



Office of the Assistant Attorney General

Washington, D.C. 20530

7 DEC 1981

Mr. Alex K. Brock  
Executive Secretary-Director  
State Board of Elections  
Suite 801 Raleigh Building  
5 West Hargett Street  
Raleigh, North Carolina 27601

Dear Mr. Brock:

This is in reference to Chapter 894 (S.B. No. 87, 1981) and Chapter 821 (S.B. No. 313, 1981), providing for the reapportionment of United States Congressional districts and for the reapportionment of the North Carolina Senate. Your submission, pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, was initially received on July 16, 1981, and was supplemented with requested additional information on October 6, 1981.

Under Section 5, the State bears the burden of proving the absence of both discriminatory purpose and effect in proposed redistricting plans. City of Rome v. United States, 446 U.S. 156, 183 n.18 (1980); Beer v. United States, 425 U.S. 130, 140-41 (1976). In order to show the absence of a racially discriminatory effect, the State of North Carolina must demonstrate, at a minimum, that the proposed redistricting plans will not lead to "a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, *supra*, 425 U.S. at 141. While the State is under no obligation to maximize minority voting strength, the State must demonstrate that the plan "fairly reflects the strength of [minority] voting power as it exists." Mississippi v. United States, 490 F. Supp. 569, 581 (D.D.C. 1979), citing Beer v. United States, *supra*, 425 U.S. at 139 n.11 and 141; and City of Richmond v. United States, 422 U.S. 358, 362 (1975).

We have given careful consideration to all of the forwarded materials, as well as past legislative reapportionment plans, comments from interested citizens, and other information available to us. With regard to the Senate plan, we note at the outset that the proposed redistricting plan was developed by the North Carolina Legislature pursuant to a 1968 amendment to the North Carolina Constitution which provides that no county shall be divided in the formation of a Senate or Representative district. As you know, on November 30, 1981, the Attorney General interposed an objection to that amendment under Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, because "[o]ur analysis show[ed] that the prohibition against dividing the 40 covered counties in the formation of Senate and House districts predictably requires, and has led to the use of, large multi-member districts." Our review of the 1968 amendment also showed "that the use of such multi-member districts necessarily submerges cognizable minority population concentrations into large white electorates." Accordingly, we have reviewed the Senate plan not only to determine whether the proposed plan would lead to a "retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise," Beer, supra 425 U.S. at 141, but also to see whether it fairly reflects minority voting strength as it exists today. State of Mississippi v. United States, 490 F. Supp. 569 (D.D.C. 1979).

Our analysis of the Senate plan shows that in several counties covered by the Voting Rights Act's special provisions, such as in Guilford, Wilson, Nash, Bertie, Edgecomb and Martin, there are cognizable concentrations of minority persons whose political strength is diluted as a result of the use of multi-member districts in the proposed redistricting plan. In Guilford, for example, the State has proposed the creation of a three-member district with a black population percentage of only 25 percent. Yet, under a fairly-drawn system of single-member districts in that area, one such district likely would be majority black and, therefore, would better recognize the potential of blacks to elect representation of their choice.

Likewise, in Wilson, Nash, Edgecomb, Martin and several of the counties in proposed District 1 which are covered jurisdictions, the State proposes to create multi-member districts in which black voters seem to have no opportunity to elect candidates of their choice. Here again, fairly-drawn single-member districts would likely result in Senate districts that would not, as the proposed Senate plan does, minimize the voting potential of black voters in those covered counties.

Understandably, these effects of the proposed Senate reapportionment plan well may have been the result of the State's adherence to the 1968 constitutional amendment which, as we have already found, necessarily requires a submerging of sizeable black communities into large multi-member districts. In view of the concerns discussed above, however, I am unable to conclude, as I must under the Voting Rights Act, that the proposed Senate redistricting plan is free of a racially discriminatory purpose or effect. Accordingly, on behalf of the Attorney General, I must interpose an objection to the Senate plan under Section 5 of the Voting Rights Act of 1965 as it relates to the covered counties.

With respect to the Congressional redistricting, we have also completed review of that submission. During the course of our review, we were presented with allegations that the decision to exclude Durham County from Congressional District No. 2 had the effect of minimizing minority voting strength and in addition was motivated by racial considerations, i.e., the desire to preclude from that district the voting influence of the politically-active black community in Durham. On the basis of the information that has been made available to us, we remain unable to conclude that the State's decision to draw District No. 2 was wholly free from discriminatory purpose and effect. In this connection we find particularly troublesome the "strangely irregular" shape of Congressional District No. 2 (see Gomillion v. Lightfoot, 364 U.S. 339, 341 (1960)), which appears designed to exclude Durham County from that district contrary to the House Congressional Redistricting Committee's recommendation.

We note also that, over the past several redistrictings, the black population percentage in District 2 has been decreased. Prior to the State's 1971 redistricting District No. 2 was approximately 43 percent black. Under the 1971 reapportionment plan, District 2 decreased to 40.2 percent black population. The 1981 submitted plan would reduce further the black population in the district to 36.7 percent. This reduction in black population percentage, occurring despite a statewide increase in the black population, is especially crucial in District 2, because it occurs in the only district where black voters could have the potential for electing a candidate of their choice.

We recognize that the State may want to respond further to the claims that a racially discriminatory purpose and effect were involved in the Legislature's decision to circumvent Durham. However, because of the time constraints imposed on the Attorney General by Section 5, and the unanswered questions still remaining, I cannot conclude that the burden imposed on the State by Section 5 has been sustained. Accordingly, I must interpose an objection also to the Congressional redistricting insofar as it affects the covered counties. However, should the state desire to present to us information relating to the configuration of District 2 which would address the allegations mentioned above, we stand ready to reconsider this determination as provided in the Section 5 guidelines.

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 the Congressional redistricting plan 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. 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 Congressional redistricting plan legally unenforceable in the covered counties.

If you have any questions concerning this matter, please feel free to call Carl W. Gabel (202/724-7439), Director of the Section 5 Unit of the Voting Section. As always, we stand ready to assist you in any way possible in your reapportionment effort.

Sincerely,



Wm. Bradford Reynolds  
Assistant Attorney General  
Civil Rights Division