



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

James S. Gore, Esq.
P. O. Box 367
Houston, Mississippi 38851

APR 18 1989

Dear Mr. Gore:

This refers to Chapter 306, H.B. No. 441 (1975), which provides for a change in the method of selecting the board of trustees from a mixed appointive/elective method to at-large elections, five annexations and a deannexation in 1971, and the February 16, 1987, annexation for the Houston School District in Chickasaw County, Mississippi, 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 the information to complete your submissions on February 17, 1989.

The Attorney General does not interpose any objections to the 1971 and 1987 boundary changes. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act 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. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

With respect to the change occasioned by Chapter 306, we have considered carefully the information you have provided, as well as information from other interested persons, the record in Moore v. Houston Municipal Separate School District, C.A. No. EC 75-4S (N.D. Miss.), and the district court decisions in Wright v. City of Houston, C.A. No. EC 85-185-LS-D (N.D. Miss. May 8, 1985), and Gunn v. Chickasaw County, C.A. No. EC 87-165-D-D (N.D. Miss. Jan. 24, 1989). At the outset, we note that Chapter 306 appears to have been adopted without significant input from the black community at a time when persons active in the political process in Mississippi were well aware that the at-large election method often could serve as a device to minimize or cancel out black voting strength. We are not unmindful of the fact that in the 1960s and early 1970s various entities within the state sought on several occasions to mandate or permit the adoption of at-large elections for county boards of supervisors, county school boards, and municipalities throughout the state, and these efforts to minimize black electoral opportunities were unsuccessful only because of court action or objections interposed under Section 5 by the United States Attorney General.

That there was a real potential for discrimination in the use of use of at-large elections in the Houston School District finds substantial support in the Wright decision, noted above, where the federal district court recently found that the at-large method of electing the governing body in the City of Houston violates Section 2 of the Voting Rights Act, 42 U.S.C. 1973. Furthermore, at no time since the at-large system was instituted for electing the Houston School District Board of Trustees have blacks been able to elect their chosen candidate to the Board except when the position was uncontested. These circumstances, in conjunction with the decisions in Wright and Gunn, indicate that, as with other elections in the area, elections for the school district board of trustees likely are characterized by a pattern of racially polarized voting in which a white bloc-voting majority consistently defeats candidates supported by minority citizens. The inferences, taken as a whole, strongly suggest that the at-large method of election was adopted for a racial purpose.

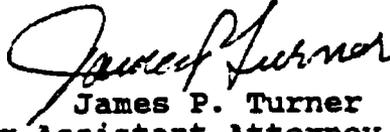
Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. In view of the considerations discussed above, I cannot conclude, as I must under the voting Rights Act, that that burden has been sustained with regard to purpose. In addition, our guidelines require that clearance be withheld if "necessary to prevent a clear violation of amended Section 2...." 28 C.F.R. 51.55(b)(2). Because we are unable to perceive any substantial difference between the circumstances examined by the district courts in Wright and Gunn and the circumstances that bear on the electoral opportunity offered black citizens by the at-large system used for electing the school district board of trustees, it would appear that Section 2 provides an additional basis for withholding clearance here. Therefore, on behalf of the Attorney General, I must object to the use of the at-large method of election occasioned by Chapter 306 (1975).

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this 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, Section 51.45 of the guidelines permits you to 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 effect of the objection by the Attorney General is to make the at-large method of election legally unenforceable. 28 C.F.R. 51.10.

We are cognizant of the fact that school trustees have been elected under Chapter 306 for 15 years and that discontinuance of its use will result in some disruption in the administration of the school district. However, any inconvenience occasioned by this action stems from the district's implementation of these changes without the requisite Section 5 preclearance and is a necessary result of the operation of Section 5 of the Act.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the Houston School District plans to take with respect to this matter. If you have any questions, feel free to call Mark A. Posner (202-724-8388), an attorney in the Voting Section.

Sincerely,



James P. Turner
Acting Assistant Attorney General
Civil Rights Division

cc: Giles W. Bryant
Special Assistant Attorney General