U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

February 10, 1989

G. Kenner Ellis, Esq.
City Attorney
P. O. Box 452
Greenville, Mississippi 38702-0452

Dear Mr. Ellis:

This refers to the change in the method of electing the city council from at large to four single-member districts and two superdistricts (with the mayor remaining as an at-large member of the council); the districting plan; the implementation schedule; the December 9, 1987, annexation; and the realignment of precincts, the establishment of an additional precinct and two additional polling places, and the elimination of a polling place for the City of Greenville in Washington 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 submissions on December 12, 1988.

We have considered carefully the extensive information you have provided, as well as data obtained from the 1980 Census and comments and information received from other interested parties. The submitted annexation will reduce the city's black population by five percentage points, from 59 percent to 54 percent of the total population. More significantly, the annexation will change the city's voting age population from one with a black majority (54%) to one with less than a black majority (49%). Under City of Richmond v. United States, 422 U.S. 358, 371 (1975), such an annexation dilutes minority voting strength and is entitled to preclearance only if it is free of discriminatory purpose and the post-annexation election system "fairly reflects the strength of the [black] community as it exists after the annexation."

The method of election here proposed for the post-annexation city provides that six councilmembers will be elected from single-member districts constituted as follows: the city first would be divided into four districts, then those four districts would be paired to form two "superdistricts." The mayor, who is elected at large, would continue as the seventh member of the council with a tiebreaking vote.

We have analyzed the opportunity this plan provides black citizens to elect candidates of their choice to the city council in the light of the particular electoral circumstances present in Greenville and Washington County, including such changes as have occurred in recent years. According to the information available to us, city elections in Greenville would appear to be characterized by a pattern of racially polarized voting where white persons consistently cast no more than about 10 percent of their votes for black candidates. In addition, our analysis of the turnout, by race, in municipal and county elections indicates that the white constituency consistently votes at a higher rate than does the black constituency and that blacks on the west side of the city participate to a significantly lesser extent than do black voters on the eastern side of the city. These circumstances certainly would appear to eliminate any prospect for minority representation in the three proposed districts where white persons comprise a majority of the population, as well as in contests for mayor since the city will have a white voting age population majority. Similarly, these circumstances would suggest that the ability of black persons in the superdistrict on the western side of the city to elect representatives of their choice is open to reasonable doubt.

Given these circumstances, we have evaluated the claim of some Greenville citizens that the plan was formulated in part to minimize the number of council seats elected from districts controlled by black voters. This contention is that throughout the litigation and negotiations related to the annexation the city has insisted not only that the 4-2-1 plan be adopted in preference to available single-member district options, but that the two superdistricts be configured on a north-south axis and that the black population of the western district be precisely limited. Thus, in apparent recognition of the potential problems created by these choices, the present plan was slightly amended last year to increase the black population figure from 63 to 64.7 percent.

We are mindful in this evaluation that one three-judge court in the District of Columbia has found that, given Mississippi's electoral history, "a district should contain a black population of at least 65 percent or a black VAP of at least 60 percent to provide black voters with the opportunity to elect a candidate of their choice." State of Mississippi v. United States, 490 F. Supp. 569, 575 (D.D.C. 1979) (emphasis added). We also considered carefully the fact that the western superdistrict (No. 6) has a population (64.7) just slightly below the 65 percent level and the fact that in the litigation context the black plaintiffs ultimately accepted this configuration as satisfying their concerns. We are also aware, from our own studies, that there are readily available variations of the 4-2-1 configuration, that would easily allow a range of larger black population choices for this district.

The issues for us to decide with respect to this election plan are: (1) does it have a retrogressive impact; (2) was it adopted free of any racially discriminatory purposes; and (3) does it "fairly reflect the strength" of the black community following the annexation. On each of these issues the burden of proof lies with the city. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52).

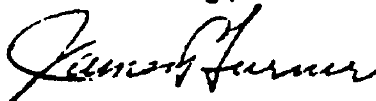
Plainly, the change to this plan from at-large elections is not retrogressive, but the other two questions are more problematic. Our decision must be tailored to the facts addressed in each case, and therefore, the court's general finding about Mississippi districts, while somewhat instructive, is not controlling. Similarly, the fact that black plaintiffs endorsed this plan in settlement of protracted litigation, although relevant, is not conclusive. The concern we have identified, and which has not been explained by the city, is that the configuration of the superdistricts, and the makeup of the western superdistrict, was influenced by considerations of race. Obviously, the city must address the racial constituency of all its districts if it is establishing them under Richmond to remedy the problem of at-large voting following an annexation. But the question raised here is that the city went beyond this remedial racial consideration and purposely selected options that minimize the potential for minority voters to elect candidates of their choice in the western superdistrict.

In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that this burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the submitted annexation to the extent it affects voting, and to the method of election and districting plan. Since the other submitted changes are directly related to these changes, no determination is necessary or appropriate with respect to these matters. See 28 C.F.R. 51.35.

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 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection. In that regard, we note that we have reached our conclusions in this matter on the basis of voter registration data which may be incomplete because of the recent reregistration. Thus, should you be able to provide more accurate information it should be included in any request for reconsideration you may make. 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 method of election, districting plan, and the voting change occasioned by the annexation legally unenforceable. 28 C.F.R. 51.10.

To enable the Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the City of Greenville plans to take with respect to this matter. If you have any questions, feel free to call Mark A. Posner (202-724-8388), an attorney in the Voting Section.

Sincerely,



James P. Turner
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

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Office of the Assistant Attorney General

Washington, D.C. 20530

FEB 14 1990

G. Kenner Ellis, Esq.
City Attorney
P.O. Box 452
Greenville, Mississippi 38702-0452

Dear Mr. Ellis:

This refers to your second request that the Attorney General reconsider the February 10, 1989, objection under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, to the change in the method of electing the city council from at large to four single-member districts and two superdistricts, the districting plan, and the December 9, 1987, annexation for the City of Greenville in Washington County, Mississippi. In addition, we note that there are certain other voting changes adopted by the City of Greenville with respect to which the Attorney General previously was unable to make a determination because they are directly related to the objected-to changes, i.e., the implementation schedule, a realignment of voting precincts, the establishment of an additional precinct and two additional polling places, and the elimination of a polling place. We received your reconsideration request on November 6, 1989; additional information was received on December 20, 1989.

We have considered carefully the information you have provided in connection with this reconsideration request, as well as comments received from other interested parties and the information received during our prior reviews of these matters. In the February 10, 1989, objection letter and the July 11, 1989, letter declining to withdraw the objection, we set forth the considerations underlying the objection. Specifically, we noted our concerns about the districting plan primarily as to the configuration of the western superdistrict, and in our July 11 letter we advised the city that it would be appropriate to

withdraw the objection if the city could provide further substantiation for its assertion that over 60 percent of the registered voters in the western superdistrict are black.

In response to the questions raised in our July 11, 1989, letter concerning the manner in which the voters were racially identified, the city now has conducted a sampling study of the racial identifications to determine the extent to which there may be errors in the identifications. We have reviewed carefully the procedures followed in obtaining the sample and have conducted our own independent statistical analysis of the results obtained from the study. Based upon this analysis, it appears that the city's estimate that a majority of the registered voters in the western superdistrict are black is a reliable one and that the western superdistrict, as drawn, does provide to black voters a fair opportunity to elect candidates of their choice. Therefore, when viewed as a whole, the districting plan would appear to "fairly reflect" the strength of the black constituency in the post-annexation city within the meaning of City of Richmond v. United States, 422 U.S. 358, 371 (1975).

Accordingly, on behalf of the Attorney General, the objections to the December 9, 1987, annexation, the method of election change, and the districting plan are hereby withdrawn. In addition, the Attorney General does not interpose any objections to the related changes set forth above. However, we feel a responsibility to point out that Section 5 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. 51.41).

We note that when the city decides upon the date and procedures for conducting the special election to implement the election method changes, these are changes which also will be subject to Section 5 review. See 28 C.F.R. 51.17.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

cc: Johnny Walls, Esq.

U.S. Department of Justice

Civil Rights Division

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

July 11, 1989

G. Kenner Ellis, Esq.
City Attorney
P.O. Box 452
Greenville, Mississippi 38702-0452

Dear Mr. Ellis:

This refers to your request that the Attorney General reconsider the February 10, 1989, objection under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, to the December 9, 1987, annexation; the change in the method of electing the city council from at large to four single-member districts and two superdistricts (with the mayor remaining as an at-large member of the council); and the districting plan for the City of Greenville in Washington County, Mississippi. We received your request on May 1, 1989; supplemental information was received on May 8 and June 21, 1989.

We have considered carefully the information you have provided in connection with the reconsideration request, as well as comments received from other interested parties and the information received prior to the objection being interposed. In our letter dated February 10, 1989, we set forth the considerations underlying the objection. In that regard, we explained that the information then available did not permit the conclusion that the city had carried its burden of showing that the proposed method of election and districting plan fairly reflect black voting strength in the post-annexation city, and that these changes had been adopted free of an invidious discriminatory purpose. We specifically noted the concern, which had not been adequately explained, that the city had "purposefully selected [districting] options that minimize the potential for minority voters to elect candidates of their choice in the western superdistrict."

In seeking reconsideration, the city presents evidence purporting to show that blacks constitute more than 60 percent of the registered voters in the western superdistrict. If these data were correct, they clearly would provide a valid basis for withdrawing the February 10, 1989, objection. However, because that picture is so markedly different from what our experience and court findings in other Mississippi situations have revealed (see, e.g., Mississippi State Chapter, Operation PUSH v. Allain, 674 F. Supp. 1245 (N.D. Miss. 1987)), we have taken some pains to inquire into the methodology used in arriving at the figures advanced.

In that regard, we note, first, that the racial identifications were based on data contained in a computer printout furnished by the circuit clerk's office of all persons who had reregistered. The racial identity of a substantial proportion of those registrants, however, did not appear on the printout as provided by the circuit clerk and the racial identification for those racially unidentified registrants was made by a single individual based upon: (1) whether another registrant whose race was known resided at the same address; (2) the personal knowledge of the identifying individual as to the racial make-up of the registrant's neighborhood; or, if these approaches were unavailing, (3) assignment of a racial identification as being the same as that of the predominant race in the census block of residence as shown on a highway map annotated with 1980 Census information. No records were maintained as to which reason supported which identification. Nor does it appear that the results were verified by any spot checking or public inspection. Indeed, we note further that even though according to the city's figures approximately 9,000 of the nearly 19,000 persons registered to vote in the city are black, members of the black community apparently were not asked to assist in the process of identifying the race of the registered voters although they would appear to be most knowledgeable about the location of black voters.

Thus, while as noted above reliable data establishing that the majority of registered voters in the western superdistrict are black would provide ample justification for withdrawal, the information provided cannot serve as a basis for such action because it is inconsistent with comparable registration patterns and otherwise lacks empirical support. You should understand, however, that we stand ready to consider any further data the city wishes to provide in support of this survey.

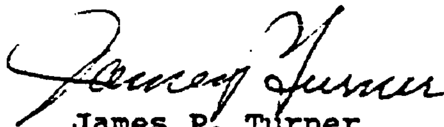
Of course, as you are aware, under Section 5 the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor discriminatory effect, and this remains the standard in considering a request for reconsideration. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.48 and 51.52). In light of the considerations

discussed above, I still am unable to conclude that the concerns which prompted the objection have adequately been allayed. Accordingly, on behalf of the Attorney General, I must decline to withdraw the objection. However, we recognize the substantial interest of all the citizens of Greenville that this matter be resolved at the earliest possible date so that elections for the city council may proceed. If it would be of assistance, we would be happy to meet with representatives of the city to discuss what action might be appropriate to achieve that end.

Also, as we previously advised, you may seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. We remind you that until such a judgment is rendered by that court, the objection remains in effect and the proposed method of election, districting plan, and the voting change occasioned by the annexation are legally unenforceable. See 28 C.F.R. 51.10, 51.11, and 51.48.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within 10 days of the course of action the City of Greenville plans to take with respect to this matter. As before, you may contact Mark A. Posner, an attorney in the Voting Section, at (202) 724-8388.

Sincerely,



James P. Turner
Acting Assistant Attorney General
Civil Rights Division