



U.S. Department of Justice
Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

OCT 5 1990

Danny Welch, Esq.
Attorney, Board of Supervisors
Chancery Building
Mendenhall, Mississippi 39114

Dear Mr. Welch:

This refers to the voting precinct realignment for District 1 and the polling places therefor in Simpson 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 August 22, 1990.

We have carefully reviewed the information you have provided, as well as Census and other available statistical data and comments from other interested parties. We note that the instant changes stem from a Section 2 lawsuit in which black residents of the county challenged the districting plan for the Board of Supervisors. Griffin v. Simpson County, No. J97-0243(B) (S.D. Miss.). As a result of this action, a redistricting was adopted under which black persons will have an opportunity equal to that of white residents to elect candidates of their choice to certain county offices, including the board of supervisors, which has never had a black elected member. This redistricting plan has received the requisite Section 5 preclearance and the instant precinct boundary line and polling place changes are designed to implement the plan in District 1, which is black majority.

At the outset, we note that the county has retained the use of the names of three existing voting precincts (Magee 1, Mendenhall 1, and Weathersby), but each of these proposed precincts is significantly different in its configuration from the precinct that now bears the same name. In addition, the proposed Jupiter precinct, which is new in name as well as in

construct, comprises portions of territory from three existing precincts. With regard to these precinct realignments and the Jupiter precinct polling place location, the Attorney General does not interpose any objection. 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. 51.41).

With respect to the sites selected by the county for the rest of the polling place locations in District 1, however, we cannot reach a like conclusion. In examining the county's choices, two observations lead to significant concerns. First, it appears that the county obtained virtually no minority input during the process of selecting the proposed polling places, even though decisions were being made to effectuate elections in the only black-majority district in the county. Second, with the exception of the proposed Jupiter precinct, the county rejected each of the alternative polling places suggested by the black community as best situated to serve the needs of the predominant group in the precinct, even though it apparently was aware of these preferences prior to adopting the changes at issue.

While, of course the county certainly is not required to adopt minority-preferred alternatives, it nevertheless must be able to explain, in nonracial terms, its choices of polling places to serve the proposed precincts. In this instance, the county has indicated that it established a set of neutral criteria in order to select polling place locations in the newly-drawn precincts. Yet, our review of the proposed and alternative locations suggests that the county freely deviated from its criteria in adopting the proposed polling places in the Magee 1, Mendenhall 1, and Weathersby proposed precincts, apparently in order to prevent the establishment of a polling place in areas of dense black population concentrations or at a location that is considered to be a black institution, and that adherence to the county's own legitimate criteria would have permitted the selection of alternatives that are more accessible to the majority of the constituents of those proposed precincts.

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 28 C.F.R. 51.52. In

satisfying its burden, the submitting authority must demonstrate that the proposed change is not tainted, even in part, by an invidious racial purpose; it is insufficient simply to establish that there are some legitimate, nondiscriminatory reasons for the voting change. See Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 265-66 (1977); see also City of Rome v. United States, 422 U.S. 156, 172 (1980); Busbee v. Smith, 549 F. Supp. 494, 516-17 (D.D.C. 1982), aff'd, 459 U.S. 1166 (1983). In light of these principles, and in view of the circumstances discussed above, I cannot conclude, as I must under the Voting Rights Act, that the county's burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the proposed polling place selections for the proposed Magee 1, Mendenhall 1, and Weathersby voting precincts.

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 proposed polling places for the new Magee 1, Mendenhall 1, and Weathersby voting precincts continue to be legally unenforceable. See 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 Simpson County plans to take with regard to these matters. If you have any questions, feel free to call Ms. Lora L. Tredway (202-307-2290), an attorney in the Voting Section.

Sincerely,



John P. Dunne
Assistant Attorney General
Civil Rights Division