U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

May 10, 1983

E. Paul Jones, Esq.
P.O. Box 448
Alexander City, Alabama 35010

Dear Mr. Jones:

This is in reference to the change in the method of electing county commissioners from single-member districts to at-large in Tallapoosa 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. We received the information to complete your submission on March 11, 1983. Although we noted your request for expedited consideration, we have been unable to respond until this time.

We have given careful consideration to the information you have provided, along with Bureau of the Census data and information and comments from other interested parties. At the outset, we note that this change initially resulted from litigation in 1969 to redress a one-person, one-vote issue and that the at-large system has been implemented by the county from that time until ordered by the court in Holley v. Sharpe, Civ. Action No. 82-17-E (M.D. Ala.), on September 9, 1982, to seek this preclearance. Thus, we have before us a history of elections under the at-large system which reflects that although blacks constitute 27 percent of the population of the county their influence on the outcome of county-wide elections is significantly less than it would be under a system in which officials are elected from single-member districts, as formerly existed.

In addition, our analysis of election returns for county commissioner and school board elections, as well as other information showing a racial consciousness in Tallapoosa County elections, indicates a pattern of racially polarized voting. Where such a phenomenon exists under an at-large system, coupled with a majority vote requirement as it is in Alabama elections, minorities have little chance of electing a candidate of their choice or significantly influencing the outcome of elections.

cc: Public File

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)). Changes in voting procedures, such as the instant one, have the prohibited effect if they result in a retrogression of black voting strength. See Beer v. United States, 425 U.S. 130 (1976). Because the court in Reynolds v. Gallion, 308 F. Supp. 803 (M.D. Ala. 1969), declared the pre-1970 districts to be unconstitutional under the Fourteenth Amendment, the benchmark for measuring retrogression in this situation would be a "properly apportioned single-member district [plan]." Wilkes County, Georgia v. United States, 450 F. Supp. 1171, 1178 (D. D.C. 1978). When so viewed, the at-large method of election does not "fairly [reflect] the strength of black voting power as it exists." Mississippi v. United States, 490 F. Supp. 569, 581 (D. D.C. 1979). Our analysis reveals that a fairly drawn single-member district plan would result in at least one district in which blacks would have substantially more influence in electing a candidate of their choice than under the at-large system.

In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the county has sustained its burden of showing the absence of the proscribed purpose and effect. Therefore, on behalf of the Attorney General, I must object to the at-large method of electing county commissioners in Tallapoosa County.

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 51.44 of the guidelines permits you to request that the Attorney General 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 at-large method of election legally unenforceable. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Tallapoosa County plans to take with respect to this matter. If you have any questions, feel free to call Carl W. Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division