



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

September 13, 1994

William Sam Byassee, Esq.
Smith, Helms, Mulliss & Moore
P. O. Box 21927
Greensboro, North Carolina 27420

Dear Mr. Byassee:

This refers to the increase in number of commissioners from five to six, the change in method of election from at large to four single-member districts and two at large (with no numbered positions), and the districting plan for the Town of Mt. Olive in Wayne 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 responses to our request for additional information on July 15 and August 31, 1994.

We have considered carefully the information you have provided as well as information from other interested persons. According to the 1990 Census, the population of Mt. Olive (including several post-1990 annexations) is approximately 4,700, of whom about 53 percent are black. About 49 percent of the town's voting age population is black and currently blacks constitute 45 percent of the town's registered voters. The town is governed by a mayor and a five-member board of commissioners elected at large, by plurality vote, to two-year concurrent terms. The commissioners are elected without designated posts which permits the use of the election device of single-shot voting.

Despite the town's substantial minority population and numerous black candidacies, there has never been more than one black elected to the board of commissioners at any one time. This appears to be the result of a pattern of racially polarized voting. This election history led representatives of the black community to file suit in May 1993 under Section 2 of the Voting Rights Act, 42 U.S.C. 1973, challenging the at-large method of election. Fussell v. Town of Mount Olive, C.A. No. 93-303-CIV-5-D (E.D.N.C.).

The filing of the Section 2 suit impelled the town to adopt a new method of election, however, the town chose to adopt the system now submitted for Section 5 review over the strenuous opposition of the Section 2 plaintiffs and the black community in general. Particular concern was raised regarding the opportunity of black voters to elect their preferred candidate to either of the at-large seats (as well as concerning the unnecessary "packing" of black population in a 97 percent black district). Our analysis suggests that given the presence of polarized voting and the limited success that black voters have enjoyed when five at-large seats are elected, there is considerable doubt as to whether black voters would have a significant opportunity to elect any at-large member under the proposed election method.

The board of commissioners proposed the instant election plan in September 1993, after the Section 2 plaintiffs agreed in July 1993 to the board's proposal to settle the lawsuit by adopting a plan of four single-member districts and one at-large seat. The change in the board's position followed an August public hearing in which black residents unanimously supported the adoption of a district method of election while several white leaders opposed altering the at-large system. Subsequently, in November 1993, when one of the black plaintiffs was elected to the board (as its only black member), the board petitioned the Section 2 court to prohibit her from participating in board discussions or voting on the method of election issues raised by the Section 2 litigation. The court denied the board's request.

The board asserts that it shifted to the proposed 4-2 approach in order to encourage voter participation. However, the board has not provided any explanation as to why adding just one additional at-large seat would yield a measurable difference in voter participation. Similarly, it has not provided any concrete explanation as to why this consideration was not a factor when it entered into the July 1993 agreement with plaintiffs or how it came to conclude between July and September 1993 that this consideration was of such weight that it justified withdrawing from the agreement with the plaintiffs. In these circumstances, the board has not offered any convincing nonracial explanation for its adoption of the proposed 4-2 plan.

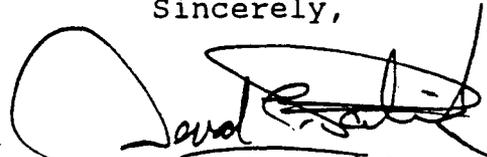
Under Section 5 of the Voting Rights Act, the town has the burden of showing that the submitted changes have neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the town's burden has been sustained in this instance with regard to the proposed method of election. Therefore, on behalf of the Attorney General, I must object to the four district, two at-large method of election, including the proposed increase from five to six commissioners.

With regard to the districting plan, since this change is directly related to the unprecleared method of election, the Attorney General will make no determination with respect to this matter.

We note that under Section 5 the Town of Mt. Olive has the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the objected-to 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, the town may 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 objected-to changes continue to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the Town of Mt. Olive plans to take concerning this matter. If you have any questions, you should call Special Section 5 Counsel Mark A. Posner, at (202) 307-1388.

Sincerely,

A handwritten signature in black ink, appearing to read "Deval L. Patrick", is written over a horizontal line. The signature is stylized and somewhat cursive.

Deval L. Patrick
Assistant Attorney General
Civil Rights Division