

JPT:DMM:MKC:lrj:emr
DJ 166-012-3
93-4338

JAN 10 1994

Gilford F. Dabbs III, Esq.
County Attorney
P. O. Box 47
Quitman, Mississippi 39355

Dear Mr. Dabbs:

This refers to the schedule for conducting the January 25, 1994, special election for Constable, Place 1, in Clarke County, Mississippi, 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 submission on November 10, 1993; supplemental information was received on December 28, 1993.

We have given careful consideration to the materials you have submitted, as well as to information and comments from other interested parties. Your submission indicates that Clarke County must hold a special election to fill a vacancy which was created when the constable for Place 1 retired in March 1993. As the result of a circuit court order, the county was enjoined from holding the special election to fill this vacancy on the date provided by state statute, November 2, 1993. The court order requires the county to hold a special election, but does not require that the election be held on a specified date. Under Section 5, the county must demonstrate that its choice of the January 25, 1994, special election date, as well as the procedures employed in conducting the special election, are not racially discriminatory in purpose or effect. See NAACP v. Hampton County Election Commission, 470 U.S. 166 (1985); see also Procedures for the Administration of Section 5, 28 C.F.R. 51.17.

The two constables serving Clarke County are elected from the same districts as the county's two justice court judges. We understand that the county plans to hold the January 25 special election for the Place 1 constable from justice court District 1, using the 1983 justice court districting plan. According to the 1990 Census, that district is 41.1 percent black in population.

cc: Public File

In September 1991, we interposed an objection to a justice court redistricting plan submitted by the county, in which District 1 would have been 41.6 percent black. Our objection was predicated on the county's failure to provide a legitimate non-racial explanation for the fragmentation of black population concentrations between the two justice court districts, despite concerns raised by the black community. In August 1993, the county board of supervisors adopted a new justice court redistricting plan. According to newspaper coverage, District 1 would be 49 percent black in population under the 1993 plan. Although this redistricting plan was finally adopted more than four months ago, it has not yet been submitted for Section 5 review.

Given the apparent pattern of racially polarized voting in the county, black voters would appear to have little opportunity to influence the January 25 special election for constable in District 1 under the 1983 justice court districting plan. These circumstances suggest that the county may have deliberately chosen to delay submitting for Section 5 review the plan adopted in response to our 1991 objection until after the special election schedule received preclearance. This manipulation of the Section 5 review process suggests an intent to minimize minority voting strength, and the county has not provided persuasive evidence to the contrary.

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. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the schedule for conducting the January 25, 1994, special election.

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. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of

Columbia Court is obtained, the proposed special election continues to be legally unenforceable. See Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10.

Of course, this letter does not constitute a determination under Section 5 concerning the justice court redistricting plan that we understand was adopted by the board of supervisors on August 31, 1993. That plan must be submitted to the Attorney General in a manner that complies with Section 5 and the Procedures for the Administration of Section 5 (28 C.F.R. Part 51) before any such determination can be made. See NAACP v. Hampton County Election Com'n, 470 U.S. 166, 182 (1985).

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Clarke County plans to take concerning this matter. If you have any questions, you should call Ms. Donna Murphy (202-514-6153), an attorney in the Voting Section.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division