



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

July 6, 1993

Mr. W. Bernard Welborn
Town Administrator
500 Mims Avenue
Johnston, South Carolina, 29832

Dear Mr. Welborn:

This refers to the 1993 redistricting plan and the procedures for conducting the September 14, 1993, special election for the Town of Johnston in Edgefield County, South Carolina, 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 May 4, 1993.

We have considered carefully the information you have provided, as well as Census data, information from your submission of the 1992 redistricting plan, and information and comments from other interested parties. According to the 1990 Census, between 1980 and 1990, the black share of Johnston's population increased from 53.6 percent to 60.5 percent. There are six members of the Johnston town council elected from single-member districts, with the mayor elected at large.

On June 5, 1992, the Attorney General interposed an objection under Section 5 to the first council redistricting plan adopted by the town following the 1990 Census. Our objection was based on the plan's overconcentration of black persons into three districts that were, respectively, 94, 83, and 82 percent black in total population. The district with the next highest black population percentage was Ward 6, at 56 percent (49.5 percent black voting age population). Our analysis indicated that racial bloc voting appears to characterize elections in the town. We noted that the objected-to plan unnecessarily "packed" black voters into three districts and that while geography dictated the high black population percentage in Ward 1, the 80%+ black percentages in the other two districts, Wards 4 and 5, did not appear necessary. We noted that the objected-to plan was adopted in a racially divisive, closed process and that during this process, the council failed to consider any redistricting options that would have produced four districts in which black voters would have an opportunity to elect their candidates of choice.

The redistricting plan now before us makes no changes to the three districts in the objected-to plan with black population percentages over 80 percent (94, 83 and 82 percent, respectively). It does, however, create a fourth district (Ward 6) with a black population majority of 61 percent (56 percent black in voting age population). Before adopting the submitted plan, the town council considered an alternative redistricting plan, drawn by its own demographer and supported by the black community, that would have reduced the overconcentration of black population that we identified in our objection letter, thereby creating a Ward 6 in which the black electorate would have a more realistic opportunity to elect a candidate of its choice. In rejecting this alternative, the council chose not to follow the recommended approach of its demographer and, instead, focused on redistricting approaches that limited the black population percentage in Ward 6 to a predetermined level while maintaining the overconcentration of black population in Wards 4 and 5.

The town's explanation that the proposed alternative was unacceptable because it reduced the black percentages in Wards 4 and 5 is unpersuasive. No such concerns were raised about the reduction by the black community; indeed, reducing the overconcentration of black population in those districts was advocated by the black community in order to produce a fairly drawn redistricting plan. While the town was not required to adopt a particular redistricting plan or approach advocated by the black community, the town's proffered reasons for rejecting this alternative proposal appear pretextual. Nor is this plan justified by the circumstances here where the minority councilmembers apparently felt constrained to vote for it lest a more unfavorable plan be adopted.

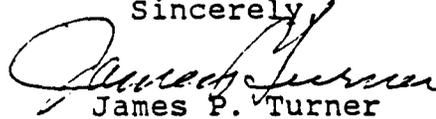
Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light 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. Therefore, on behalf of the Attorney General, I must object to the submitted redistricting 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. See 28 C.F.R. 51.11 and 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the proposed redistricting plan continues to be legally unenforceable. See Clark v. Roemer, 111 S.Ct. 2096 (1991); 28 C.F.R. 51.10.

Because the procedures for conducting the September 14, 1993, special election are dependent upon preclearance of the 1993 redistricting plan, the Attorney General will make no determination with regard to the special election at this time. See 28 C.F.R. 51.22.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the Town of Johnston plans to take concerning this matter. If you have any questions, you should call George Schneider (202-307-3153), an attorney in the Voting Section.

Sincerely,



James P. Turner
Acting Assistant Attorney General
Civil Rights Division

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DJ 166-012-3
93-1658

OCT 26 1993

Greg W. Anderson, Esq.
Anderson & Anderson
306 Main Street
Edgefield, South Carolina 29824

Dear Mr. Anderson:

This refers to your request that the Attorney General reconsider the July 6, 1993, objection under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, to the 1993 redistricting plan for the Town of Johnston in Edgefield County, South Carolina. We received your request on September 15, 1993.

We have reconsidered our earlier determination in this matter based on the information and arguments that you have advanced in support of your request, along with other information in our files and comments from other interested persons. According to the 1990 Census, black persons constitute 60.5 percent of the town's population (54.5% of the voting age population). Johnston is governed by a six-member town council elected from single-member districts with a mayor who is elected at large.

The submitting authority has the burden under Section 5 of showing that a submitted voting 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. On two occasions, we have interposed objections to the town's post-1990 redistricting plans for the town council because the town had failed to demonstrate that the plans were free of the proscribed discriminatory purpose. Our conclusions were based

on a number of factors, including our analysis of voting patterns in town elections and the continued overconcentration of black population into two districts, Districts 4 and 5, that are over 80 percent black. We also considered the fact that the town's demographics appear to allow for the creation of a fourth district from which black voters would have a fairer opportunity to elect candidates of their choice than that presented by the proposed plans. The town has twice rejected alternatives that would have effectuated this result, as well as cured the observed overconcentration of black population.

The limited information provided by the town with its request for reconsideration does not warrant us altering our view that the objected-to plan fails to pass muster under Section 5. The town's request presents no new information rebutting our earlier determination that its stated reasons for the rejection of alternatives preferred by the black community were pretextual. Nor does it address our concerns that District 6 does not present a district from which black voters will have a fair opportunity to elect their candidates of choice and that black voters are overconcentrated in Districts 4 and 5.

During our prior review, we addressed the town's position that the objected-to plan is the result of the unanimous approval of the town council, including its black members and, thus, is entitled to preclearance. As we stated in our July 6, 1993, letter, we are not persuaded that this plan is justified under circumstances where the black members of the council apparently felt "constrained to vote for it lest a more unfavorable plan be adopted."

In light of the considerations discussed above, I remain unable to conclude that the Town of Johnston has carried its burden of showing that the 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. Therefore, on behalf of the Attorney General, I must decline to withdraw the objection to the 1993 redistricting plan for town council elections.

As we previously advised, you may 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. 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 change continues to be legally unenforceable. See Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10, 51.11, and 51.48(c) and (d).

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the Town of Johnston plans to take concerning this matter. If you have any questions, you should call Delora L. Kennebrew (202) 307-3718, Deputy Chief of the Voting Section.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division