U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

October 1, 1984

Kathleen Heenan McGuan, Esq.
The Farragut Building
900 Seventeenth Street, N.W.
Washington, D.C. 20006

Dear Ms. McGuan:

This refers to House Bill 2, Chapter 1 (1984), which provides for the apportionment of North Carolina House of Representatives Districts 8 and 70, 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 information to supplement your submission on July 31, 1984, and again on September 28, 1984. While we have noted your request for expedited consideration of this submission, as you are aware questions concerning it have persisted and, thus, we have been unable to respond until this time.

We have considered carefully the information you have provided, as well as comments and information provided by other interested parties. The proposed districting, occasioned by the court's ruling in Gingles v. Edmisten, Civ. Action No. 81-803-CIV-5 (E.D. N.C. Jan. 27, 1984), creates one single-member district (69.1% black population) and one three-member district (29.6% black population) for the Edgecombe/Nash/Wilson County area. While this plan provides minorities with a realistic opportunity to elect a representative of their choice to the legislature from the single-member district involved, we also note that, during this redistricting process, another proposal (Plan N54), containing only single-member districts and providing for a second district in which the minority community likely would have a significant influence on the outcome of elections, was considered and rejected, reportedly to protect a white incumbent from such minority influence. In addition, we understand that a second three-member district proposal (Plan N62) was rejected for similar concerns when it was discerned that a

similar single-member district configuration would result should the State be required to subdivide that multimember district into single-member ones. The responses which, to date, have been forthcoming with respect to this claim have been conflicting.

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). If the evidence before us is conflicting and the Attorney General is unable to determine that the change does not have the prohibited purpose and effect, an objection must be interposed. See 28 C.F.R. 51.39(e). Because of the conflicting nature of the information we have, some of which only reached us on September 28, 1984, I cannot at this time conclude that the State has carried its burden. Therefore, on behalf of the Attorney General, I must interpose an objection to the apportionment of Districts 8 and 70 as reflected in House Bill 2. However, pursuant to our guidelines, 28 C.F.R. 51.45, we will continue our analysis of this matter to determine whether there is a basis for withdrawing the objection.

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. 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 apportionment of Districts 8 and 70 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 State of North Carolina 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,

(Original signed by
Wm. Bradford Reynolds)

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division