U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

SEP 10 1985

Jerry R. Wallace, Esq.
Montgomery, Smith-Valiz,
McGraw & Ellington
P. O. Box 284
Canton, Mississippi 29046

Dear Mr. Wallace:

This refers to the redistricting of single-member representative districts for the board of supervisors, county board of education, constables, and county election commission; the realignment of election districts (voting precincts); and the creation of two new polling places and change in location of one existing polling place in Madison 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 August 30, 1985. In accordance with your request, expedited consideration has been given this submission pursuant to the Procedures for the Administration of Section 5 (28 C.F.R. 51.32).

To obtain the requested Section 5 preclearance, Madison County has the burden of showing that the submitted 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. 1973c.; see also, Georgia v. United States, 411 U.S. 526 (1973); Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)). Absence of the proscribed effect is satisfactorily established when it is shown that the voting changes at issue, as compared to the previously existing voting procedure, will not lead to a "retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 130, 141 (1976). See also, State of Mississippi v. United States, 490 F. Supp. 569, 581 (D. D.C. 1979).

In reference to the instant redistricting proposal, we note that the 1983 legislative plan received Section 5 preclearance. While that plan was not implemented as a result of a court order finding the districts to be malapportioned (Cook v. Luckett, 575 F. Supp. 485 (Miss. 1983), rev'd, 735 F.2d 912 (11th Cir. 1984)), its preclearance requires us to look to the 1983 legislative plan as the benchmark for analyzing the instant submission. On the basis of this comparison, we find that the submitted redistricting plan allows minority voters less opportunity to participate in the political process than they were afforded by the 1983 legislative redistricting. The County has not provided, as it must, a satisfactory explanation for this retrogression in minority voting strength.

In light of the considerations discussed above, I cannot conclude that the Section 5 burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the proposed redistricting plan for single-member representative districts of Madison County.

The realignment of election districts (precincts) and the proposed polling place changes within some of those precincts are dependent on the district lines. Accordingly, the Attorney General will make no determination at this time with regard to the proposed realignment of election districts (precincts), the creation of two new polling places, and a change in the location of one existing polling place. See 28 C.F.R. 51.20(b).

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 these changes have 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 41.44 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 redistricting of representative districts and the precinct realignment and polling changes in Madison County, Mississippi, legally unenforceable. 28 C.F.R. 51.9.

To enable this Department to meets its responsibility to enforce the Voting Rights Act, please inform us of the course of action Madison County plans to take with respect to this matter. If you have any questions, feel free to call Sandra S. Coleman (202-724-6718), Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

June 13, 1986

Jerry R. Wallace, Esq.
Montgomery, Smith-Vaniz & McGraw
P. O. Box 284
Canton, Mississippi 29046

Dear Mr. Wallace:

This refers to your request that the Attorney General reconsider his September 10, 1985, objection under Section 5 of the Voting Rights Act of 1965, as amended, to the redistricting of single-member representative districts for the board of supervisors, county board of education, constables, and county election commission; and to the pending determination regarding the realignment of voting precincts, the three polling places, and the creation of Canton Precinct No. 7 (District 1, E.D. 6) in Madison County, Mississippi. We received your initial request on February 28, 1986; supplemental information was received on March 24, April 10, and April 14, 1986. Although we noted your request for expedited consideration, we have been unable to respond until this time.

We have considered carefully all of the information you have provided, as well as comments and information from other sources and interested parties. At the outset, we note that the proposed redistricting plan has its genesis in federal court litigation concerning the districting plan in effect from 1890-1983. Cook v. Luckett, 575 F. Supp. 485 (S.D. Miss. 1983), rev'd, 735 F.2d 912 (5th Cir. 1984). Although the county's first proposed remedial plan, which received Section 5 preclearance in 1983, was not used for any election, we continue to believe that that plan is the appropriate benchmark for determining whether the submitted redistricting plan has a discriminatory effect. See Beer v. United States, 425 U.S. 130 (1976).

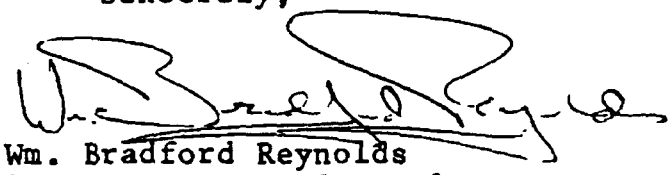
In requesting reconsideration of the objection, you have provided estimated 1985 population data for both the 1983 plan and the submitted plan in support of your contention that the submitted plan is not retrogressive in light of

demographic changes since the 1980 Census. Using that data, a comparison of minority voting strength in the two plans shows that, indeed, the proposed redistricting scheme likely would not lead at the present time to a "retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." Id. at 141. Accordingly, on behalf of the Attorney General I am withdrawing the objection.

In reaching our determination in this matter we noted that, under the 1985 population estimates, the proposed plan now has an overall deviation among districts of more than 40 percent. While this issue is one outside of our immediate concerns under Section 5, we do note that remedying that malapportionment would provide the county with an excellent opportunity for eliminating the fragmentation of the homogeneous black community in southwestern Canton and environs which is occasioned by the boundary line between Districts 1 and 2 of the plan.

In addition, with regard to the realignment of voting precincts, the three polling places and the creation of Canton Precinct No. 7, the Attorney General does not interpose any objections to the changes 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 changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.48).

Sincerely,



Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division