



U.S. Department of Justice

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

DEC 29 1987

Dear Mr. Crowell:

This refers to Chapter 432 of the 1987 North Carolina Session Laws which changes the method of electing the Board of Commissioners from at large with residency districts to six single-member districts and three at-large positions; the districting plan; the increase in the number of commissioners from six to nine; and the implementation schedule for Pitt 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 July 29, 1987. On October 19 and 26, 1987, we received information in response to our September 28, 1987, request for additional information and on November 9, 1987, we received information further supplementing your submission. Although we noted your request for expedited consideration, we have been unable to respond until this time.

To obtain preclearance under Section 5, a submitting authority must demonstrate that the voting changes are nondiscriminatory in both purpose and effect. See Georgia v. United States, 411 U.S. 526 (1973), and the Procedures for the Administration of Section 5 (28 C.F.R. 51.52).

As to the effect of the proposed method of election, our analysis shows that it would offer a greater opportunity for black political participation than the existing plan does. Thus, the Board of Commissioners has met its burden of showing that the proposed plan would not have a retrogressive effect. See Beer v. United States, 425 U.S. 130, 141 (1976).

In addressing the issue of purpose, however, we note in particular the course of dealings that led to the increase by three in the size of the Board and the at-large method of election chosen for filling those positions. Pertinent to our review was consideration of the strong opposition of the black community to the election method selected and the Board's rejection of possible

tr
s
r

e

d
n
d

t
d
r

n
t
e
c
t

i
c
m
t
t
c
t
s
i
c
m

e
g

compromises. For example, one such alternative, proposed by the Board in May 26, 1987, and passed by the state House of Representatives on May 27, appeared largely to meet the Board's stated nonracial reasons for wanting to include three at-large seats. Nevertheless, without notice to the public the Board met in a private session on June 1, 1987, and voted to abandon the compromise bill ostensibly because the black community did not accept the compromise. However, this does not appear to be supported by information, such as that contained in contemporaneous newspaper articles that the Board submitted, indicating that, as of June 1, black organizations either had indicated their support for the compromise or had indicated they were considering supporting it. Yet, the Board's abrupt withdrawal from the compromise bill ruled out further negotiations on the matter and, instead, the Board unilaterally returned to a plan which seems calculated to minimize minority voting strength.

In view of these circumstances, we are unable to conclude that the Board has met its burden of showing nondiscriminatory purpose in the adoption of this feature in its proposed election plan. Therefore, on behalf of the Attorney General, I must object to the proposed method of election.

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 51.45 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 Chapter 432 legally unenforceable. 28 C.F.R. 51.10.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Pitt County plans to take with respect to this matter. If you have any questions, feel free to call Sandra S. Coleman (202-724-6718), Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division