Act's preclearance requirements. Accordingly, I must object to the election method insofar as it includes a majority vote requirement.

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 have 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, implementation of the proposed changes is legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

Because the procedures for filling vacancies and the November 2, 1993 special election are related to the objectionable method of election, the Attorney General will make no determination regarding those changes at this time. 28 C.F.R. 51.22(b).

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Baldwin County plans to take concerning this matter. If you have any questions, you should call Gaye Hume (202-307-6302), an attorney in the Voting Section.

Sincerely,

Brian K. Landsberg
Acting Assistant Attorney General
Civil Rights Division

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Milton F. "Rick" Gardner, Jr., Esq.
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Dear Mr. Gardner:

This refers to your request that the Attorney General reconsider the August 13, 1993, objection under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, to Act No. 165 (1993), insofar as it provided for a change in the method of selecting the chief magistrate from appointed by the governor to elected at large by majority vote in non-partisan elections for Baldwin County, Georgia. We received your request on August 26, 1993; supplemental information was received on September 15 and 21, 1993.

We have reconsidered our earlier determination in this matter based on the information and arguments you have advanced in support of your request, 1990 Census data, other information in our files and comments received from other interested persons. According to the 1990 Census, black persons constitute 42 percent of the total population and 40 percent of the voting age population in Baldwin County. No black person has been appointed as chief magistrate under the county's existing gubernatorial appointment system.

In the request for reconsideration, the county argues that it is "preferable" for black voters to vote for an elected chief magistrate with a majority vote requirement than for the existing appointive system for that office to continue. The focus of our objection, however, is not the change from an appointive to an elective system. Rather, it is to the imposition of a majority vote requirement because of the potential that exists for discrimination against black voters given the at-large election system and the racially polarized voting patterns that are apparent in Baldwin County elections. You have not provided any information rebutting our conclusions about the existence of racially polarized voting in Baldwin County or the potential for discrimination that exists in the use of a majority vote requirement for countywide elections for chief magistrate.

In addition, the county suggests that our Section 5 review of the objected-to voting change for Baldwin County is inconsistent with the position of the United States in United States v. State of Georgia, Civil Action No. 1:90-CV-1749-RCF (N.D. Ga), our suit claiming, inter alia, that the majority vote requirement for positions elected countywide in Georgia violates Section 2 of the Voting Rights Act. While the county contends that it is of the view that the majority vote claims in United States v. State of Georgia will be settled, clearly that is not the case with regard to offices elected countywide.

Finally, we are unpersuaded by the county's contention that it is constrained by general state law requirements that the elected chief magistrate be elected by a majority vote. The county has not satisfactorily explained its decision to deviate from general state law requirements under some circumstances, e.g., opting for a nonpartisan system for electing the chief magistrate when Georgia law appears to require partisan elections, yet not doing so to avoid the potential for discrimination against black voters.

In light of these considerations, I remain unable to conclude that Baldwin County has carried its burden of showing that the submitted changes have neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In addition, preclearance must be withheld where a change presents a clear violation of Section 2. 28 C.F.R. 51.55(b)(2). Accordingly, on behalf of the Attorney General, I must decline to withdraw the August 13, 1993, objection to the election method for the chief magistrate in Baldwin County insofar as it includes a majority vote requirement.

As we previously advised, you may seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. We remind you that until such a judgment is rendered by that court, the objection by the Attorney General remains in effect and the proposed changes are legally unenforceable. See also 28 C.F.R. 51.10, 51.11, and 51.48(c) and (d).

Because the objection to the method of election is continued, no determination regarding the related changes involving the procedures for filling vacancies and the November 2, 1993, special election is required at this time. 28 C.F.R. 51.22(b).

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Baldwin County plans to take concerning this matter. If you have any questions, you should call Ms. Zita Johnson-Betts (202-514-8690), an attorney in the Voting Section.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division