



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

MAR 10 1986

Mr. Garry C. Mercer
Wilson County Manager
P. O. Box 1728
Wilson, North Carolina 27893

Dear Mr. Mercer:

This refers to the election of county commissioners from two multimember districts for concurrent, four-year terms, the implementation schedule, the districting plan, and the procedures for conducting the May 6, 1986, referendum election for the board of county commissioners in Wilson 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 January 7, 1986.

We have considered carefully the information you have provided, as well as comments and information from other sources. At the outset, we note that the submitted voting changes were enacted following the federal court ruling that the existing at-large election structure denies black citizens an opportunity equal to that afforded white citizens to participate in the political process and to elect candidates of their choice in violation of Section 2 of the Voting Rights Act, as amended, 42 U.S.C. 1973. Haskins v. County of Wilson, No. 82-19-CIV-8 (E.D.N.C. Aug. 16, 1985). In order to obtain preclearance pursuant to Section 5, the county must demonstrate that the submitted voting changes "[do] not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color." 42 U.S.C. 1973c. See also, Georgia v. United States, 411 U.S. 526 (1973); Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)).

The submitted voting procedures, when compared to the at-large election structure, will enhance the opportunity for effective black political participation and thus will not have a discriminatory effect within the meaning of Section 5. Beer v. United States, 425 U.S. 130, 141 (1976). We cannot conclude, however, that the proposed method of election was adopted without a discriminatory purpose.

The submitted plan creates two multimember districts. One district would elect five members and is about 76 percent white in population; the other district would elect two members and is about 67 percent black in population. The proposed five-member district is geographically large and essentially retains features of the at-large election system which the Court has found violative of Section 2 of the Voting Rights Act. In particular, in light of the Haskins court finding that there is "a substantial degree of racial polarization in Wilson County elections," Order, at 7, black voters likely will have little, if any, chance of electing a representative of their choice in the five-member district. This is significant because nearly half of the county's black population has been placed in this district, while a relatively insignificant portion of the county's white population has been placed in the majority black district. While nothing said herein should be construed as precluding the use of multimember districts, the material submitted concerning the county commissioners' deliberations shows that they were well aware of these limiting aspects of the submitted plan and supports an inference that the plan was designed and intended to limit the number of commissioners black voters would be able to elect.

In light of these considerations, I cannot conclude, as I must under the Voting Rights Act, that the county has sustained its burden of showing that the submitted changes were not motivated, at least in part, by a discriminatory purpose. Therefore, on behalf of the Attorney General, I must object to the submitted election method, districting plan and implementation schedule.

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 submitted election method, districting plan and implementation schedule legally unenforceable. 28 C.F.R. 51.9.

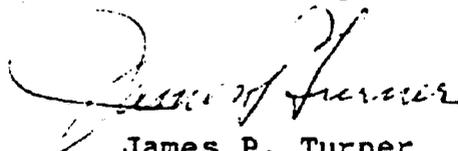
We note that your submission also contains a proposed referendum election on the submitted election plan. In light of our determination with regard to that plan, the Attorney General will make no determination with regard to the referendum election. 28 C.F.R. 51.20(b).

In addition, it has come to our attention that the county has proposed, in the context of the Haskins case, to hold the upcoming primary and general elections for county commissioner on dates other than the regularly scheduled dates for these elections. This proposal is subject to Section 5 review before the changes may be legally enforced. McDaniel v. Sanchez, 452 U.S. 130 (1981).

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Wilson County plans to take with respect to this matter. If you have any questions, feel free to call Steven H. Rosenbaum (202-724-8388), Attorney/Reviewer of the Section 5 Unit of the Voting Section.

In view of the pending vote dilution litigation, we are forwarding a copy of this letter to the Honorable F.T. Dupree, Jr. and counsel of record in the Haskins case.

Sincerely,



James P. Turner
Acting Assistant Attorney General
Civil Rights Division