



Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

16 JAN 1984

Joseph J. Harper, Jr., Esq.  
Philips, Bourne, Harper & Keel  
P. O. Drawer 1158  
Tarboro, North Carolina 27886

Dear Mr. Harper:

This is in reference to House Bill No. 608 (1983) of the North Carolina General Assembly establishing double-member residency districts, increasing from six to seven school board members and the election of six members from residency districts with the seventh member to run countywide for the Edgecombe County Board of Education in Edgecombe 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. We received the information to complete your submission on November 17, 1983.

We have given careful consideration to the information which you have furnished, as well as to information and comments from other interested parties. In regard to the increase from six to seven school board members and the at-large election of the seventh member, the Attorney General does not interpose any objections to the changes in question. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.48).

With respect to the remaining changes, our analysis indicates that in the context of an at-large election system such as exists in the Edgecombe County school district, the proposed residency districts would operate essentially as designated posts, separating what has been a single contest for several seats into several contests for single positions on the

school board. In such a situation we note that when the black electorate is in the minority, as it is in the Edgecombe County school district, and racially polarized voting exists, as it seems to in the Edgecombe County School District, the opportunity to engage in single-shot voting offers minority voters a realistic chance to elect a candidate of their choice to office. Indeed, past success for the black electorate in Edgecombe County would seem to have occurred because several positions were open and the presence of a number of candidates caused the white vote to be split, thus allowing a candidate of the black voters' choice to win.

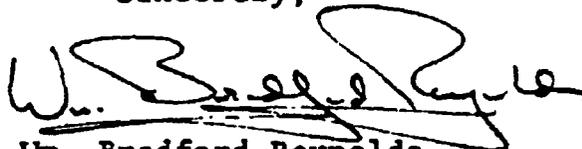
However, in the context of an at-large election system and the racially polarized voting which seems to exist in Edgecombe County, the imposition of the proposed residency districts would appear to decrease significantly the opportunities for minority voters to elect a representative of their choice. Such a result would constitute impermissible "retrogression" for black voters in the Edgecombe County school district. 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 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 election of six members from residency districts for the Edgecombe County Board of Education.

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, 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 use of residency districts 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 Edgecombe County School Board 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,

A handwritten signature in black ink, appearing to read "Wm. Bradford Reynolds", written over a horizontal line.

Wm. Bradford Reynolds  
Assistant Attorney General  
Civil Rights Division