Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

20 APR 1984

Philip Henry Pitts, Esq.
Pitts, Pitts & Thompson
P. O. Drawer 537
Selma, Alabama 36701

Dear Mr. Pitts:

This refers to the redistricting of councilmanic wards (Ordinance No. 83-05) for the City of Selma in Dallas 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 April 4, 1984. In accordance with your request, expedited consideration has been given this submission pursuant to the Procedures for the Administration of Section 5 (28 C.F.R. 51.32).

We have reviewed carefully the information you have provided along with that provided by interested third parties. According to 1980 Census data, blacks constitute 52.6 percent of the city's population and 48.5 percent of the city's voting age population. It is conceded that racially polarized voting prevails in Selma elections.

Under the interim single-member district plan, black citizens represent significant majorities in five of the ten districts and, in fact, appear to have elected representatives of their choice in each of those five districts, thus filling five of the eleven council seats. Under the proposed plan black voters would constitute a majority in two of the five double-member wards and thus would have a realistic prospect of electing candidates of their choice to only four of the eleven seats.

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 28 C.F.R. 51.39(e). A

prohibited "effect" is one that leads to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise. See Beer v. United States, 425 U.S. 130 (1975).. Usually, such a determination is made on a comparison of the proposed plan with the "existing" plan. Here, however, the only lawful plan in existence is the court-ordered, interim plan that temporarily permits a ten single-member district configuration that cannot be legislatively continued under the city charter. In such circumstances, we cannot turn to the court-ordered plan as the benchmark for purposes of the retrogression analysis but must view the proposal in light of what reasonably can be regarded as a "fairly drawn" plan that is fully responsive to minority voting interests in the community. See Wilkes Cty., Ga. v. United States, 450 F. Supp. 1171 (D. D.C. 1978), aff'd, 439 U.S. 999 (1978).

Application of that standard here provides no clear-cut answers. Because the city charter demands five two-member districts, and given the racial housing patterns, bloc voting, and the demographics of Selma, there appears to be little practical chance of developing a configuration that will allow blacks and whites each to control five of the council's district seats. Given that reality, a "fairly drawn" plan might well be one that has two majority-white districts, two majority-black districts, and a fifth district that reflects as nearly as possible the city's voting age population. Whether such a redistricting would result in an even split of the district seats along racial lines, or favor one or the other race (6-4) would, of course, be irrelevant to the analysis, since the standard under the Voting Rights Act is, in these circumstances, a "fairly drawn" plan, not racially proportional representation.

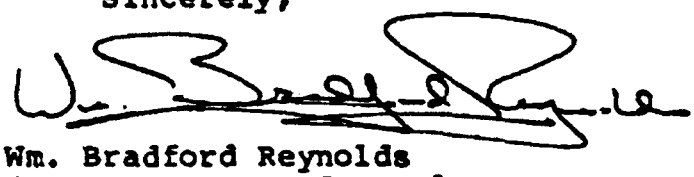
The difficulty with the city's instant submission is that there appears to have been no real effort to develop the five districts in the manner outlined above. While two districts are majority white and another two are majority black, District 3 does not accurately reflect citywide voting age population. An alternative plan that was rejected by the council does a better job in this regard, although it, too, might require some additional modification to satisfy the Section 5 standard.

In light of the above considerations, I am unable to conclude that the city has met its burden of showing that the submitted plan is free of discriminatory effect. In addition, there is some suggestion that the council's selection of this proposed redistricting may not have been wholly without a prohibited purpose. Therefore, on behalf of the Attorney General, I must object to the proposed redistricting of councilmanic wards for the City of Selma, Alabama.

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 a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the proposed redistricting 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 the City of Selma plans to take with respect to this matter. If you have any questions, feel free to call Sandra S. Coleman (202-724-6718), Deputy Director of the Section 5 Unit of the Voting Section.

Sincerely,



Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division