

DJ 166-012-3  
C2476-2477

22 OCT 1979

Honorable Mark Helmer  
Attorney General  
State of South Dakota  
State Capitol Building  
Pierre, South Dakota 57501

Dear Mr. Attorney General:

This is in reference to the Laws of South Dakota, Chapter 45 (House Bill 1197 of the 1979 Session), entitled "An Act to Provide for the Organization of Unorganized Counties", which establishes new governmental systems for Todd and Shannon Counties, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on August 23, 1979.

Under Section 5 of the Voting Rights Act the submitting authority has the burden of proving that a submitted change has no discriminatory purpose or effect. See, e.g., Georgia v. United States, 411 U.S. 526 (1973); 28 C.F.R. 51.19. In order to determine whether the State of South Dakota has carried that burden in this instance we have given careful consideration to the information you have furnished, as well as to the comments of other interested parties and information gathered through our own research.

Our analysis reveals that the proposed change finds its impetus in Little Thunder v. State of South Dakota, 511 F.2d 1293 (8th Cir. 1975). For many years prior to this decision the predominantly Indian residents of unorganized Todd and Shannon Counties were not permitted to vote for the officials of organized and predominantly white Tripp and Fall River Counties, who provided them with governmental services. The Little Thunder decision invalidated this restriction on the

basis of the Equal Protection Clause of the Fourteenth Amendment. In response to this decision, which provided Todd and Shannon Counties with political access to county government for the first time, residents of Tripp and Fall River Counties and others began a process which resulted in the passage of House Bill 1197 in 1979. The preponderance of evidence suggests that one of the reasons for the passage of House Bill 1197 is to nullify the effects of the Little Thunder decision.

This legislation would sever Tripp County from Todd County, and Fall River County from Shannon County. While these newly organized counties would each have their own governmental bodies, these bodies would be severely and uniquely limited in their ability to carry out governmental functions. The evidence indicates that the county governments of Todd and Shannon Counties provided for in House Bill 1197 would not have sufficient revenues to carry on the normal affairs of county government. In fact House Bill 1197 contemplates contracting by the county governments of the newly organized counties with neighboring counties, but not with Indian tribes, in contrast to other South Dakota counties. The newly organized counties' interim appointed commissions have indeed contracted for these services with the counties to which they were previously attached. These commissions were appointed by the Governor of South Dakota pursuant to House Bill 1197, replacing the elected representatives of Todd and Shannon Counties. The net effect of House Bill 1197, therefore, is to return Todd and Shannon Counties to a position of dependence on Tripp and Fall River Counties for governmental services, while being without electoral participation in either of those counties with respect to both the interim and permanent county governing bodies. The rights of access won in Little Thunder would thus be negated.

Under these circumstances I cannot conclude that the submitting authority has carried its burden of proving that House Bill 1197 will have neither the proscribed discriminatory purpose nor effect. Therefore, on behalf of the Attorney General, I must object to the proposed change.

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 these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.21(b) and (c), 51.23, and 51.24) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make House Bill 1197 (1979) legally unenforceable.

Sincerely,

FRANK S. DAVIS III  
Assistant Attorney General  
Civil Rights Division