24

T. 7-7-77
JPT:GWJ:AJS:rm
D.J. 166-012-3
A0900

JUL 8 1977

Honorable A. F. Summer
Attorney General
State of Mississippi
Jackson, Mississippi 39205

Dear Mr. Attorney General:

This is in reference to Section 37-5-15 of the Mississippi Code of 1972, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965 as amended. Your submission was received on May 9, 1977.

Our analysis reveals that this section of the Mississippi Code originally was passed in 1966 and was amended to its present form in 1968. According to information furnished by your office, the provisions of §37-5-15 apply now to the ten counties of Coahoma, DeSoto, Holmes, Humphreys, Leflore, Quitman, Sunflower, Tallahatchie, Tunica, and Yazoo. Section 37-5-15 requires that the board of education in each of these counties be elected at-large with residency districts. Under general state law boards of education must be elected by single-member districts. The effect of this section, then, is to grant to these ten counties an exception to the general state law.

Our evaluation reveals that although, according to the 1970 Census, all of these counties, with the exception of DeSoto, are majority black, in only three, Coahoma, Holmes and Leflore, have blacks ever been

elected to the boards of education. In Holmes and Coahoma, where the boards of education did not, in fact change their method of election as required by §37-5-15 and continued to elect by single-member districts, four out of the five board members in the former are black and in the latter a black is serving his second term. In Leflore, which did change its method of election pursuant to §37-5-15, even though a black has been elected to the board of education for the first time, we understand that a lawsuit has been filed attacking the at-large method of election as unconstitutionally diluting black voting strength. We are also mindful that, with the exception of Quitman County all of the affected counties have been designated under the federal examiner/observer provisions of the Voting Rights Act (42 U.S.C. 1973d and 1973f) and that the Department has found it necessary in recent times to send federal observers to most of these counties to safeguard the protections afforded by the provisions of the Voting Rights Act.

Recent court decisions, to which we feel obligated to give great weight, have established that the use of at-large elections in situations where there is a cognizable racial minority and a history of voting along racial lines has the potential for impermissibly diluting minority voting strength. See White v. Regester, 412 U.S. 755 (1973); Turner v. McKeithen, 490 F.2d 191 (5th Cir. 1973); Zimmer v. McKeithen, 485 F.2d 1297 (5th Cir. 1973), aff'd sub nom. East Carroll Parish School Board v. Marshall, 424 U.S. 636 (1976). Our analysis reveals that the minority proportion of the population is "cognizable" in each of these counties. The fact that in some of the counties blacks constitute a numerical majority of the population does not assure against dilution of the minority voting strength in an at-large system. See, e.g., Moore v. Leflore County Board of Election Commissioners, 502 F.2d 621 (5th Cir. 1974). The State has come forth with nothing to refute the implications we find here that blacks in these counties have been and may still be repressed in their participation in the political process.

Under these circumstances, I cannot conclude, as I must under the Voting Rights Act, that implementation of the provisions of Section 37-5-15 has not had and will not in the future have a racially discriminatory effect. I must, therefore, on behalf of the Attorney General interpose an objection to any further implementation of the at-large election requirements of Section 37-5-15 of the Mississippi Code of 1972.

Of course, as provided by Section 5 you have the right to seek a declaratory judgment from the District Court for the District of Columbia that the changes in question neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Sections 51.21, 51.23 and 51.24 of the Attorney General's Section 5 guidelines (28 CFR 51.21, 51.23 and 51.24) permit reconsideration of the objection should you have new information bearing on the matter. However, until such time as the objection may be withdrawn or a favorable judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the change to at-large elections required by Section 37-5-15 of the Mississippi Code legally unenforceable.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division