



U. S. Department of Justice

Civil Rights Division

Washington, D.C. 20530

APR 30 2012

Robert T. Sonnenberg, Esq.
In-house Counsel
Pitt County Schools
1717 West Fifth Street
Greenville, North Carolina 27834

Dear Mr. Sonnenberg:

This refers to Session Law 2011-174 (SB 260) (2011), which reduces the number of school board members from twelve to seven; changes the method of election (to six members elected from single-member districts, and one member elected at large); reduces the terms of office from six years to four years; and provides an implementation schedule for these changes, for the Pitt County School District in Pitt County, North Carolina. These changes were submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. We received additional partial responses to our August 26, 2011, request for additional information, October 24, 2011, follow-up request, and December 30, 2011, follow-up request, on October 27 and December 7, 21, and 28, 2011; your submission was complete on March 1, 2012.

With regard to the change in the terms of office from six years to four years, the Attorney General does not interpose any objection. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. *Procedures for the Administration of Section 5 of the Voting Rights Act of 1965*, 28 C.F.R. 51.41.

With regard to the remaining changes, we have carefully considered the information you have provided, as well as census data, comments and information from other interested parties, and other information, including the school district's previous submissions. Under Section 5, the Attorney General must determine whether the submitting authority has met its burden of showing those proposed changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. *Georgia v. United States*, 411 U.S. 526 (1973); 28 C.F.R. 51.52(c). For the reasons discussed below, I cannot conclude that the school district's burden under Section 5 has been sustained as to the reduction in the number of school board members from twelve to seven; the change in the method of election from a twelve-member board elected from six double-member

districts to a seven-member board elected from six single-member districts and one member elected at large; and the implementation schedule. Therefore, on behalf of the Attorney General, I must object to those changes.

The Pitt County School District is coterminous with Pitt County. The school district currently is governed by a twelve-member board, elected from six double-member districts, which are coterminous with the six county commission districts. School board elections are staggered such that one seat in each of the six double-member districts is up for election in each set of board elections. Terms of office for school board members are six years, and the next elections for the board are scheduled for 2014 and 2016. The Department has interposed no objection under Section 5, on December 30, 2011, to the 2011 redistricting plan for the school board (and county commission).

Session Law 2011-174 (SB 260) (2011) reduces by half the number of members elected from districts, from twelve to six, and would add an at-large member, for a total board size of seven members; shortens the terms for school board members from six years to four years; and provides an implementation schedule for these changes. The positions of all six of the current board members whose terms expire in 2014 will be eliminated at the expiration of their terms. The only board member elections in 2014 will be for the new at-large position and to fill the remainder of the term for one of the District 1 seats, in which a vacancy has been filled by appointment, each of which will be for a two-year term. In 2016, all seven remaining seats will be up for election.

Available information indicates that since 2009, the school board has addressed and rejected the idea of reducing the number of school board members on three separate occasions; the most recent instance was in February 2011. Local legislators who were present at the February 2011 meeting informed the board that if it did decide to seek such a change through local legislation, it would need to send a resolution to the local legislative delegation making that request. Although the school board has never made that request, a state senator who is a member of the Pitt County legislative delegation subsequently introduced the bill that led to the changes before us. That senator informed us that the bill incorporated a proposal he received from the Pitt County-Greenville Chamber of Commerce, and that he supported a smaller school board because each representative would be responsible for a larger population and because smaller elected bodies have less rancor in decision-making. He also informed us that he disliked the idea of having a school board without an at-large member.

We turn first to our analysis of the effect of the changes to the method of election. According to the 2010 Census, Pitt County's total population is 168,148, of whom 57,956 (34.5%) are black. Its voting age population is 130,350, of whom 41,470 (31.8%) are black. The county's elections are generally racially polarized. District 1 has a black voting age population majority of 50.6 percent. District 1 for both the school board and county commission has historically operated as an ability-to-elect district since at least 2002. The same is not true for District 2. Although District 2 has a majority black total population, its voting age population is 48.4 percent black. Throughout this same time period, District 2 was majority-black in voter

registration, black voters made up the majority of the electorate in 2004 and 2008, and all the black candidates were the candidates of choice of black voters. Nonetheless, black voters in District 2 have not demonstrated an ability to elect their candidates of choice in either county commission or school board elections, with the sole exception of the 2008 election, which was marked by an unusually high turnout of black registered voters. As a consequence, there are three black members currently on the school board, two elected from District 1 and one elected from District 2.

Our analysis has therefore determined that, as a result of the voting patterns that exist in the county, the benchmark plan provides black voters with the ability to elect candidates of their choice to two of twelve seats (16.7%). The proposed change would reduce by half the number of members elected from districts, from twelve to six, and would add an at-large member, for a total board size of seven members. Given the racially polarized voting patterns in the county and the fact that African Americans have never elected a candidate of choice to a county-wide office, the at-large seat will not be an ability-to-elect seat. Therefore, the addition of the at-large seat would decrease the representation of minority-preferred officials on the school board from two of twelve (16.7%) to one of seven (14.3%). Because the net effect of the changes currently before us is to reduce the proportion of positions on the board to which black voters can elect preferred candidates from 16.7 to 14.3 percent, these changes are retrogressive.

In addition, the school board has failed to show that it could not have adopted a non-retrogressive change to accomplish the stated goal of reducing the size of the board. For example, the school board could simply have changed to a system that elects one board member rather than two from each district, which would have resulted in a non-retrogressive six-member board. As another example, the Pitt County Board of Commissioners consists of nine members, with six members elected from single-member districts that are coterminous with the school board districts, and three additional members elected from super-districts that combine the existing districts in pairs. A school board plan that incorporated that structure would have resulted in a board with two ability-to-elect districts, which, when compared to the benchmark method, would not have been retrogressive. Indeed, in presenting its proposals for a smaller school board to the state senator, the Chamber of Commerce proposed a nine-member plan as one alternative. The only reasons given by the senator for proposing a seven-member plan instead were that he was familiar with county governance and small boards, felt that a smaller board was better, and disliked the idea of having a board without an at-large position.

With respect to the school district's ability to demonstrate that these changes were adopted without a prohibited purpose, the starting point of our analysis is the framework established in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977). There, the Court provided a non-exhaustive list of factors that bear on the determination of discriminatory purpose, including the impact of the action on minority groups; the historical background of the action; the sequence of events leading up to the action or decision; the legislative or administrative history regarding the action; departures from normal procedures; and evidence that the decision-maker ignored factors it has otherwise considered important or controlling in similar decisions. *Id.* at 266-68.

As an initial matter, the process for enacting Session Law 2011-174 departed dramatically from the normal procedure for local legislation. In the ordinary course, a local body or board passes a resolution on a matter and sends it to the local legislative delegation asking that the matter be enacted. Nothing like this procedure happened here; to the contrary, the school board addressed and rejected this matter three times over the course of three years, offering no resolution calling for the local legislative delegation to act. Yet, despite the absence of such a request, the state senator introduced the legislation. The manner in which the change was adopted was a complete departure from the normal procedures.

The historical background raises additional concerns, because Pitt County has a history of challenges to at-large positions under the Voting Rights Act. *See* May 5, 1986, Objection to Chapter 2, H.B. 29 (1985) and Chapter 495, H.B. 1397 (1986); *Pitt County Concerned Citizens for Justice v. Pitt County*, No. 87-cv-129 (E.D.N.C. 1988) (challenge under Section 2 of the Voting Rights Act resolved by consent decree). The addition of an at-large seat in the proposed plan, and the effect it would have on minority voters' ability to elect, is particularly noteworthy given this history.

Finally, the changes will have a discriminatory effect on minority voters, as indicated by our conclusion that the school district cannot meet its burden of showing that the reduction in seats and the addition of an at-large member will not have a retrogressive impact on African Americans. As noted above, this discriminatory effect was not necessary to achieve the stated goal of reducing the size of the school board. In addition, the reduction in seats would be accomplished through a proposed implementation schedule that removes six members of the board through cancelling all school board elections for 2014 except for the new at-large seat and the special election to fill the District 1 vacancy. Because every black member of the school board is currently serving a term that expires in 2014, this implementation schedule would have the consequence of simultaneously eliminating the seats of two of the three current black board members.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor will have a discriminatory effect. *Georgia v. United States*, 411 U.S. 526 (1973); 28 C.F.R. 51.52. In light of the considerations discussed above, I cannot conclude that your burden has been sustained in this instance.

In reaching this conclusion, let us underscore that we are not concluding that the school board and the state cannot enact local legislation that would reduce the size of the school board and otherwise change the method of election for those members. Rather, if the school board and the state choose to enact such legislation, they must do so in a manner that comports with the Voting Rights Act. As noted in this letter, our review indicates that the board had a number of options to accomplish its stated goal of reducing the number of board members while also complying with Section 5, whether through the method of election used by the nine-member Pitt

County Board of Commissioners, or simply through a six-member board that elects one rather than two members from each district. We expect other non-retrogressive alternatives can be identified as well.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the United States District Court for the District of Columbia is obtained, the submitted changes continue to be legally unenforceable. *Clark v. Roemer*, 500 U.S. 646 (1991); 28 C.F.R. 51.10. To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action that the Pitt County School Board plans to take concerning this matter. If you have any questions, you should contact Robert S. Berman (202/514-8690), a deputy chief in the Voting Section.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tom E. Perez', with a stylized flourish at the end.

Thomas E. Perez
Assistant Attorney General