



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

March 20, 1995

William E. Woodrum, Esq.
Jenkins County Attorney
P.O. Box 866
Millen, Georgia 30442

Dear Mr. Woodrum:

This refers to the polling place changes in Districts 1 and 5 for Jenkins County, Georgia, 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 your responses to our request for additional information on January 17, and March 10, and 13, 1995.

The Attorney General does not interpose any objection to the polling place change for District 5. However, we note that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change.

With regard to the polling place change for District 1, we have carefully considered the information you have provided, as well as information and comments from other interested persons. According to the 1990 Census, black persons represent 41 percent of Jenkins County's total population and 37 percent of its voting age population. In addition, the Census indicates that there are significant disparities in the socio-economic status of black persons and white persons living in the county. For example, while 38 percent of black households are without a vehicle, only 4 percent of white households are without a vehicle.

Information made available to us indicates that in May of 1994, the county made the decision to change the polling place location for District 1 without any meaningful input from the black community regarding other potential polling sites or the possible effects of the proposed change. Our analysis reveals that instead of broadly publicizing the need for a new polling location, the county appears to have asked only a very small number of landowners for permission to use their land as a polling site. When none of these landowners offered their land for this purpose, the proposed polling place was selected.

The proposed polling place is a parcel of land located on State Highway No. 17, outside the limits of the City of Millen, in a predominantly white neighborhood. State Highway No. 17 has a speed limit of 55 miles per hour, has a blind curve followed by a downward hill just before the entrance of the polling place, and has no sidewalks. By contrast, the existing polling place for District 1 is a concrete slab adjoining a Dairy Queen which is located on Highway No. 25, in the City of Millen (58 percent black), in a predominantly black neighborhood. Highway 25 has a speed limit of 35 miles per hour and has sidewalks, crosswalks, and street lights located in the vicinity of the polling place.

While the county appears to have a justifiable reason for moving the polling place in District 1 (e.g., the owner is turning it into a used car lot), it does not appear to have a legitimate, nonracial reason for the selection of this particular polling location. The county claims that the proposed polling place for District 1 is safer than and as accessible as the existing polling place, and that the proposed polling place is in a racially neutral territory. Yet, our analysis does not substantiate these claims and finds quite the opposite to be true. Under these circumstances, the county's proffered reasons for the selection of this particular polling site appear to be pretextual, as the selection of this location appears to be designed, in part, to thwart recent black political participation.

Nor has the county provided evidence to suggest that the proposed polling place change will not have a retrogressive effect on black voter participation. The county has limited public transportation and nearly ten times as many black households are without a vehicle as are white households. Consequently, because so many black voters walk to the polls, the fact that the county proposes to move the polling place in District 1 to a location to which voters cannot walk safely would appear to make it more difficult for black voters to exercise their right to vote and is likely to result in significantly lower electoral participation by black voters.

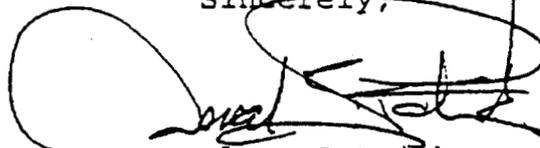
Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); Procedures for the Administration of Section 5, 28 C.F.R. 51.52. The existence of some legitimate, nondiscriminatory reasons for the voting change does not satisfy this burden. See Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 265-66 (1977); City of Rome v. United States, 446 U.S. 156, 172 (1980); Busbee v. Smith, 549 F. Supp. 494, 516-17 (D.D.C. 1982), aff'd, 459 U.S. 1166 (1983). Nor can we say that the county has met its

burden of showing that, in these circumstances, the polling place change in District 1 will not "lead to a retrogression in the position of . . . minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 130, 141 (1976). In light of the considerations discussed above, I cannot conclude that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the polling place in District 1.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed 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, you may 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 polling place change for District 1 continues to be legally unenforceable. Clark v. Roemer, 111 S.Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Jenkins County plans to take concerning this matter. If you have any questions, you should call Ms. Colleen Kane (202-514-6336), an attorney in the Voting Section.

Sincerely,

A handwritten signature in black ink, appearing to read "Deval Patrick", written over a large, stylized circular flourish.

Deval L. Patrick
Assistant Attorney General
Civil Rights Division