U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

30 MAR 1982

Jerris Leonard, Esq.
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Washington, D.C. 20006

Dear Mr. Leonard:

This is in reference to Senate Bill No. 2001 (1981), providing for the reapportionment of the Mississippi Congressional districts, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received initially on November 10, 1981, and completed with additional information on January 29, 1982.

Under Section 5, the State bears the burden of showing the absence of both discriminatory purpose and effect in the proposed Congressional redistricting plan. City of Rome v. United States, 446 U.S. 156, 183 n. 18 (1980); Beer v. United States, 425 U.S. 130, 140-141 (1976). While the State is under no obligation to maximize minority voting strength, the State must demonstrate that the plan "fairly reflects the strength of black voting power as it exists." Mississippi v. United States, 490 F. Supp. 569, 581 (D. D.C. 1979), citing Beer v. United States, supra, 425 U.S. at 139 n. 11 and 141; and City of Richmond v. United States, 422 U.S. 358, 362 (1975).

We have given careful consideration to all of the materials provided by the State, as well as to information and comments from other interested parties. As a backdrop for our analysis and determination in this matter, we note briefly the history of Congressional apportionment in Mississippi in recent years.

Since the late 1800's and until 1966, the State of Mississippi maintained a Congressional districting configuration which included a majority black district in the Mississippi Delta area. The State's reapportionment of 1966 did not continue a Delta district similar to the one which at that time had included a sixty-five percent black population majority. Rather, the 1966 plan

inaugurated a districting configuration which fragmented the Delta area among three districts. That plan was never submitted for Section 5 preclearance but the federal district court, in an ensuing constitutional challenge to the plan (Connor v. Johnson, 279 F. Supp. 619 (S.D. Miss. 1966), aff'd, 386 U.S. 483 (1967)), held that the plaintiffs had failed to carry the burden of proving purposeful discrimination pursuant to the Fifteenth Amendment. When the State reapportioned in 1972, following the 1970 Census, it essentially readopted the 1966 plan, making only those modifications necessary to satisfy the "one man, one vote" requirement. The State submitted the 1972 plan to the Attorney General pursuant to Section 5 and no objection was interposed. However, the Attorney General's decision was, as expressly stated in the 1972 no objection letter, not based on an independent review of the merits of the plan under Section 5, but, rather, rested solely on the view held at that time that the decision in Connor v. Johnson, supra, was binding on the Attorney General.

Later decisions of the United States Supreme Court have made it clear that any legislatively enacted reapportionment plan, may not be considered effective as law until it has received clearance under Section 5 regardless of other proceedings in federal court. See Connor v. Waller, 421 U.S. 656 (1975); Connor v. Finch, 431 U.S. 407 (1977); McDaniel v. Sanchez, 101 S. Ct. 2224 (1981). The import of these decisions demonstrates that it was wrong in 1972 to defer to the decision in Connor v. Johnson, supra, without making an independent review of the plan on its merits under the purpose/effect standard of Section 5.

As a result of this highly unusual history of Congressional reapportionment in Mississippi, no Congressional reapportionment plan enacted since the effective date of Section 5 has received the scrutiny Congress intended "to ensure that [the gains thus far achieved in minority political participation] shall not be destroyed through new [discriminatory] procedures and techniques." S. Rep. No. 94-295, 94th Cong., 1st Sess. 19 (1975).

As the law now stands, we are not bound by the disposition of the 1966 plan by the Connor court or the formal preclearance of the 1972 plan in reviewing whether the instant apportionment has the proscribed purpose or effect. Rather, we are compelled by the more recent Supreme Court decisions reflecting the true intent of Congress under the Voting Rights Act, to assure ourselves that the instant plan "fairly reflects the strength of black voting power as it exists." Mississippi v. United States, supra, 490 F. Supp. at 581.

Our analysis shows that, according to 1980 Census data, the State is authorized five congressional districts and has a population which is 35.2 percent black. The black population in large part still is concentrated in the Delta region. District Nos. 1, 2 and 3 of the reapportionment plan have been drawn horizontally across the majority-black Delta area in such manner as to dismember the black population concentration and effectively dilute its voting strength.

Alternate proposals were presented to the reapportionment body which would have avoided the fragmentation and dilution of minority voting strength in the Delta area, and we have received complaints that such alternate proposals were rejected for racially discriminatory reasons. Our own review has revealed that, in fact, reasonable alternatives could be drawn which would avoid the fragmentation and dilution of minority voting strength in the Delta area and the State's submission offers no satisfactory explanation for, or governmental interest in, the rejection of such alternatives. The adoption of the east-west configuration of the proposed plan, instead of a configuration which recognizes the Delta as a community of interest, suggests to us an unnecessary retrogression in the position of black voters in Mississippi.

Accordingly, we are unable to conclude that the submitted plan meets the requirements of the Act in its treatment of the Delta area. I must, therefore, on behalf of the Attorney General, interpose an objection to Senate Bill No. 2001 pursuant to Section 5 of the Voting Rights Act of 1965.

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 (Section 51.44, 46 Fed. Reg. 878) 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 is obtained, the effect of the objection by the Attorney General is to make the implementation of Senate Bill No. 2001 (1981) legally unenforceable.

If you have any questions concerning this letter, please feel free to call Carl W. Gabel (202-724-8388), Director of the Section 5 Unit. You can be assured that we are prepared to assist you in any way possible in connection with your reapportionment efforts.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

cc: Honorable Bill Allain
Attorney General
State of Mississippi