U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

July 19, 1983

Tommy McWilliams, Esq.
Townsend, McWilliams & Holladay
P. O. Box 107
Indianola, Mississippi 38751

Dear Mr. McWilliams:

This is in reference to the redistricting of supervisor and justice court districts and the creation of two additional voting precincts and the polling places for those precincts in Sunflower County, Mississippi, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on June 1, 1983.

We have made a careful analysis of the information you have provided along with the United States Bureau of the Census data. We also have received and carefully considered a significant number of comments submitted by citizens of Sunflower County.

Under Section 5, the submitting authority has the burden of demonstrating that the proposed voting changes do not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color. 42 U.S.C. 1973; Beer v. United States, 425 U.S. 130 (1976); City of Richmond v. United States, 422 U.S. 358 (1975); Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)).

Regarding the districting plan for justice court judges, the Attorney General does not interpose any objection to the change in question. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.48).

Concerning the supervisory redistricting plan, our analysis reveals that the proposed plan needlessly fragments the black community in the Indianola area among three supervisor districts; the Southgate subdivision itself is divided among three districts. District 3 appears to be unusually shaped and makes a southernly turn within Indianola to include a substantial portion of the black community; the remainder of District 3 is heavily white in racial composition. We are aware that black citizens of the county voiced strong and unified opposition to the proposed plan because of the fragmentation of black neighborhoods in the Indianola area and presented an alternate plan designed to remedy the fragmentation.

No satisfactory explanation has been furnished by the Board of Supervisors as to why the submitted plan meandered through the streets of the black community in so divisive a manner. The tape recordings of the public hearings which you provided reveal that the supervisors believed that balancing road mileage and land area between the districts was among the most important reapportionment criteria and yet the mileage and area of District 3 was reduced, and contains substantially less mileage and area than any other district; the reason for the imbalance is the assignment of a significant portion of the city to District 3.

The Voting Rights Act, of course, does not require the balancing of mileage and area among districts, but the county's deviation from following its own criteria, coupled with the calculated fragmentation of black residential areas in the city, suggests a purpose to hold black voting strength in and around Indianola to minimum levels. Such a purpose runs afoul of the Voting Rights Act. See, e.g., Connor v. Finch, 431 U.S. 407, 425 (1977).

In light of the considerations discussed above, I am unable to conclude that the county has satisfied the burden of proof required by Section 5. There is no statutory requirement to maximize black voting strength; nor is it necessary to achieve a third black district of 65 percent or more in order to obtain Section 5 preclearance. In this regard, it should be made clear that we do not insist upon Board adoption of the alternate plan

prepared with the assistance of the Mississippi Legal Services Coalition. But, the unexplained fragmentation of the black community in Indianola under the submitted plan can be faulted for needlessly minimizing the voting strength of a minority group. As a consequence, I must, on behalf of the Attorney General, interpose an objection to the supervisory redistricting plan.

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 the supervisory redistricting plan has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the Sunflower County supervisory redistricting plan legally unenforceable. 28 C.F.R. 51.9.

The remaining voting changes included in your submission appear to be dependent on the supervisory redistricting plan. In light of the Section 5 objection to the redistricting plan, the Attorney General will make no determination as to the remaining voting changes at this time.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Sunflower County plans to take with respect to this matter. If you have any questions, feel free to call Paul F. Hancock (202-724-3095), Assistant for Litigation of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

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14 NOV 1983

Dear Mr. McWilliams:

This is in reference to your request that the Attorney General reconsider the July 19, 1983, objection under Section 5 of the Voting Rights Act of 1965, as amended, to the redistricting of supervisor districts in Sunflower County, Mississippi. We received your letter on September 15, 1983.

We have reviewed carefully the information that you have provided to us, as well as comments and information provided by other interested parties. That review, including careful consideration of your legal arguments, does not provide a basis for the withdrawal of the Attorney General's objection. Therefore, on behalf of the Attorney General, I must decline to withdraw the objection.

In reaching this conclusion, however, a word of clarification is needed. In your request for reconsideration you suggested that the Attorney General had perhaps indicated a preference for the alternative plan drawn by the Mississippi Legal Services Coalition (MLSC). That is not the case. The MLSC plan has never been submitted to us for preclearance, and there has thus been no occasion for the Attorney General to subject that plan to the scrutiny required by Section 5 of the Act. Whether or not to adopt the MLSC plan, or some variant of the submitted plan, is a decision for the board to make in the first instance. My responsibility simply is to insure that the plan selected, whatever its configuration, is free of discriminatory purpose and effect. That conclusion cannot be reached with respect to the county's current proposal for supervisor districts.

Of course, Section 5 permits you 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, irrespective of whether the change previously has been submitted to the Attorney General. As previously noted, until such a judgment is rendered by that court, the legal effect of the objection by the Attorney General is to render the change in question unenforceable. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.9).

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division