



Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

Michael Crowell, Esq.
Tharrington, Smith & Hargrove
P. O. Box 1151
Raleigh, North Carolina 27602

JUL 6 1987

Dear Mr. Crowell:

This refers to the 1966 change from single-member districts to an at-large method of nominating candidates, and Chapter 151, H.B. No. 311 (1969) and Chapter 167, S.B. No. 209 (1969), which provide for staggered, four-year terms for the board of commissioners in Onslow 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 your submission on May 5, 1987.

We have considered carefully the information you have provided as well as information received from other interested parties. With regard to the change in the nomination process from district to at-large elections, the Attorney General does not interpose any objection. 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 change. See Section 51.41 of the Procedures for the Administration of Section 5 (52 Fed. Reg. 496 (1987)).

With regard to Chapters 151 and 167, we note at the outset that under the election system adopted by the county in 1966, and precleared above, the county commission is comprised of five members nominated and elected at large on a partisan basis for concurrent, two-year terms, with a majority vote requirement in the primary election. Since that system now has met the Section 5 preclearance requirement, it is against those procedures that we must measure the effect of the change to staggered, four-year terms as set forth in Chapters 151 and 167. See also Section 51.54(b) (52 Fed. Reg. 498 (1987)).

Viewed in that context, our analysis reveals that black candidates for county-wide office repeatedly have been unsuccessful due at least in part to an apparent pattern of racially polarized voting in county elections. Despite this voting pattern, however, and apparently through the election device of single-shot voting,

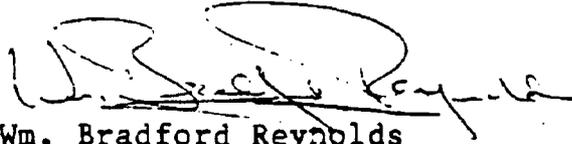
the electoral history of Onslow County shows that black candidates frequently finish fourth or fifth in multi-candidate, multi-position contests. The one instance where a black candidate finished higher than fourth was a special runoff primary and general election (for the board of education) in which voter turnout was unusually low and, even in that contest, we note that the black candidate finished fifth in the first primary and qualified for the runoff only because five positions were to be elected to the school board. Thus, by restricting the number of commissioner positions to be filled at each election to two or three instead of five, it appears that the adoption of staggered terms reduces the utility of single-shot voting and thus diminishes the opportunity of black citizens to elect candidates of their choice to the board of commissioners.

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 Section 51.52(a) (52 Fed. Reg. 497-498 (1987)). 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 Chapters 151 and 167 (1967) to the extent that they provide for staggered terms.

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 this change has 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 51.45 of the guidelines (52 Fed. Reg. 496 (1987)) 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 staggered terms legally unenforceable. See Section 51.10 (52 Fed. Reg. 492 (1987)).

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Onslow County plans to take with respect to this matter. If you have any questions, feel free to call Mark A. Posner (202-724-8388), Deputy Director of the Section 5 Unit of the Voting Section.

Sincerely,

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

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division