



Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

T.W. Thagard, Jr., Esq.  
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Montgomery, Alabama 36101

21 JUL 1981

Dear Mr. Thagard:

This is in reference to the change in the method of election for members of the Barbour County Commission from six single-member districts and one county-wide district to election from seven single-member districts and to the redistricting plan for those seven districts for Barbour County, Alabama, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Your submission was received on May 27, 1981.

The Attorney General does not interpose any objection to the change to a plan that provides that all seven members of the County Commission be elected from single-member districts. 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 change.

With regard to the redistricting plan, we have given careful consideration to the information you have provided as well as to that available from the Bureau of the Census and from other interested parties. Our analysis shows that most districts are not compact, do not follow natural and recognizable boundaries in many instances and, with respect to Districts 1 and 4, are noncontiguous. In addition, District 3 merges the 83.5 percent black Springhill/Comer area with a 72 percent white portion of the City of Eufaula resulting in a district which appears to have a majority white voting age population.

Our analysis also reveals that the county's submitted plan divides the predominantly black population concentrations in the northern and western portions of the county among three districts (Districts 3, 5, and 6) and the areas of

black population concentration within the City of Eufaula among three districts (Districts 1, 2 and 4). This fragmentation of black population concentrations results in a plan that contains no district in which a majority of the voters are black, even though the County is 44 percent black, according to the 1980 Census. Specifically, although the plan provides for districts with nominal black population majorities of 55.7, 55.8 and 57.6 percent (Districts 1, 3 and 6), the County has not provided any information regarding voting age population. Unless the ratio of black to white voting age population has radically changed since 1970, two of the above districts have a white majority voting age population and the third is only slightly over 50 percent black. Even in that district, whites constitute a majority of registered voters. In addition, apparent racial bloc voting and the majority vote requirement further impinge on black voting strength.

Since the prior plan is unconstitutionally malapportioned, Porte v. Barbour County Commission, Civil Action No. 79-537-N (M. D. Ala., Dec. 17, 1979), our standard of comparison under Beer v. United States, 374 F. Supp. 363, rev'd, 425 U.S. 130 (1976), is "options for properly apportioned single-member district plans." Wilkes County v. United States, 450 F. Supp. 1171, 1178, Conclusion 10 (D. D.C. 1978), aff'd, 439 U.S. 999 (1978). In this regard, our analysis reveals that readily apparent alternatives would provide at least two viable majority black districts, one in the northwestern portion of the county and one in the City of Eufaula, with black populations of well over 60 percent each. Such districts would be natural, compact and contiguous, would satisfy the Fourteenth Amendment requirement of one person, one vote and most likely such a plan could include a third district of nearly a 60 percent black population. The county has not provided any information to show that its choice of the submitted redistricting plan, in preference to the available alternatives, does not have the purpose or effect of discriminating against black voters.

In addition, there is evidence pertinent to the question of an impermissible racial purpose. Barbour County has a long history of failing to comply with the preclearance provisions of the Voting Rights Act. This submission itself is the result of court action stemming from such a failure. While the white community was consulted regarding this plan, it is our understanding that leaders of the black community were not consulted concerning the placement of the new district lines, and the County has provided no evidence of any systematic effort to involve blacks in its deliberations. As noted above, racially polarized voting appears to exist in Barbour County, the proposed districts are not natural, compact or contiguous and the electoral scheme would maintain black voting strength at a minimum level, although readily available alternatives would provide a fair chance for meaningful minority participation. These facts all bear on the question of an impermissible racial purpose in the adoption of the plan. See Wilkes County v. United States, supra.

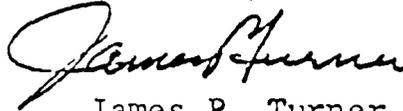
Under Section 5 of the Voting Rights Act, the submitting authority has the burden of proving that a submitted change has no discriminatory purpose or effect. See, e.g., Georgia v. United States, 411 U.S. 526 (1973); see also Section 51.39(e) of the Procedures for the Administration of Section 5 (46 Fed. Reg. 878). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the redistricting plan for election of the Barbour County Commissioners.

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, color or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (Section 51.44, 46 Fed. Reg. 878) 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 is obtained, the effect of the objection by the Attorney General is to make the redistricting plan legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter what course of action Barbour County plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Carl W. Gabel (202-724-7439), Director of the Section 5 Unit of the Voting Section.

We are sending a copy of this letter to the Honorable Robert E. Varner, Judge, United States District Court, Middle District of Alabama.

Sincerely,

A handwritten signature in cursive script, appearing to read "James P. Turner".

James P. Turner  
Acting Assistant Attorney General  
Civil Rights Division