



Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

March 28, 1983

Mr. David Overton
Town Administrator
P.O. Box 508
Windsor, North Carolina 27983

Dear Mr. Overton:

This is in reference to the establishment of residency districts for the election of commissioners and to the districting plan therefor in the Town of Windsor, Bertie County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Your submission was completed on January 26, 1983.

We have given careful consideration to the information which you have provided, as well as to information and comments from other interested parties. Our analysis reveals that the proposed residency districts would operate essentially as designated posts, separating what would otherwise be one contest for several seats into several individual head-to-head election contests. As a practical matter, such a system would likely amount to the imposition of a majority vote requirement in most instances.

Concerning such a situation the United States District Court for the Eastern District of North Carolina noted in Dunston v. Scott, 336 F. Supp. 206, 213 n. 9 (1972):

In a true at-large election, if the majority spreads its votes around and the minority single shot votes, the minority strength is concentrated, thus increasing their chance of electing. However, if the minority candidate is forced to run against a specific candidate or candidates for a specific seat,

the majority can readily identify for whom they must vote in order to defeat the minority candidate.

Thus, in the context of an at-large election system and the racially polarized voting which seems to exist in Bertie County, the imposition of residency districts would appear significantly to decrease the opportunities for minority voters to elect a representative of their choice. Such a result would constitute impermissible "retrogression" for the Town of Windsor's black voters. See Beer v. United States, 425 U.S. 130 (1976).

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)). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the establishment of residency districts and the implementing districting plan for the election of commissioners in the Town of Windsor.

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 these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.44) permit you to request the Attorney General to 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 establishment of residency districts and the districting plan 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 Town of Windsor plans to take with respect to

this matter. If you have any questions concerning this letter, please feel free to call Sandra S. Coleman (202-724-6718), Deputy Director of the Section 5 Unit of the Voting Section.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Bradford Reynolds". The signature is written in a cursive style with a large, looping initial "W".

~~Mr. Bradford Reynolds~~
Assistant Attorney General
Civil Rights Division