

DJ 166-012-3
D3068

Richard T. Phillips, Esq.
Smith & Phillips
103 Bates Street
P. O. Box 466
Batesville, Mississippi 38606

29 SEP 1980

Dear Mr. Phillips:

This is in reference to the redistricting for the City of Batesville in Panola County, Mississippi, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on August 11, 1980.

We have carefully considered the submitted materials, the comments of other interested persons and relevant court decisions. Our investigation reveals that the City of Batesville's current at-large aldermanic election system, enacted in accordance with Chapter 567 of the 1962 Mississippi Laws, was declared unconstitutional as a result of Stewart v. Waller, 404 F. Supp. 206 (N.D. Miss. 1975), thus leaving single-member districts as the only legally enforceable method of election for the city. In the ordinance of August 5, 1980, the mayor and aldermen for Batesville resolved to adopt the previously submitted four residency district boundaries as ward boundaries for the newly re-enacted single-member districts.

According to information you furnished, the city conducted in September 1978, a house-by-house census study in preparation for expansion of the city, and subsequently used the same population figures from the study in determining the proposed redistricting plan. That study shows Batesville to have a 1978 population which was 24.8 percent black. Our analysis of the proposed plan reveals that proposed Ward No. 2 would be 51.4 percent black. However, that ward is significantly overpopulated while Ward Nos. 3 (95.3% white) and 4 (97.5% white) are substantially underpopulated, resulting in an overall deviation of 54 percent in the plan.

Our analysis further reveals that voting in the county and the various school district elections appears to follow racial lines. Thus, blacks under this plan would appear to have no effective opportunity to elect an alderman of their choice. On the other hand, we find that a reasonable and fairly drawn alternative plan which eliminated the malapportionment extant in the submitted plan likely would contain a district with a significantly larger black majority than does the proposed Ward No. 2. In fact, we understand that such an alternative was available to and considered by the city prior to its adoption of the plan now under submission. In our view, the adoption of a plan that would maintain black voting strength at a minimum level, where alternative options would provide a fairer chance for minority representation, is relevant to the question of an impermissible racial purpose in its adoption (see Wilkes County v. United States, 450 F. Supp. 1171 (D. D.C. 1978), aff'd, 439 U.S. 999 (1978)).

Under Section 5 of the Voting Rights Act the submitting authority has the burden of proving that a submitted change has no discriminatory purpose or effect. See, e.g., Georgia v. United States, 411 U.S. 526 (1973); 28 C.F.R. 51.19. In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the district lines as presently drawn.

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 this change has 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. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.21(b) and (c), 51.23, and 51.24) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the redistricting legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter what course of

action the City of Batesville plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Ms. Corliss Ibbott (202-724-7162) of our staff, who has been assigned to handle this submission.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division