U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

16 NOV 1981

T. W. Thagard, Jr., Esq.
Smith, Bowman, Thagard,
Crook & Culpepper
Post Office Box 78
Montgomery, Alabama 36101

Dear Mr. Thagard:

This is in reference to the redistricting plan for the seven single-member districts for members of the Barbour County Commission of 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 September 16, 1981.

At the outset we note that on July 21, 1981, an objection was interposed on behalf of the Attorney General to the plan previously submitted. We found that the districts in that plan were "not compact, do not follow natural and recognizable boundaries . . . and . . . are noncontiguous." We further found that the plan evidenced dilution of black voting strength in Barbour County by drawing new district lines in such a way as to cause needless fragmentation of black population concentrations. In the context of Barbour County, including as it does racial bloc voting, a majority vote requirement, and a substantially lower voting age population and voter registration rate among blacks than among whites, we were unable to conclude that black voting strength had been maintained at a level that would have allowed blacks to participate fully and fairly in the electoral process. Accordingly, we advised the county that it had failed to sustain its burden under the Voting Rights Act and an objection was interposed.

As noted in our July 21 letter of objection, since the preexisting plan was found to be unconstitutionally malapportioned, Forte v. Barbour County Commission, Civil Action No. 79-537-N (M.D. Ala., Dec. 17, 1979), the proper standard of comparison under Beer v. United States, 425 U. S. 130 (1976), is to compare the submitted plan with "options for properly apportioned single-member

district plans." Wilkes County v. United States, 450 F. Supp. 1171, 1178, Conclusion 19 (D. D.C. 1978), aff'd, 439 U.S. 999 (1978). Such a comparison necessarily must take into account the existence of racially polarized voting in Barbour County. Also important to our analysis is the wide discrepancy in voting age population between blacks and whites in Barbour County. Weighing in the balance these and other considerations we must in the end determine whether your submitted plan was designed "to minimize . . . the voting strength of racial . . . elements of the voting population." Fortson v. Dorsey, 379 U.S. 433, 439.

With this background in mind we have given careful consideration to the information you have supplied as well as that available from our files, the Bureau of the Census and other interested parties. Our analysis shows that even though the districts in the new proposal appear to be contiguous, some continue to be drawn in a manner designed to fragment black population concentrations. This is particularly the case in the City of Eufaula where the boundaries of District 3 are drawn in a convoluted and distorted fashion that "carves out" of the district three virtually all-black areas while drawing into the district elsewhere two all-white areas. The information that you have supplied does not indicate any governmental interest served by this configuration and we have received no explanation to suggest a reason other than to minimize black voting strength in District 3 over what one would naturally expect had a more evenly drawn, unfragmented plan been adopted.

In addition, with respect to the boundary line between Districts 1 and 2, predominantly black voting Precinct 10, which has the second highest percentage of black registered voters in the county, seems to be split unnecessarily between Districts 1 and 2. This fragmentation also results in what seems to be an unnecessary splitting of a Census Enumeration District and the attending unreliability of statistics that such splitting engenders. In fact, our analysis shows that the unreliability of the data resulting from the split in this instance may be exacerbated by the methodology used, which assumed equal distribution of population by race throughout the ED and which made no distinction in the number of persons per household whether white or black. Census experience has shown that these are not realistic assumptions.

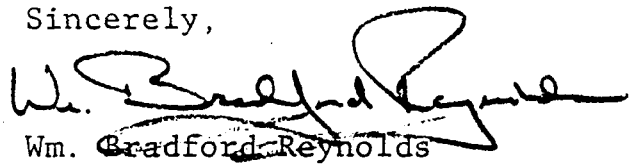
Under Section 5 of the Voting Rights Act the submitting authority has the burden of proving that a submitted change has no discriminatory purpose or effect. See, e.g., Georgia v. United States, 411 U.S. 526 (1973); see also Section 51.39(e) of the Procedures for the Administration of Section 5 (46 Fed. Reg. 878). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the county has carried

its burden of showing that the plan here under submission is free of any purpose to abridge the right to vote on account of race or color. Accordingly, on behalf of the Attorney General, I must interpose an objection to the redistricting plan contained in the instant submission.

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, Fed. Reg. 878) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the redistricting plan for Barbour County legally unenforceable.

Since this matter is related to the litigation pending in the federal district court, I am taking the liberty of forwarding a copy of this letter to Judge Varner. 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.

Sincerely,



Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

cc: Chief Judge Robert E. Varner