U.S. Department of Justice

Civil Rights Division

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

Benjamin E. Griffith, Esq.
Griffith & Griffith
P.O. Drawer 1680
Cleveland, Mississippi 38732

OCT 12 1990

Dear Mr. Griffith:

This refers to the abandonment of the single-member districting plan, the delay in implementing single-member districts, the cancellation of the November 1990 general election, and the holding over of trustees elected at large for the Cleveland School District in Bolivar 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 3; supplemental information was received on August 7, 1990.

We have given careful consideration to the information contained in your submission, the State of Mississippi's submission of Chapter 523 (1988), your previous submission of the single-member districting plan, and information from other sources. As you know, Chapter 523 required school districts such as the Cleveland School District to effectuate a transition from an at-large method of election to single-member districts by November 1989. Such transition was delayed in the Cleveland School District. On February 2, 1990, we precleared a single-member districting plan for the district and, as part of that determination, we precleared the cancellation of the November 1989 school district election, after the fact, with the understanding that a special election would be scheduled to implement the single-member districts in compliance with state law as soon as could be scheduled by the chancery court.

According to the 1980 Census, 46.3 percent of the district's population is black. Currently, only one of the five members of the school district board of trustees is black. In the single-member districting plan we have precleared, two of the five districts have black voting age population majorities

exceeding 69%, and a third district has a black voting age population of 50%. One of the goals in the drawing of this plan was to realize minority voting strength more fairly than is realized under the at-large system, and an earlier districting plan was revised, after protests from the black community, to better meet this specific goal. Thus, the proposed abandonment of this plan and the delay in implementation of single-member districts until some time after the 1990 Census results become available in 1991, appear to effect a retrogression in the position of minority voters in the Cleveland School District, contrary to the requirements of Section 5. See Beer v. United States, 425 U.S. 130, 140-41 (1976).

Several reasons are now asserted why the plan we have precleared should be abandoned and the implementation schedule set by state law should be further delayed. Foremost among them is the charge that the 1980 Census data are too old and, therefore, too inaccurate to be used. However, you have provided little specific information identifying flaws in the Census data, and nothing showing that the precleared districting plan fails to accomplish its intended goals. It is well settled that in the absence of specific, more reliable data, the results of the decennial Census are deemed authoritative for purposes of drawing election districts. See, e.g., United States v. County of Los Angeles, Nos. CV 88-5143 and 88-5435, slip op. at 114-15 (C.D. Cal. June 4, 1990) (copy enclosed); McNeil v. Springfield Park District, 851 F.2d 937, 946 (7th Cir. 1988), cert. denied, 109 S. Ct. 1769 (Apr. 17, 1989).

You have also claimed that the likely need to redistrict after the 1990 Census and the possibility of future school district consolidation justifies the failure to implement a plan based on the 1980 Census. However, it is unclear why either of these factors justify the proposed course of action. The costs involved in developing the 1980 Census plan have already been incurred, and no claim has been made that the effective implementation of this plan is beyond the capability of the Bolivar County Board of Election Commissioners. Similarly, no facts have been provided establishing that school district consolidation will occur in the near future, nor has there been any showing that implementation of single-member districts at this time would jeopardize such consolidation or retard any other needed educational or fiscal reforms in Bolivar County. Nor has the school district presented us with information which would

tend to show that suspending the right to vote of citizens in the Cleveland School District is necessary to ensure the orderly progress of school desegregation in the district.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. 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). 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 changes.

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. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the submitted changes continue to be legally unenforceable. 28 C.F.R. 51.10.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the Cleveland School District plans to take with respect to this matter. As noted above, the school district was required under Chapter 523 to implement its new election plan by November 1989. We are concerned that further delays operate to the distinct disadvantage of black voters who stand at the threshold of being able to participate effectively in the political process and to elect candidates of their choice to the school board. The school district is obliged to propose a new election schedule, submit the new schedule for Section 5 preclearance, and to hold elections under a racially fair election plan at the earliest possible date. To that end, we stand ready to accelerate as much

as possible our Section 5 review of a proposed schedule so that the precleared single-member districting plan can be implemented at the earliest possible date. If you have any questions regarding this matter, feel free to call George Schneider (202-514-8696), an attorney in the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

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Benjamin E. Griffith, Esq.
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JAN 9 1991

Dear Mr. Griffith:

This refers to your request that the Attorney General reconsider the October 2, 1990, objection under Section 5 of the Voting Rights Act, as amended, 42 U.S.C. 1973c, to the abandonment of the single-member districting plan, the delay in implementing single-member districts, the cancellation of the November 1990 general election, and the holding over of trustees elected at large for the Cleveland School District Board of Trustees in Bolivar County, Mississippi. We received your letter on November 13, 1990.

The October 2, 1990 objection was interposed to the school district's proposed abandonment of measures designed to make the district's electoral system fair to minority voters. Previously, the school board was elected at large, and although blacks comprise over 46 percent of the District's residents, according to the 1980 Census, their historical underrepresentation on the board evidenced the at-large system's failure to accord black voters an equal opportunity to elect candidates of their choice. When state law mandated a change to single-member districts, the districting plan was drawn and then revised to better meet the goal of producing a plan by which black voters could elect candidates of their choice in numbers which more fairly realized their voting potential. The districting plan received the requisite Section 5 preclearance.

Rather than implement the new election method and districting plan, the school district obtained a state court order purportedly authorizing the abandonment of the plan, and related changes. When these changes were submitted for review

under Section 5, an objection was interposed on October 2, 1990, to prevent a significant retrogression in political opportunities for minority citizens of the Cleveland School District. As set forth in the letter interposing the objection, no adequate justification was offered for continuing to delay the implementation of a racially fairer electoral system. Although, as you are aware, Section 5 expressly prohibits affected jurisdictions from taking any step to enforce or administer a voting change until preclearance is obtained, the District nevertheless cancelled the 1990 elections.

We have reconsidered our earlier determination in this matter based on the information and arguments you have advanced in support of your request, along with the other information in our files and comments received from other interested parties. Your request for reconsideration raises no significant new issues which were not considered at the time of the October 2 objection, and presents no new facts upon which withdrawal of the objection reasonably could be based. The central fact of a delay in the implementation of a racially fair plan remains.

In light of these considerations, I remain unable to conclude that you have carried your burden of showing that the changes to which we interposed an objection on October 2, 1990, have neither a discriminatory purpose nor a discriminatory effect. 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). Therefore, on behalf of the Attorney General, I must decline to withdraw the objection to those changes.

At the time of our October 2 objection, we noted the obligation of the District "to hold elections at the earliest possible date," and that "we stand ready to accelerate as much as possible our Section 5 review of a proposed schedule so that the precleared single-member districting plan [could] be implemented at the earliest possible date." We continue to view the situation as one requiring prompt attention and, so, I have authorized the filing of a lawsuit to enforce Section 5, and to obtain a special election for school trustees. Based on your previous statements of a desire to cooperate in this matter, we are willing to delay the filing of the lawsuit for a short period of time to negotiate a consent decree to be filed simultaneously with the complaint. If, after receipt of this letter, you

believe such pre-filing discussions would be useful or productive, you may contact Voting Section attorney John K. Tanner (202/307-2897) to make the necessary arrangements for such a meeting.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division