

OCT 26 1978

Mr. Tom Tobin
States Attorney's Office
State of South Dakota
Tripp County Courthouse
Winner, South Dakota 57530

Dear Mr. Tobin:

I am writing in reference to the April 18, 1978 redistricting of commissioner precincts in Tripp and Todd Counties, South Dakota, which you submitted to the Attorney General pursuant to Section 3 of the Voting Rights Act, as amended. Your submission was received on September 14, 1978.

We have analyzed the information contained in your submission, data obtained from the Bureau of the Census as well as information and comments of other interested parties. At the outset, we note that the submitted reapportionment plan is based upon voter registration statistics instead of population statistics. While we recognize that the Supreme Court has ruled that the use of voter registration statistics in such a reapportionment is not per se unconstitutional, it has also been held that use of this statistical base can constitute a violation of the equal protection clause unless "it appears that the distribution of registered voters approximates distribution of state citizens or another permissible population base." Burns v. Richardson, 384 U.S. 73, 95 (1966).

Our analysis, on the basis of Census data available to us, does not reveal that the distribution of registered voters in the plan under submission satisfies this requirement. Using 1975 Census population estimates we computed the total population within each district

created by the plan. Our analysis indicates that there is a total deviation in population distribution of approximately 65 percent among the three districts. Moreover, the one district which is predominantly Indian in population (district 3) is substantially underrepresented whereas the two predominantly white districts are both significantly overrepresented. In addition, our review of the Board of County Commissioners' minutes you included with your submission does not reflect the presence of any of the factors which made use of registration statistics acceptable in the Burns case cited above.

Under these circumstances, therefore, we are unable to conclude that the plan under submission does not have the purpose or effect of abridging the right to vote on account of race. Accordingly, on behalf of the Attorney General I must interpose an objection to the implementation of the redistricting of commissioner precincts in Tripp and Todd Counties submitted by your letter of September 11, 1978.

Of course, under the Procedures for the Administration of Section 5 of the Voting Rights Act (42 C.F.R. 51.21(b) and (c), 51.23, and 51.24) you may request the Attorney General to reconsider this objection. In addition, Section 5 permits you to seek a declaratory judgment from the United States District Court for the District of Columbia that this change does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. However, until the objection is withdrawn or such a judgment is rendered by that Court, the legal effect of the objection by the Attorney General is to render the redistricting change unenforceable.

I would appreciate it if you would inform me of what course of action you intend to follow as soon as possible and an attorney from this Division will be in touch with you in that regard very shortly.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division